



# The State Bar *of California*

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## **OPEN SESSION AGENDA ITEM 50-2 MARCH 2020**

**DATE:** March 12, 2020

**TO:** Members, Board of Trustees

**FROM:** Vanessa L. Holton, General Counsel

**SUBJECT:** Annual Report on Use of Outside Counsel for 2019

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### **EXECUTIVE SUMMARY**

In its 2017 Audit Report, the California State Auditor recommended the State Bar annually report to the Board of Trustees the prior year's use of outside counsel by the State Bar. This report describes State Bar outside counsel use for the calendar year 2019. The item is for informational purposes only; it does not require formal action by the Board of Trustees.

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### **BACKGROUND**

In its June 2017 Audit Report, the California State Auditor recommended the State Bar annually prepare a report to the Board describing the State Bar's use of outside counsel not directly employed by the State Bar. The Audit Report states: "To increase transparency, the State Bar should disclose annually to the board a list of all contracts with outside law firms – including a description of the services provided, the need for such contracts, and the value and length of the contracts."

### **DISCUSSION**

In compliance with the 2017 recommendation of the California State Auditor, the General Counsel herein submits to the State Bar Board of Trustees the attached outside counsel report for the year 2019. The report is comprehensive in that it includes not only outside counsel who provided legal advice or representation in litigation, but also attorneys who provided the State Bar with arbitration services as required under applicable statutes or memoranda of

understanding, investigation, and services required under State Bar Rules of Procedure, rule 2201.<sup>1</sup>

As noted in the enclosure, in 2019, outside counsel were retained instead of obtaining representation by attorneys in the Office of General Counsel (OGC) for three primary reasons: ethical conflicts, outside counsel's niche expertise, and insufficient internal resources.

Expenditures on arbitrators increased in 2019 over 2018. As OGC continued to transition advice and litigation in-house, the amount spent by the State Bar in 2019 for legal advice and representation decreased by \$760,686, or by 89.2 percent over 2018.<sup>2</sup> The amount paid to Special Deputy Trial Counsel in Rule 2201 cases in 2019 continued at the same approximate level as in 2018, and reflects the continued professionalization of a robust program to review, investigate, and prosecute complaints against attorneys on the same basis as the Office of the Chief Trial Counsel, where the Chief Trial Counsel determines conflicts in that office's handling of complaints.

### **FISCAL/PERSONNEL IMPACT**

None

### **AMENDMENTS TO RULES OF THE STATE BAR**

None

### **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

### **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: 3. Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.

Objective a: Improve productivity through performance accountability, training, and professional development.

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<sup>1</sup> Under State Bar Rules of Procedure, rule 2201, Special Deputy Trial Counsel independent of the Office of the Chief Trial Counsel (OCTC) must be retained when the Chief Trial Counsel recuses herself with respect to an inquiry received by the OCTC.

<sup>2</sup> \$852,569.34 was paid for legal advice and representation in 2018; \$91,883.45 was paid in 2019.

Objective b: Improve staff morale and career satisfaction through recognition of performance, career path development, transparent and collaborative communication, and recognition and encouragement of innovation, efficiencies, and money saving ideas.

## **RECOMMENDATIONS**

None

## **ATTACHMENT(S) LIST**

- A. Report to the Board of Trustees on the State Bar's Use of Outside Counsel in 2019

## Report to the Board of Trustees on the State Bar's Use of Outside Counsel in 2019

**Table 1. Arbitration**

Firm	Services provided	Need	Value	Length
ADR Services, Inc.	Labor arbitrator	Arbitration	\$3,000.00	July 2019
Michael Prihar	Labor arbitrator	Arbitration	\$1,250.00	February 2019
David A. Weinberg	Labor arbitrator	Arbitration	\$2,894.00	November 2019
<b>TOTAL</b>			<b>\$7,144.00</b>	

**Table 2. Investigation**

Firm	Services provided	Need	Value	Length
Law Offices of Scott N. Kivel	Investigation	Conflict	\$60,601.58	2019
Shaw Law Group	Investigation	Conflict	\$18,492.06	2019
<b>TOTAL</b>			<b>\$79,093.64</b>	

**Table 3. Legal Advice and Representation**

Firm	Services provided	Need	Value	Length
Davis Wright Tremaine LLP	Out of state proceeding	State of Washington proceeding	\$7,427.68	2019
Employee Benefits Law Group	Retiree health benefits	Niche expertise of outside counsel	\$3,950.00	2019

Firm	Services provided	Need	Value	Length
Hinshaw	Transitioning State Bar sponsored life insurance	Niche expertise of outside counsel	\$28,491.23	2019
Locke Lord LLP	Transitioning State Bar sponsored life insurance	Niche expertise of outside counsel	\$3,000.00	May 2019
Renne Public Law Group	Employee policy drafting	Insufficient internal resources	\$8,371.50	2019
Sloan Sakai Yeung & Wong LLP	Employee policy drafting	Insufficient internal resources	\$4,441.50	2019
SSL Law Firm LLP	Lease negotiations	Niche expertise of outside counsel	\$28,393.38	2019
Van Der Hout LLP	H1B visa petition	Niche expertise of outside counsel	\$7,633.16	2019
Wagstaffe, Von Loewenfeldt, Busch, & Radwick LLP (WVLB)	CPRA request	Niche expertise of outside counsel	\$175.00	September 2019
			<b>TOTAL</b>	<b>\$91,883.45</b>

**Table 4. Rule 2201 Special Deputy Trial Counsel**

Firm	Services provided	Need	Value	Length
Law Offices of David E. Boyd	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$14,902.75	2019
Best Best & Krieger	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$36,529.09	2019
Alara T. Chilton, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,200.00	2019
Lawrence J. Dal Cerro	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$4,985.00	2019
Creg G. Datig, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,375.00	2019
Christopher Frick, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$2,900.00	2019

Firm	Services provided	Need	Value	Length
Evan Michael Hess, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,084.95	2019
Gordon & Rees, LLP	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$17,092.88	2019
Klein & Wilson	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$5,023.97	2019
Koss Firm	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,257.75	2019
Joel Mark, Esq.	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$2,002.51	2019
Edward McIntyre	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$44,547.97	2019
Charles A. Murray, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$6,861.28	2019
Law Offices of Steven B. Piser	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$863.60	2019
Sall Spencer Callas & Krueger, APC	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$4,603.25	2019
Brooke Schafer, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,390.00	2019
Schmid & Watson	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$830.00	2019
Jim Tanizaki, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,118.35	2019
Terry L. Spitz	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$1,929.45	2019
Watson Legal Services	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$320.00	2019
Wertlieb Law	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$773.76	2019
Wilson Elser Moskowitz Edelman & Dicker LLP	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$750.00	2019

Firm	Services provided	Need	Value	Length
Wolfe Legal Group	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$650.96	2019
<b>TOTAL</b>			<b>\$152,992.52</b>	