



The Honorable Judge Rodney Melville
Superior Court
312-M East Cook Street
Santa Maria, CA 93455-5165

Santa Barbara County Civil Grand Jury
Attention: Foreman
1100 Anacapa Street
Santa Barbara, CA 93101

Dear Honorable Judge Rodney Melville and
Foreman Santa Barbara Civil Grand Jury:

The following is the response of the Solvang City Council to the Report of the 2005-2006 Santa Barbara County Civil Grand Jury entitled "Legal Services in Santa Barbara. Very High Prices for Comprehensive Representation." The Solvang City Council appreciates the time and effort that the 2005-2006 Santa Barbara Civil Grand Jury spent in preparing the referenced report. This report has provided valuable information for use in the future in evaluating both the budgetary actions of the City Council and in evaluating the services of the City Attorney.

The City of Solvang has reviewed the report, the findings and the recommendations and has the following responses as required by law:

FINDINGS

Finding 1

Legal services for municipalities and districts are a vital necessity that provides advice, guidance, counsel and defense. Municipalities and districts fulfill their legal service requirements by various methods suitable to each municipality or district's unique needs and circumstances. Budgeting procedures for legal services often underestimate actual expenses, especially when the municipality or district is involved

in litigation. Often budgeting seems to be a mere guess or a deliberate understatement of anticipated or known foreseeable costs.

Response to Finding 1

The City of Solvang agrees that legal services for municipalities and districts are a vital necessity that provides advice, guidance, counsel and defense. Likewise, the City agrees that municipalities and districts fulfill their legal service requirements by various methods suitable to each municipality or district's unique needs and circumstances. As regards to the City of Solvang, Solvang disagrees with that portion of the finding suggesting that budgeting procedures for legal services often underestimate actual expenses and that often budgeting seems to be a mere guess or a deliberate understatement of anticipated or known foreseeable costs. The Solvang City Council cannot speak for any other city or district, but a review of the Grand Jury information indicates that the City of Solvang has accurately budgeted for legal expenses with the actual expenditures for the referenced period being less than the budgeted figures rather in excess of the budgeted figures.

Finding 2

Legal services are very costly. Litigation is even more costly. Litigation is often an open checkbook for the municipality or district, which has little or no ability to control the costs' thrust.

Response to Finding 2

The City of Solvang agrees with the majority of Finding 2. Legal services are very costly. Litigation is even more costly. The City of Solvang essentially agrees with the final portion of Finding 2, and finds that the ability to control the cost of litigation exists more when a city is a plaintiff than when the city is a defendant. The City Council of the City of Solvang has recently engaged in extensive cost/benefit analysis before deciding to initiate litigation. Such discussions have included attempting to obtain real information on the potential costs of such litigation prior to it being initiated. However, the issue cannot be completely solved because putting arbitrary limits on time spent by attorneys in important litigation also arbitrarily restricts the ability of those attorneys to do the job adequately and to maximize the potential beneficial results of that litigation.

Finding 3

Although confidential information contained in legal bills could be deleted or redacted, some municipalities and districts chose to submit bills with all information about services provided by attorneys omitted making it difficult to determine what services were provided to the government agency.

Response to Finding 3

The City of Solvang has no response to Finding 3. The Grand Jury did not request billing records from the City of Solvang and can make no comment on how other public entities responded. It is important for cities to maintain attorney-client privilege. It is also important that much privileged information be contained in billings, so that the billings can be adequately reviewed by senior staff and by the City Council. This is an important issue to continue to review.

Finding 4

The requirements of informed consent appear to be informally satisfied.

Response to Finding 4

The City of Solvang has no response to Finding 4. Finding 4 appears to relate to other entities as no investigation was conducted in Solvang regarding informed consent. The City of Solvang can respond in general in that it has not consented to, either formally or informally, conflicted representation. The Grand Jury report does indicate one misunderstanding of facts. The report on page eleven indicates that the City of Solvang budgets \$20,000.00 in legal services for water district services. There is no separate water district in Solvang. Rather, the \$20,000.00 is the budgeted amount for legal services to the City of Solvang on water issues from the legal expert the City has retained for that purpose. The City of Solvang conducted a statewide recruitment for water law specialists a number of years ago. One specific purpose of the statewide recruitment was to find a water lawyer who would have no conflicts with other agencies. In addition to the other excellent qualifications of the law firm of Baker, Manock & Jensen, that was a significant reason for choosing them rather than other qualified firms with potential or existing conflicts. The one time there was a potential conflict over water issues (a potential conflict involving the City Attorney's office rather than Baker, Manock & Jensen) the City Attorney's office recused itself from participation and left the representation on those issues to the water law specialist.

Finding 5

Retainers are often short, simple, summary agreements containing little detail defining the nature of the services, the purpose of the retainer or scope of services to be provided in sufficient detail to assure adequate accountability.

Response to Finding 5

The City of Solvang has no response as to what retainer agreements exist in other places. The retainer agreement for the City Attorney in the City of Solvang is not a short simple summary. It contains much detail about the purpose of the retainer, scope of services and is specifically designed to assure adequate accountability.

Finding 6

Retainers contain provisions that are unique to each municipality or district. Hours, rates, travel time and travel costs, disbursements, office costs, staff costs, research costs, professional liability insurance, costs and expenses on termination, ownership of documents and renewals are some of the issues relative to retainers that must be carefully negotiated.

Response to Finding 6

The City of Solvang agrees with Finding 6.

Finding 7

Budgets or caps are rarely used to control legal expenses.

Response to Finding 7

Solvang agrees that caps are rarely used to control legal expenses. The City does use its budget to control legal expenses. The City Council is strong in its direction both to the City Manager's ongoing duty to monitor legal expenses and to the City Attorney's office as part of the City Council's duty to monitor legal expenses to encourage everyone to keep legal services within budget. The City Council in Solvang is acutely aware that although legal expenditures are a necessity, every dollar that is spent on legal services is a dollar that cannot be otherwise spent on capital projects, road improvements or other necessary services of the City.

Finding 8

Counsels are selected on the basis of various objective criteria such as qualifications, competence, ability and expertise and on subjective criteria such as politics, confidence and trust.

Response to Finding 8

The City Council of the City of Solvang has no responses to how the lawyers are selected for other municipal entities. The previous City Council of the City of Solvang conducted extensive recruitment and sought requests for proposals. The selection of the City Attorney was based on objective criteria such as qualifications, competence, ability and expertise. The City Council conducted interviews of many candidates, and the candidate that was selected had no political history in or with the City of Solvang and had no prior relationship with any City Councilmember. Confidence and trust is something that was built over time.

Finding 9

Hiring is distinctly a function of the governing board and requests for proposals do not seem to be generally used. The lowest cost should not necessarily be the sole objective of legal services but routine repetitive work may justify a more cost conscious manner of obtaining legal services.

Response to Finding 9

The City Council of the City of Solvang does not have a response as to how other public entities seek legal counsel. Hiring is distinctly a function of the governing board. However, in Solvang hiring was done pursuant to a request for proposals. Solvang's legal rates are lower than the other legal rates indicated in the Grand Jury Staff Report which suggests that all prior Solvang City Councils did consider cost consciousness in their hiring process.

Finding 10

Special services are required in connection with complex, difficult, time consuming and specialized areas of the law. The cost of special counsel may add substantially to the annual cost of legal services. Often the cost of outside counsel is not included in the annual general fund budget.

Response to Finding 10

The City Council of the City of Solvang agrees with Finding 10. Although this has not been a problem in the City of Solvang for a number of years, the cost of outside counsel may add substantially to the annual cost of legal services and should be strongly monitored. The City of Solvang does try to anticipate potential outside counsel costs when it budgets items. In addition, neither the City Attorney nor the City Manager have the authority to hire outside counsel for the City of Solvang without the prior approval of the City Council.

Finding 11

The level of audit and review of legal service bills varies. Some municipalities or districts closely review bills and services provided. Others rarely question the need, cost or amount of such bills.

Response to Finding 11

The City Council of the City of Solvang cannot respond as to how other public entities review legal service bills. The City Manager is tasked with carefully reviewing bills and tasked with making sure that the legal services are both accurately budgeted, and then performed within budget. Unforeseen events can lead to unusual legal expenses. However, here in Solvang the City Manager would be tasked with coming to the City

Council, explaining the nature of other legal services that would be required, and allowing the City Council to make the appropriate budgetary decisions if something like that occurs.

RECOMMENDATIONS

Recommendation 1

Municipalities and districts should review and define the level of their legal service needs and seek counsel at a level to satisfy those needs. The level of needed legal services should be developed objectively with an understanding of the anticipated actual costs and include a realistic amount in the annual budget.

Response to Recommendation 1

This recommendation has been implemented. The Solvang City Council when it recruited the current City Attorney more than eight years ago used a process as now recommended. The City Councils over the past eight years have analyzed their legal services needs objectively and included realistic amounts in the budgets and monitored budgetary performance.

Recommendation 2

Municipalities and districts should review, audit and control the number of hours for which services are claimed for billing purposes. Management personnel must be given authority to review and audit claims for legal services in the same manner as they review and audit other services provided to the municipality and district.

Response to Recommendation 2

This recommendation has been implemented. This has been the practice in Solvang for at least the last eight years.

Recommendation 3

Municipalities and districts should review the basic fees structure and give consideration to flat rate charges for routine or monthly services and define with precision additional services and the methods of authorizing additional services.

Response to Recommendation 3

The recommendation will not be implemented because is not currently warranted or reasonable. Legal services for the City of Solvang for the years in question in the Grand Jury Report and for prior years have been carefully monitored and have been reasonable. Although City Council and staff have discussed the potential of flat rate charges for routine or monthly services, it has been determined that the current

procedure of low rates for the number of hours reasonably anticipated is very similar to a flat rate for basic services. However, the City Council will continue to monitor its legal expenses carefully.

Recommendation 4

Municipalities and districts should use caps and budgets or other limitations to control costs in litigation where the municipality or district is named as a party.

Response to Recommendation 4

Although an arbitrary cap is not feasible when litigation is involved, the recommendations to the extent they are possible to implement have already been implemented in the City of Solvang. Please see our recent responses to the findings above.

Recommendation 5

Municipalities and districts should review the necessity for attendance by counsel at advisory board meetings.

Response to Recommendation 5

This recommendation has been implemented. The City Council has reviewed the necessity for attendance by Council at advisory board meetings. For that reason, the City Attorney's office staffs the Planning Commission meetings held monthly but does not otherwise staff on a regular basis the other advisory board meetings. Those meetings will be attended by the City Attorney only where directed by the City Council and/or the City Manager in unusual circumstances. An additional cost saving method is to have joint meetings of the various boards where common legal issues need to be discussed. This has also already been implemented.

Recommendation 6

Municipalities and districts should consider billing practices, minimum charges, minimum hours, carryover of unused monthly hours, multiple billing for in-office conferences and the services to be included in monthly minimum fees.

Response to Recommendation 6

This recommendation has already been implanted by past practice in the City of Solvang. The City of Solvang strongly audits the billings to prevent multiple billing for in-office conferences and multiple billing for services to be included in the monthly minimum fees.

Recommendation 7

Municipalities and districts should review disbursements such as electronic research, postage, shipping, telephone, travel time and travel expenses, expert witness costs, extraordinary discovery procedures, staff overtime costs, outdated charges such as word processing charges, prior approval provisions related to extraordinary costs and costs assumed by a municipality or district in the event of a dispute.

Response to Recommendation 7

The City Council of the City of Solvang has already implemented this recommendation by past practice. The City of Solvang does not pay for City Attorney costs such as electronic research, normal postage, shipping, telephone, and does not pay for travel time for regular meetings or regular office hours. Likewise, the City Council does not pay for staff overtime costs or outdated charges such as word processing charges and has prior approval provisions related to extraordinary costs or costs assumed by the City.

Recommendation 8

Municipalities and districts should require proof of an agreed level of professional liability insurance.

Response to Recommendation 8

This recommendation has been implemented.

Recommendation 9

Municipalities and districts should require disclosure of the names of current clients represented by the firm to be retained who may have potential conflicts with the municipality or district. Municipalities and districts should give consideration to limitations on its law firm's representation of other clients whose interests could foreseeably result in a conflict requiring disqualification of the municipality or district's law firm and provide a procedure to deal with the issue if it should arise.

Response to Recommendation 9

This recommendation has already been implemented. The City of Solvang requires its City Attorney to refuse representation of other clients whose interests could foreseeably result in a conflict requiring disqualification.

Recommendation 10

Retainers should provide for payment within a period longer than 30 days without penalty to permit full audit of services. In no event should the period within which

pay is required to be made be less than the normal meeting cycle plus processing time of the government board.

Response to Recommendation 10

This recommendation will not be implemented. The low rates provided for our current City Attorney are based upon timely payment. The City staff, City Manager and Financial Department is charged with auditing those bills and since the City Council meets every two weeks, any amounts over the normal monthly retainer are presented to the City Council before they are paid.

Recommendation 11

Municipalities and districts should require renewal retainers to be upon the complete agreement rather than the change of a rate sheet.

Response to Recommendation 11

The recommendation has not yet been implemented. The recommendation will be implemented if and when the City Attorney seeks a raise in compensation.

Recommendation 12

Municipalities and districts should use requests for proposals for retaining counsel to handle routine, repetitive matters.

Response to Recommendation 12

This recommendation has been long implemented in the City of Solvang.

Recommendation 13

Where legal service costs exceed 1% of the budget of the municipality or district, legal service costs should be monitored and evaluated to determine need and appropriateness.

Response to Recommendation 13

This recommendation likewise has been long implemented in the City of Solvang. The City of Solvang feels that legal service caution be monitored and evaluated even if they are less than 1% of the budget of the municipality.

Recommendation 14

In situations where informed consent is required, the rules related to informed consent should be strictly enforced and the basis upon which informed consent is given should be fully set forth in the minutes of the governing body.

Response to Recommendation 14

This recommendation will be immediately implemented, though there is not likely to occur such an event in the near future. It should be noted that some of these legal issues are properly discussed in closed session and that minutes of closed sessions are not public records.

Recommendation 15

Bills and other records of charges made for legal services after deleting confidential information should be deemed to be public records open to public disclosure.

Response to Recommendation 15

This recommendation will be implemented consistent with existing state law on public records and attorney-client privilege.

CITY OF SOLVANG

DATED: _____ 2006

BY: _____
Mayor Pro Tem, Ken Palmer