

OPEN SESSION

CONSENT AGENDA ITEM

50-2 JANUARY 2018

DATE: January 27, 2018

TO: Board of Trustees

FROM: Vanessa L. Holton, Office of General Counsel

SUBJECT: Use of Outside Counsel for 2017 Calendar Year

EXECUTIVE SUMMARY

In its June 2017 Audit Report, the State Auditor recommended that the State Bar annually report to the Board of Trustees the use of outside counsel by the State Bar. This first annual report following the State Auditor recommendation describes State Bar outside counsel use for the calendar year 2017. The item is for informational and discussion purposes only; it does not require any formal action by the Board of Trustees.

BACKGROUND

In its June 2017 Audit Report, the State Auditor recommended that the State Bar annually prepare a report describing the State Bar's use of counsel not directly employed by the 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 State Auditor, the General Counsel has prepared the attached outside counsel report for the year 2017. To best understand it, some background is in order. The report is comprehensive. It includes not only outside counsel or law firms that provided legal advice or representation in litigation in the year reported. The report also includes attorneys who provided the State Bar with arbitration/mediation services as required under applicable statutes or memoranda of understanding; investigation; and training. The report also lists attorneys retained as Special Deputy Trial Counsel as required under State Bar Rules of Procedure, rule 2201.¹ Finally, the list distinguishes those attorneys or law firms whose services were paid for by State Bar insurance policies, and not by State Bar funds.

¹ 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 himself with respect to an inquiry received by the OCTC.

In 2017, the reasons for the use of outside counsel instead of attorneys in the Office of General Counsel for advice and litigation matters primarily fell into two main categories: matters in which there were ethical conflicts (e.g., formation advice to the California Lawyers Association) and matters in which the outside counsel had niche expertise not currently possessed by OGC attorneys (e.g., advice concerning transition of insurance programs). Note that in the retention of outside counsel with niche expertise, OGC attorneys were attached to the matters so that they might begin to obtain sufficient learning and skill to be able to perform the same legal work in the future without resort to outside counsel.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022

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

Objective: b. Improve productivity

Objective: c. Improve staff morale and career satisfaction

RECOMMENDATION

None.

ATTACHMENT(S) LIST

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

Report to the Board of Trustees on the State Bar's Use of Outside Counsel in 2017

ARBITRATION

Firm	Services Provided	Need	Value	Length	Comments
Norman Brand, Esq.	Labor Arbitrator	Required retention under the grievance/arbitration procedures in the Memorandum of Understanding between the State Bar and the Service Employees International Union	\$3,750.00	January 2017	
Katherine J. Thomson	Labor Mediator	Required retention under the Meyers-Milias-Brown Act	\$1,650.00	June 2017	
Barry Winograd	Fact Finder	Required retention under the Meyers-Milias-Brown Act	\$6,500.00	November 2017	

INVESTIGATION

Firm	Services Provided	Need	Value	Length	Comments
GCA Law Partners	Audit letter	Compliance with State Auditor request	\$268.00	April 2017	
Law Offices of Scott N. Kivel	Investigation	Conflict	\$19,553.50	March & April 2017	

LEGAL ADVICE AND REPRESENTATION

Firm	Services Provided	Need	Value	Length	Comments
Adler & Colvin	Formation of the California Lawyers Association	Conflict	\$175,931.87	8/17/17–12/31/17	
Employment Benefits Group	Plan drafting and advice on employee benefits	Niche expertise of outside counsel	\$4,600.00	8/10/17–12/31/17	
Hueston Hennigan LLP	Defense of administrative litigation – Dunn v. State Bar	Conflict	\$771,257.21	1/1/16–12/31/17	<i>Covered under insurance policy; No State Bar funds expended.</i>

Hueston Hennigan LLP	Defense of civil litigation – Layton v. State Bar	Conflict	\$407,387.60	1/1/16–12/31/17	<i>Covered under insurance policy; No State Bar funds expended.</i>
Hueston Hennigan LLP	Defense of civil litigation – Noonan v. State Bar	Conflict	\$514,740.35	1/1/16–12/31/17	<i>Covered under insurance policy; No State Bar funds expended.</i>
Hueston Hennigan LLP	Defense of civil litigation – Oehler v. State Bar	Conflict	\$271,983.56	1/1/16–12/31/17	<i>Covered under insurance policy; No State Bar funds expended.</i>
Kerr & Wagstaffe LLP	Defense of civil litigation – Sander v. State Bar	Office of General Counsel (OGC) outsourced matter in 2007 for lack of expertise in OGC	\$71,842.36	2017	<i>Covered under insurance policy. No State Bar funds expended.</i>
Kerr & Wagstaffe LLP	General advice re: privacy law	Niche expertise of outside counsel	\$1,860.00	2017	
Locke Lord LLP	Advice to transitioning of State Bar's sponsored life insurance	Niche expertise of outside counsel	\$41,850.00	3/10/17–12/31/17	
Renne Sloan Holtzman Sakai LLP	Defense in employment matter	Conflict	\$81,617.27	2017	

RULE 2201 SPECIAL DEPUTY TRIAL COUNSEL

Firm	Services Provided	Need	Value	Length	Comments
Best Best & Krieger	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$2,022.54	2017	
Brown Rudnick LLP	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,500.00	2017	
Creg G. Datig, Attorney at Law	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,875.00	2017	
Jennifer Gilman, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,490.00	2017	
Gordon & Rees, LLP	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$8,182.90	2017	

Kerr & Wagstaffe LLP	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$15863.41	2017	
Klein & Wilson	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$1,450.92	2017	
Law Office of Alara T. Chilton	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$1,320.00	2017	
Joel Mark	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$731.04	2017	
Edward McIntyre	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$52,065.00	2017	
Sall Spencer Callas & Krueger, APC	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$2,438.92	2017	
Schmid & Watson	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$1,860.00	2017	
Terry Spitz	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$3,555.54	2017	
Wertlieb Law	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$850.00	2017	
Wilson Elser Moskowitz Edelman & Dicker LLP	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$220.00	2017	
Wingert Grebing Brubaker & Juskie LLP	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$435.11	2017	
Wolfe Legal Group	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$3,526.23	2017	

TRAINING

Firm	Services Provided	Need	Value	Length	Comments
Minami Tamaki LLP	Contract law training	Training of new attorneys	\$6,800.00	4/11/17–5/31/17	