

Tim Cary & assoc. response for SM Bonita School Dist to “legal services.....”

## **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 1:

Santa Maria-Bonita School District disagrees partially with this finding.

Santa Maria-Bonita School District agrees that legal services are a vital necessity to provide advice, guidance, counsel, and defense. The costs of legal services are often very difficult to foresee, however the Santa Maria-Bonita School District carefully creates its budget weighing many factors, including past years budgets for legal services. The Santa Maria-Bonita School District does not agree that budgeting is a mere guess, in fact, Santa Maria-Bonita School District uses all necessary resources to diligently prepare its budget each year.

### **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 2:

Santa Maria-Bonita School District disagrees partially with this finding.

Santa Maria-Bonita School District agrees that legal services are costly; however, it has retained legal counsel that charge substantially less than comparable private firms in the field. Santa Maria-Bonita School District disagrees that litigation is often an open checkbook for the district. Litigation often raises complex issues; nevertheless the Santa Maria-Bonita School District cautiously approves all costs, including those incurred during 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 3:

Santa Maria-Bonita School District disagrees wholly with this finding.

Santa Maria-Bonita School District does not agree that confidential information contained in legal bills can appropriately be deleted or redacted and then produced, without violating attorney-client privilege. Santa Maria-Bonita School District has a duty to protect its attorney- client privilege which is vital to the successful legal protection of the District.

**Finding 4**

The requirements of informed consent appear to be informally satisfied.

Response 4:

Santa Maria-Bonita School District disagrees wholly with this finding.

Santa Maria-Bonita School District does not agree that the requirements of informed consent are informally satisfied.

**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 5:

Santa Maria-Bonita School District disagrees partially with this finding.

Santa Maria-Bonita School District agrees that the scope of services in the Legal Services Agreement should be provided in sufficient detail to assure adequate accountability. The Legal Services Agreement that Santa Maria-Bonita School District and its counsel have in place is detailed and defines the nature of all services provided to Santa Maria-Bonita School District by its legal counsel. In addition, the Legal Services Agreement is clear in its scope and purpose.

**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 6:

Santa Maria-Bonita School District agrees with this finding.

The Santa Maria-Bonita School District agrees that the issues relative to Legal Service Agreements must be carefully negotiated.

**Finding 7**

Budgets or caps are rarely used to control legal expenses.

Response 7:

Santa Maria-Bonita School District disagrees wholly with this finding.

The Santa Maria-Bonita School District utilizes budgets and staff approval processes to control legal expenses.

**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 8:

Santa Maria-Bonita School District disagrees partially with this finding.

The Santa Maria-Bonita School District agrees that counsel is selected on the basis of various objective and subjective criteria.

**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 9:

Santa Maria-Bonita School District disagrees partially with this finding.

Hiring legal counsel is a right of the governing board. In the past, Santa Maria-Bonita School District has used a variety of methods to obtain legal services at competitive rates.

**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 10:

Santa Maria-Bonita School District disagrees partially with this finding.

Santa Maria-Bonita agrees that special services are required in connection with complex, difficult, time consuming and specialized areas of the law. Santa Maria-Bonita School District also agrees that the cost of special counsel may add substantially to the annual costs of legal services. Santa Maria-Bonita School District disagrees that the cost of outside counsel is not included in the annual budgets. Santa Maria-Bonita School District includes the cost of outside counsel in its annual budgets.

**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 11:**

Santa Maria-Bonita School District disagrees partially with this finding.

Santa Maria-Bonita School District is unable to determine the level of review of legal service bills in other districts. However, insofar as the finding applies to Santa Maria-Bonita School District, the Santa Maria-Bonita School District attentively reviews legal bills and services provided.

**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 I:**

This recommendation has been implemented by the Santa Maria-Bonita School District.

The District staff regularly reviews the level of legal services needed and annually develops a budget to take into account those needs.

**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 2:**

This recommendation has been implemented by the Santa Maria-Bonita School District.

The District staff reviews, audits and controls the number of hours for which services are claimed for billing purposes. In addition, District management personnel are given authority to review and audit claims for legal services in the same manner as they review and audit other services provided to the District.

**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 3:

This recommendation will not be implemented by the Santa Maria-Bonita School District because it is not warranted.

Santa Maria-Bonita School District believes that this recommendation greatly oversimplifies the use of flat rate charges. Moreover, flat rate charges provide incentives for counsel to provide fewer services than are needed by the District in order to increase their profit margin.

**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 a party.

Response 4:

This recommendation has been implemented by the Santa Maria-Bonita School District.

The District staff reviews legal bills to control costs of litigation when the District is a named party.

**Recommendation 5**

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

Response 5:

This recommendation has been implemented by the Santa Maria-Bonita School District.

The District's legal counsel is only present at Board meetings when their attendance is necessary.

**Recommendation 6**

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

Response 6:

This recommendation will not be implemented by the Santa Maria-Bonita School District because it is not warranted.

Santa Maria-Bonita School District feels that this will not yield cost savings for the District because the District already carefully reviews its legal bills.

**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 7:

This recommendation has been implemented by the Santa Maria-Bonita School District.

The District staff carefully reviews disbursements related to legal services.

**Recommendation 8**

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

Response 8:

This recommendation has been implemented by the Santa Maria-Bonita School District.

Santa Maria-Bonita School District requires proof of professional liability insurance.

**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 interest could foreseeably result in a conflict requiring disqualification of the municipality or district's law firms and provide a procedure to deal with the issue if it should arise.

Response 9:

This recommendation has been implemented by the Santa Maria-Bonita School District.

Santa Maria-Bonita School District expects that the District's law firms will act in accordance with the Rules of Professional Responsibility which requires disclosure of any conflicts.

**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 governing board.

Response 10:

This recommendation has been implemented by the Santa Maria-Bonita School District.

The District's Legal Services Agreement provides for payment within a period longer than 30 days without penalty to permit full audit of services.

**Recommendation 11**

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

Response 11:

This recommendation has been implemented by the Santa Maria-Bonita School District.

The District requires renewal Legal Service Agreements to be upon the complete agreement rather than on the change of a rate sheet.

**Recommendation 12**

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

Response 12:

This recommendation has been implemented by the Santa Maria-Bonita School District.

In the past, Santa Maria-Bonita School District has used a variety of methods to obtain legal services at competitive rates.

**Recommendation 13**

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

Response 13:

This recommendation has been implemented by the Santa Maria-Bonita School District.

Santa Maria-Bonita School District monitors and evaluates the costs of legal services to determine need and appropriateness.

**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 14:

This recommendation has been implemented by the Santa Maria-Bonita School District.

In situations where informed consent is required the rules relating to informed consent are strictly enforced.

**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 15:

This recommendation will not be implemented by the Santa Maria-Bonita School District because it is not reasonable.

Santa Maria-Bonita's legal bills contain detailed information about matters involving legal counsel and due to attorney-client privilege it would not be reasonable or advisable to attempt to delete the attorney-client privileged information and make it a public record. However, the invoice page for legal services is made available by the District as a public record.