



The State Bar of California

OPEN SESSION AGENDA ITEM 50-2 MAY 2023

DATE: May 18, 2023

TO: Members, Board of Trustees

FROM: Ellin Davtyan, General Counsel
Robert G. Retana, Deputy General Counsel

SUBJECT: Annual Report on the Use of Outside Counsel for 2022

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's outside counsel use for the calendar year 2022. The item is for informational purposes only; it does not require formal action by the Board of Trustees.

BACKGROUND

The June 2017 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."

Following that June 2017 Audit Report, the general counsel has reported to the Board of Trustees on the use of outside counsel on an annual basis. As explained below, the total expenditures on outside counsel for the calendar year in 2022 was \$2,580,618¹, inclusive of amounts spent on engaging counsel for the Special Deputy Trial Counsel program. This compares to \$988,490 in 2021.

DISCUSSION

In accordance with prior reporting format to address the 2017 recommendation of the California State Auditor, the general counsel herein submits to the State Bar Board of Trustees

¹ Amounts are rounded up.

the attached outside counsel report for the calendar year 2022. The report 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 (STDC) as required under State Bar Rules of Procedure, rule 2201². For the 2022 calendar year, the total outside counsel expenditure was \$2,580,618. This total includes \$1,118,875 for legal advice and representation, \$637,909 in expenditures relating to investigations, and \$823,833 for STDCs under rule 2201.

As noted in attachment A, in 2022, 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. The Office of General Counsel (OGC) continues, where possible, to provide a full panoply of legal services to the State Bar. Nevertheless, 2022 saw a substantial increase over the 2021 costs for outside investigations, legal advice, and representation for the reasons described below and given that OGC on average had four attorney and three nonattorney vacancies, necessitating the use of external resources to address the needs of the office.

One of the most significant expenditures in 2022 was in connection with the Board of Trustee's directive to conduct an investigation into the handling of discipline complaints against former licensee Thomas V. Girardi. (Halpern May Ybarra Gelberg LLP, for 2022 calendar year in the amount of \$630,380). With regard to legal advice and representation, the State Bar retained outside counsel to handle a putative class action lawsuit resulting from a data breach incident in 2022. The firm retained has billed significant amounts, even though most of the costs are covered by insurance (Cooley LLP, \$665,903)³. Additionally, in 2021, the California Supreme Court returned a discipline case to State Bar Court to adjudicate whether the disbarment of former licensee, Gregory Harper, resulted from any impact or treatment of him based on race and gender. That required retaining outside counsel with expertise in the substantive legal area at issue. (Coblentz Patch Duffy & Bass, \$31,694). And, of course, there were additional activities, including briefings, in the Los Angeles Times litigation arising out of the State Bar's change in the position relating to the interpretation of a key statute. Other expenditures related to the need to engage outside counsel on various matters that required specialized legal expertise, including bankruptcy, whistleblower protection, immigration, and tax laws. Thus, the total amount spent in 2022 on outside counsel, including investigations, was \$1,756,785. This is approximately a 251 percent increase over the amount spent in 2021, i.e., \$500,371.67.

Finally, the amount paid to STDCs in rule 2201 cases in 2022 increased from \$488,117 in 2021 to \$823,833 in 2022, which is an increase of approximately 68 percent. This occurred for three reasons. First, in late 2021, there was an increase in the pay rate for SDTCs (from \$100/hr. to \$250/hr.). Second, in 2022, there were multiple matters in litigation in addition to matters in

² 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.

³ There is an indemnification clause in the underlying contract that may enable the State Bar to recover some of the litigation costs. The State Bar has reserved its rights and is pursuing its ability to recover; additional information is not included in this report to preserve its rights and opportunities.

investigation. Third, in 2022, 172 matters were closed following intake and investigation, or post-filing, as opposed to 105 in 2021. 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.

FISCAL/PERSONNEL IMPACT

None. The costs were incurred in 2022. There is no current year fiscal impact.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

d. 2. Develop strategies to effectively investigate and prosecute attorneys who commit misconduct, regardless of the nature of their practice, including attorneys in large organizations and firms.

RECOMMENDATIONS

None

ATTACHMENT LIST

A. Report to the Board of Trustees on the State Bar's Use of Outside Counsel in 2022

**Report to the Board of Trustees on the
State Bar's Use of Outside Counsel in 2022**

Table 1. Investigation

Firm	Services provided	Need	Value
Downey Brand LLP	Investigation	Investigation best performed by attorneys independent of State Bar	\$7,529.00
Halpern May Ybarra Gelberg LLO	Investigation	Investigation best performed by attorneys independent of State Bar	\$630,380.00
TOTAL			\$637,909.00

Table 2. Legal Advice and Representation

Firm	Services provided	Need	Value
Coblentz Patch Duffy & Bass LLP	Gregory Harper	Insufficient internal resources	\$31,694.00
Cooley LLP	Albert et al 2022 Data Breach Incident	Insufficient internal resources; niche expertise of outside counsel.	\$665,093.92
Employee Benefits Law Group	Retiree health benefits	Niche expertise of outside counsel	\$115.00
Fellmeth, Robert	Audit of OCTC closed discipline files	Investigation best performed by attorneys independent of State Bar	\$6,180.00
Hanson Bridgett	Tax advice	Niche expertise of outside counsel	\$45,375.75

Issacs Friedberg LLP	Legal advice relating to investigations and other legal advice as overflow	Niche expertise of outside counsel; insufficient internal resources.	\$91,064.25
Kim Vaughn Lerner	Germain v. Placer	Insufficient internal resources	\$12,956.21
Marquis Aurbach	Dydzak, Daniel – Nevada	Niche expertise of outside counsel	\$4,835.82
Meyers, Laura	LegalMatch document review	Insufficient internal resources	\$1,465.00
Papetti Samuels Weiss McKirgan	Enforcement of Subpoena	Niche expertise of outside counsel	\$4,668.00
Shaw Law Group	Investigation (Whistleblower Process Project; Ombudsman Project)	Niche expertise of outside counsel; Insufficient internal resources	\$37,799.00
SSL Law Firm LLP	Lease negotiations	Niche expertise of outside counsel	\$645.00
Stradling, Yocca, Carlson & Rauth	Sale of 180 Howard Street	Niche expertise of outside counsel	\$10,797.40
Van Der Hout LLP	H1B visa petitions/PERM Labor Certification	Niche expertise of outside counsel	\$45,355.03
Wagstaffe, Von Loewenfeldt, Busch, & Radwick LLP (WVBR)	Albert v. Farfan; LA Times Communications, Germain; Pietro; Kassas; Hart; CPRA related matters & privacy; Volume work for State Bar; Schwartzberg	Insufficient internal resources; niche expertise of outside counsel.	\$160,831.25
TOTAL			\$1,118,875.63

Table 3. Rule 2201 Special Deputy Trial Counsel

Firm	Services provided	Need	Value
Law Offices of David E. Boyd	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$4,150.00
Lawrence J. Dal Cerro	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$87,177.00
Dunn DeSantis Walt & Kendrick	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$59,920.00
Gordon & Rees, LLP	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$107,549.00
Henderson, Robert	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$675.00
Hess, Evan Michael	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$8,287.00
Jacobson, Lawrence	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,500.00
Koss Firm	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$1,454.00
Laguna, Stacia	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$126,910.00
Mark, Joel	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$825.00
McIntyre, Edward	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$192,290.00
Charles A. Murray	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$7,475.00
Law Offices of Steven B. Piser	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$5,826.00
Sall Spencer Callas & Krueger, APC	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$11,770.00
Brooke Schafer	Special Deputy Trial Counsel	Rule 2201 – CTC conflict	\$90,350.00

Firm	Services provided	Need	Value
Rizamari C. Gonzaga Sitton	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$89,949.00
Brandon Tady	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$18,992.00
Wertlieb Law	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$1,954.00
Wilson Elser Moskowitz Edelman & Dicker LLP	Special Deputy Trial Counsel	Rule 2201 - CTC conflict	\$6,780.00
		TOTAL	\$823,833.00
GRAND TOTAL FOR TABLES 1 – 3		\$2,580,617.63	