



The State Bar *of California*

OPEN SESSION AGENDA ITEM 50-4 MAY 2022

DATE: May 19, 2022

TO: Members, Board of Trustees

FROM: Vanessa L. Holton, General Counsel

SUBJECT: Annual Report on Use of Outside Counsel for 2021

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 2021. The item is for informational purposes only; it does not require formal action by the Board of Trustees.

BACKGROUND

In its June 2017 Audit Report, the California State Auditor recommended the State Bar annually prepare a report to the Board of Trustees 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 2021. 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 audits and

investigations, and served as Special Deputy Trial Counsel as required under State Bar Rules of Procedure, rule 2201.¹

As noted in the enclosure, in 2021 outside counsel was retained for four primary reasons: (1) Chief Trial Counsel conflicts under rule 2201; (2) advice, representation, audits, and investigations best performed by attorneys independent of the State Bar; (3) outside counsel's niche expertise; and (4) insufficient internal resources.

While the Office of General Counsel continues, where possible, to provide a full panoply of legal services to the State Bar, 2001 saw a substantial uptick over the 2020 costs in the need for outside audits, investigations, legal advice, and representation. In particular, in the area of investigations, the Board of Trustees and the Chief Trial Counsel each launched investigations into the handling of discipline complaints against former licensee Thomas V. Girardi (respectively Halpern May Ybarra Gelberg, \$202,277.00, and Alyse Lazar, \$78,756.48). One in particular (Halpern May) was very costly.

With regard to legal advice and representation, the California Supreme Court returned a discipline case to State Bar Court to adjudicate whether the disbarment of former licensee, Gregory Harper, was the result of any impact or treatment of him based on race and gender. That required the retention of outside counsel with expertise in the substantive legal area at issue.

Finally, the amount paid to Special Deputy Trial Counsel in rule 2201 cases in 2021 increased by about 73 percent, or \$206,507.51 over the same costs in 2020. This occurred for two reasons. First, an increase in the rates paid to Special Deputy Trial Counsels and the Special Deputy Trial Counsel Administrator, which was anticipated by the Board of Trustees in its resolution to increase those rates to encourage recruitment and retention. Second, 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 2021 is attributable to the effort to decrease the backlog of aged cases and an increase in cases being prepared for trial and their associated costs.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

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 themselves with respect to an inquiry received by the OCTC.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None – compliance

RECOMMENDATIONS

None

ATTACHMENT LIST

- A.** Report to the Board of Trustees on the State Bar's Use of Outside Counsel in 2021

**Report to the Board of Trustees on the
State Bar's Use of Outside Counsel in 2021**

Table 1. Investigation

Firm	Services provided	Need	Value	Length	Comments
Halpern May Ybarra Gelberg LLP	Investigation	Investigation best performed by attorneys independent of State Bar	\$202,277.00	Nov.–Dec. 2021	Paid by Office of General Counsel (OGC)
Law Office of Alyse Lazar	Audit	Investigation best performed by attorneys independent of State Bar	\$78,756.48	2021	Paid by OGC and Office of Chief Trial Counsel (OCTC)
Shaw Law Group	Investigation (Cal/OSHA obligations; Whistleblower Process Project)	Insufficient internal resources	\$3,960.00	2021	Paid by Human Resources (HR)
Solomon Law APC	Investigation	Investigation best performed by attorneys independent of the State Bar	\$7,268.00	Nov. 2020	Paid by HR
TOTAL			\$292,261.48		

Table 2. Legal Advice and Representation

Firm	Services provided	Need	Value	Length	Comments
Coblentz Patch Duffy & Bass LLP	Gregory Harper	Insufficient internal resources	\$121,508.34	2021	Paid by OCTC
Employee Benefits Law Group	Retiree health benefits	Niche expertise of outside counsel	\$1,177.50	2021	Paid by OGC
Laura Meyers	LegalMatch document review	Insufficient internal resources	\$9,055.00	2021	Paid by OGC

SSL Law Firm LLP	Lease negotiations	Niche expertise of outside counsel	\$24,106.85	2021	Paid by OGC
Van Der Hout LLP	H1B visa petitions and PERM Labor Certification	Niche expertise of outside counsel	\$10,675.00	2021	Paid by recruitment
Wagstaffe, von Loewenfeldt, Busch & Radwick LLP	McGee; LA Times Communications, CPRA-related matters and privacy	Insufficient internal resources	\$41,587.50	2021	Paid by executive director, OCTC, and OGC
TOTAL			\$ 208,110.19		

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 – Chief Trial Counsel (CTC) conflict	\$1,981.60	2021	
Alara Chilton	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$10,860.00	2021	
Lawrence J. Dal Cerro	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$108,974.28	2021	
Dunn DeSantis Walt & Kendrick, LLP	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,725.00	2021	
Gordon Rees Scully Mansukhani, LLP	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$96,756.76	2021	
Evan Michael Hess	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$5,831.59	2021	
Koss Firm APC	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$427.40	2021	
Edward McIntyre	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$121,466.42	2021	
Charles A. Murray	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$760.00	2021	
Law Offices of Steven B. Piser	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$7,088.58	2021	

Firm	Services provided	Need	Value	Length	Comments
Sall, Spencer, Callas & Krueger, APC	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$3,500.00	2021	
Brooke Schafer	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$84,022.69	2021	
Rizamari C. Gonzaga Sitton	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$32,828.13	2021	
Jim Tanizaki	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$750.00	Nov. 2021	
Wertlieb Law	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$3,437.49	Oct. 2021	
Wilson Elser Moskowitz Edelman & Dicker LLP	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,837.63	2021	
James M. Waters	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$860.00	May 2021	
Debra A. Wolfe	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,160.00	2021	
			TOTAL	\$488,117.57	