



# The State Bar *of California*

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## **OPEN SESSION AGENDA ITEM 50-4 MARCH 2021**

**DATE:** March 18, 2021

**TO:** Members, Board of Trustees

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

**SUBJECT:** Annual Report on Use of Outside Counsel for 2020

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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 2020. 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 retained 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 2020. The report is comprehensive in that it includes not only outside counsel who provided legal advice or representation in litigation, but also those who conducted

whistleblower investigations and served as Special Deputy Trial Counsel as required under State Bar Rules of Procedure, rule 2201.<sup>1</sup>

As noted in the enclosure, in 2020 outside counsel were retained for four primary reasons: (1) Chief Trial Counsel conflicts under Rule 2201, (2) whistleblower investigations best performed by attorneys independent of the State Bar, (3) outside counsel's niche expertise, and (4) insufficient internal resources.

As the Office of General Counsel continues, where possible, to provide all advice and litigation representation to the State Bar in-house, the amount spent by the State Bar in 2020 for those services decreased by \$59,171.45, or 64 percent over 2019.<sup>2</sup> At the same time, the amount paid to Special Deputy Trial Counsel in Rule 2201 cases in 2020 increased by 84 percent, or \$128,617.54. This 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. More specifically, the increase in 2020 is attributable to the successful effort to decrease backlog of aged cases and an increase in cases being prepared for trial and their associated costs.

## **FISCAL/PERSONNEL IMPACT**

None

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

None

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

None

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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> \$91,883.45 was paid for outside counsel legal advice and representation in 2019; \$32,712.02 was paid for such services in 2020. This is a much smaller but continued negative trajectory of the more significant 89.2 percent (\$760,686) decrease in these expenses between 2018 and 2019.

## **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 2020

**Report to the Board of Trustees on the  
State Bar's Use of Outside Counsel in 2020**

**Table 1. Investigation**

Firm	Services provided	Need	Value	Length	Comments
Shaw Law Group	Investigation	Whistleblower Complaint	\$6,030.00	2020	
Solomon Law APC	Investigation	Whistleblower Complaint	\$3,555.00	Nov 2020	
			<b>TOTAL</b>	<b>\$9,585.00</b>	

**Table 2. Legal Advice and Representation**

Firm	Services provided	Need	Value	Length	Comments
Employee Benefits Law Group	Retiree health benefits	Niche expertise of outside counsel	\$2,600.00	2020	
Sloan Sakai Yeung & Wong LLP	Employee policy drafting	Insufficient internal resources	\$252.00	2020	
SSL Law Firm LLP	Lease negotiations	Niche expertise of outside counsel	\$13,963.67	2020	
Trucker & Huss	Retiree benefits	Niche expertise of outside counsel	\$5,632.00	Dec 2019	
Van Der Hout LLP	H1B visa petitions	Niche expertise of outside counsel	\$3,789.35	2020	
Wagstaffe, Von Loewenfeldt, Busch, & Radwick LLP (WVBR)	<i>Sander v. State Bar</i> follow-on advice	Niche expertise of outside counsel	\$6,475.00	2020	
			<b>TOTAL</b>	<b>\$32,712.02</b>	

**Table 3. Rule 2201 Special Deputy Trial Counsel**

Firm	Services provided	Need	Value	Length	Comments
Law Offices of David E. Boyd	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$19,105.60	2020	
Best & Krieger	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$3,594.39	2020	
Lawrence J. Dal Cerro	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$65,153.56	2020	
Dunn DeSantis Walt & Kendrick	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$2,860.00	2020	
Christopher W. Frick	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$6,300.00	2020	
Gordon & Rees, LLP	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$14,802.44	2020	
Evan Michael Hess, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,084.95	2020	
Klein & Wilson	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$3,331.12	2020	
Koss Firm	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,056.15	2020	
Joel Mark, Esq.	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$2,906.50	2020	
Edward McIntyre	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$85,703.56	2020	
Joel Milliband	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$108.00	2020	
Charles A. Murray, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$2,471.75	2020	
Law Offices of Steven B. Piser	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$2,305.15	2020	

Firm	Services provided	Need	Value	Length	Comments
Sall Spencer Callas & Krueger, APC	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$1,242.91	2020	
Brooke Schafer, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$32,550.22	2020	
Rizamari C. Gonzaga Sitton	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$17,956.00	July 2020	
Jim Tanizaki, Esq.	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$4,043.59	2020	
Wertlieb Law	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$1,090.78	2020	
Wilson Elser Moskowitz Edelman & Dicker LLP	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$7,977.35	2020	
James M. Waters	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$5,056.04	2020	
Debra A, Wolf	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$910.00	2020	
TOTAL			\$281,610.06		