



The State Bar *of California*

OPEN SESSION AGENDA ITEM 50-2 MARCH 2019

DATE: March 15, 2019

TO: Members, Board of Trustees

FROM: Vanessa L. Holton, General Counsel, Office of General Counsel

SUBJECT: Annual Report on Use of Outside Counsel for 2018 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 is the second annual report following the State Auditor recommendation. It describes State Bar outside counsel use for the calendar year 2018. The item is for informational 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 herein submits to the State Bar Board of Trustees the attached outside counsel report for the year 2018. 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; training, and services of Special Deputy Trial Counsel, as required under State Bar

Rules of Procedure, rule 2201.¹ Finally, the list distinguishes those attorneys whose services were paid for by State Bar insurance policies from those whose services were paid by State Bar funds.

As noted in the enclosure, in 2018 outside counsel were retained instead of obtaining representation by attorneys in the Office of General Counsel (OGC) for two primary reasons: ethical conflicts (e.g., formation advice to the California Lawyers Association) and outside counsel's possession of niche expertise not currently possessed by OGC attorneys (e.g., drafting of complex employee benefit plans; transitioning the State Bar-sponsored life insurance; and complex real estate transactions). In the retention of outside counsel with niche expertise, OGC attorneys were attached to the matters to obtain sufficient knowledge and skill to be able to perform the same legal work in the future without resort to outside counsel. OGC continues to endeavor to fill all its attorney vacancies with individuals with the skill sets required to provide the broad scope of services required by the State Bar.

Note that expenditure on arbitrators decreased in 2018 over 2017. As OGC attorneys have continued to transition advice and litigation in-house, the amount spent by the State Bar in 2018 for legal advice and representation decreased by \$206,426.36 or by 67.5% over 2017. As the State Bar has increased its employee training (e.g. in harassment prevention), the amount it spent in 2018 for training increased over 2017. Finally, the increase in 2018 over 2017 in expenditures for Special Deputy Trial Counsel in Rule 2201 cases reflects the continued professionalization of a robust program to review, investigate and prosecute complaints against attorneys on the same basis as the Office of Chief Trial Counsel where the Chief Trial Counsel determines conflicts in that office's handling of complaints.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

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 herself with respect to an inquiry received by the OCTC.

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.

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 2018

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ARBITRATION

Firm	Services Provided	Need	Value	Length	Comments
John D. Perone	Labor Arbitrator	Arbitration	\$937.00	July 2018	<i>Paid by CTC 10310</i>
TOTAL			\$937.00		

INVESTIGATION

Firm	Services Provided	Need	Value	Length	Comments
Law Offices of Scott N. Kivel	Investigation	Conflict	\$17,167.00	January 2018 to March 2018	<i>Paid by ED Office 10001</i>
Solomon Law	Investigation	Workload	\$34,800.29	7/2/18 – 10/17/18	<i>Paid by OGC 23001</i>
TOTAL			\$51,967.29		

LEGAL ADVICE AND REPRESENTATION

Firm	Services Provided	Need	Value	Length	Comments
Adler & Colvin	Formation of the California Lawyers Association	Conflict	\$34,468.00	January 2018	<i>Paid by Sections 70</i>
Employment Benefits Group	Plan drafting and advice on employee benefits	Niche expertise of outside counsel	\$3,150.00	1/2/18 – 6/25/18	<i>Paid by OGC 23001</i>
Gerry Goldsholle	Advice to transitioning of State Bar's sponsored life insurance	Niche expertise of outside counsel	\$34,850.00	1/1/18 – 9/30/18	<i>Reimbursed to State Bar by AIG</i>
Hueston Hennigan LLP	Defense of administrative litigation – Dunn v. State Bar	Conflict	\$3,803.62	2018	<i>Covered under insurance policy; No State Bar funds expended</i>
Hueston Hennigan LLP	Defense of administrative litigation – Layton v. State Bar	Conflict	\$117,590.19	2018	<i>Covered under insurance policy; No State Bar funds expended</i>

ATTACHMENT A

Hueston Hennigan LLP	Defense of administrative litigation – Noonen v. State Bar	Conflict	\$217,691.30	2018	<i>Covered under insurance policy; No State Bar funds expended</i>
Hueston Hennigan LLP	Defense of administrative litigation – Oehler v. State Bar	Conflict	\$164,280.73	2018	<i>Covered under insurance policy; No State Bar funds expended</i>
Hueston Hennigan LLP	Noonen Cross-Complaint	Conflict	\$28,123.00	4/20/18 – 5/8/18	<i>Paid by OGC 23001</i>
Joseph Lavitt	Advice to transitioning of State Bar’s sponsored life insurance	Niche expertise of outside counsel	\$31,300.00	1/1/18 – 9/30/18	<i>Reimbursed to State Bar by AIG</i>
Locke Lord LLP	Advice to transitioning of State Bar’s sponsored life insurance	Niche expertise of outside counsel	\$183,620.72	1/11/18 – 11/30/18	<i>Reimbursed to State Bar by AIG</i>
Squire Patton Boggs (US) LLP	General Advice in Real Estate Matters	Niche expertise of outside counsel	\$16,967.85	1/15/18 – 5/10/18	<i>Paid by OGC 23001</i>
SSL Law Firm LLP	General Advice in Real Estate Contracts – Clark Construction	Niche expertise of outside counsel	\$16,723.93	4/1/18 – 7/28/18	<i>Paid by OGC 23001</i>
			TOTAL	\$852,569.34	\$503,365.84 (Insurance) \$249,770.72 (AIG Reimbursements) \$99,432.78 (State Bar)

TRAINING

Firm	Services Provided	Need	Value	Length	Comments
Renne Public Law Group	Harassment training	Niche expertise of outside counsel	\$9,250.00	April 2018	<i>Paid by HR 23206</i>
			TOTAL	\$9,250.00	

RULE 2201 SPECIAL DEPUTY TRIAL COUNSEL

Firm	Services Provided	Need	Value	Length	Comments
Best Best & Krieger	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$4,920.45	2018	<i>Paid by 10316</i>
Gordon & Rees, LLP	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$18,677.64	2018	<i>Paid by 10316</i>
Kerr & Wagstaffe LLP	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$325.00	2018	<i>Paid by 10316</i>
Klein & Wilson	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$6,227.63	2018	<i>Paid by 10316</i>
Joel Mark, Esq.	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$3,956.30	2018	<i>Paid by 10316</i>
Edward McIntyre	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$69,050.35	2018	<i>Paid by 10316</i>
Charles A. Murray, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$7,924.29	2018	<i>Paid by 10316</i>
Sall Spencer Callas & Krueger, APC	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$2,055.30	2018	<i>Paid by 10316</i>
Brooke Schafer, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$7,249.42	2018	<i>Paid by 10316</i>
Schmid & Watson	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$530.00	2018	<i>Paid by 10316</i>
Solomon Ward Seidenwurm & Smith LLP	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,895.57	2018	<i>Paid by 10316</i>
Terry L. Spitz	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$6,690.81	2018	<i>Paid by 10316</i>
Wertlieb Law	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$6,980.86	2018	<i>Paid by 10316</i>
Wilson Elser Moskowitz Edelman & Dicker LLP	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$1,705.92	2018	<i>Paid by 10316</i>
Wingert Grebing Brubaker & Juskie LLP	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$4,458.31	2018	<i>Paid by 10316</i>

Wolfe Legal Group	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$3,920.21	2018	<i>Paid by 10316</i>
TOTAL			\$146,568.06		