

Minutes of May 22, 2013

**RECOMMENDATION FOR 2012-14 DISTRICT LEGAL SERVICES**

The attached report on District Legal Services for 2012-14, was presented to the Board for information and guidance. Ms. Grilli thanked District Finance Director Jonah Nicholas for the clarity and simplicity of the report. Chancellor Benjamin thanked Vice Chancellor, Human Resources/Chief Negotiator Gene Huff for all the work he did in surveying college districts to obtain information about their legal services/fees. The Board accepted the recommendation made by staff of using a panel approach for legal services for the next two years.

This is a follow-up to the report presented to the Board on March 27, 2013. At that time, the Board requested information about legal services at other multi-college Districts.

## **Recommendation for 2012-14 District Legal Services**

### **Issue**

At the March 27, 2013, Governing Board meeting, District staff presented information and recommendations related to legal services. The Board requested information about how other multi-college Districts obtain legal services.

### **Background**

There are 24 multi-college Districts in the state, including Contra Costa Community College district (CCD). All were surveyed except Los Angeles, leaving 22 comparator Districts, of which 20 responded. Districts were asked- if they had in-house counsel; if so, what the base salary was; what law firm(s) provided services; and approximately what was expended annually in legal costs. The response detail is attached.

### **Analysis**

Of the 20 respondent districts, five have in-house counsel at an average base salary of approximately \$150,000. Of those, all still use outside legal services as well, with annual expenses ranging from a low of \$400,000 to \$500,000 to a high of \$1M.

Fourteen of the 20 districts use more than one law firm. Of the six that use only one firm, two use only Atkinson, Andelson, Loya, Rudd & Romo (AALRR) and three use only Liebert Cassidy Whitmore (LCW.) San Mateo has an arrangement with San Mateo County Counsel.

Annual legal services expenses vary greatly, as would be expected. Size has some impact. Peralta, one of the largest college districts, has the highest expenses at approximately \$1M, and several smaller districts reported about \$150,000 in annual expenses. San Mateo seems to be an anomaly with only approximately \$55,000 in annual expenses, a result of the unique arrangement with San Mateo County Counsel.

Contra Costa CCD's average annual expense of approximately \$400,000 is on the lower end of similarly-sized districts. Nothing in the information gathered leads to definitive direction about what approach is best. The two largest law firms specializing in community colleges and Education Code, AALRR and LCW, are contracted in some way by the vast majority of districts, mostly as part of a legal panel. Following common practice would lead to either engaging AALRR or LCW, or using a panel for legal services.

As stated in March, contracting with an outside panel of firms provides the District with the flexibility to choose services based on subject-matter expertise. Each of the recommended firms has provided competitive rates for services and have staff and/or offices located within the San Francisco/Oakland Bay Area. District staff will continue to perform outreach to Contra Costa County firms in order to solicit bids for legal services as well as other contracts and services. The District's recommendation remains largely unchanged as a result of the information gathered.

### **Recommendation**

Continue with a panel approach to legal services, entering into two-year agreements with the following firms and for the general services indicated:

- **School and College Legal Services of California (SCLS) (general counsel/contracts and agreements, excluding real estate/Education Code)**

SCLS has provided services in several areas in the current year and has become the District's general counsel.

- **AALRR (human resources/employment law)**

The District has a long-term history with AALRR in addressing personnel matters. AALRR has served as the District's primary counsel since the 1980's.

- **LCW (training/general counsel, as needed)**

LCW provides a variety of training programs in areas such as ethics and diversity in hiring, needed by the District, and can provide support in any area as needed.

- **Fagen Friedman & Fulfrost (FFF) (facilities/real estate law)**

As a result of a recent request for proposal process, staff recommends that FFF be retained for facilities and real estate issues.

**CALIFORNIA MULTI-COLLEGE DISTRICTS LEGAL SERVICES INFORMATION**

DISTRICT	IN-HOUSE GENERAL COUNSEL	GENERAL COUNCIL BASE SALARY	LAW FIRM(S) USED	ANNUAL COSTS FOR LEGAL SERVICES
Chabot-Las Positas	No	N/A	LCW	\$150,000
Coast	No	N/A	Burke, Williams & Sorenson / Panel	\$500,000
Contra Costa	No	N/A	AARLL / LCW / School and College Legal Services	\$400,000
El Camino	No	N/A	Parker & Covert / Frierson	\$150,000
Foothill-DeAnza	No	N/A	Panel	\$500,000
Grossmont- Cuyamaca	No	N/A	Schwartz, Hyde & Sullivan / LCW	\$180,000 (HR only, not negotiations)
Kern	Yes	\$143,808	Panel	\$400,000-\$500,000
Los Angeles	Not Surveyed	-	-	-
Los Rios	Yes	\$150k-\$161k	Panel	\$400,000-\$500,000
North Orange County	No	N/A	AALRR	\$200,000
Peralta	Yes	\$165,000	Panel	\$1M
Rancho Santiago	No	N/A	AALRR / LCW / County Counsel	\$100,000
Riverside	Yes	\$97,982 - \$119,289	LCW	\$600,000
San Bernardino	No	N/A	LCW / Currier and Hudson	\$150,000
San Diego	Yes	\$167,136	Panel	\$575,000
San Jose- Evergreen	No	N/A	LCW	\$310,000
San Mateo	No	N/A	San Mateo County Counsel	\$55,000
South Orange	No	N/A	AALRR / LCW	\$500,000+
State Center	No Response	-	-	-
Ventura	No	N/A	Freidman / LCW	\$600,000
West Hills	No Response	-	-	-
West Valley- Mission	No	N/A	AALRR	\$200,000 (HR only)
Yosemite	No	N/A	Marilyn Kaplan / LCW	\$175,000
Yuba	No	N/A	FFF / LCW	\$200,000-\$300,000

Minutes of March 27, 2013

**DISTRICT LEGAL SERVICES**

The attached report on District legal services was presented to the Board for information and guidance. The report provides a very brief overview of how the District has acquired legal services over the last few decades. It also presents the status of current counsel, and outlines options and recommendations. Contracts and/or other action items will be presented to the Board in coming months, based on the guidance provided.

Governing Board member Márquez asked that staff survey other districts that use in-house counsel and provide further information on the topic at the next meeting. Upon recommendation from Vice Chancellor, Human Resources/Chief Negotiator Gene Huff, the Board unanimously supported hiring Fagen Friedman & Fulfrost for facilities and real estate issues.

**AGENDA ITEM**

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**DATE** March 27, 2013

**PURPOSE**

District Legal Services

The attached report, District Legal Services, is presented to the Board for information and guidance. The report provides a very brief overview of how the District has acquired legal services over the last few decades. It also presents the status of current counsel, and outlines options and recommendations. Contracts and/or other action items will be presented to the Board in coming months, based on the guidance provided.

John al-Amin and Eugene Huff

## **District Legal Services**

### **Issue**

The District is seeking guidance from the Board on how legal services are to be obtained. The District is currently utilizing the services of three law firms with contracts terminating on June 30, 2013.

### **Background**

Over the last several years, the District has spent approximately \$400,000 per year on legal expenses. This year has been an anomaly. As of March 1, 2013, the District has expended over \$509,000 on required legal services, and given the current legal workload, the amount will increase by approximately \$387,000 before the end of the fiscal year.

From the early 1980s through 2012, the District contracted with Atkinson, Andelson, Loya, Rudd & Romo (AALRR) for legal services almost exclusively. In the spring of 2010, the District issued a Request for Proposal (RFP) for legal services. There were four responsive bidders. After review and analysis by a District team, AALRR was selected to continue as the District's legal services provider.

In the fall of 2011, the Board requested that District staff seek other options for legal services. District staff did so, bringing a recommendation to engage the services of several law firms, moving to a "panel" approach for 2012-13. To provide these various services during the 2012-13 fiscal year, the District has engaged the firms of AALRR; Liebert Cassidy Whitmore (LCW); and School and College Legal Services of California (SCLS.) During the past year, the Governing Board also expressed concern that the District was not contracting with any firms housed within Contra Costa County. Subsequently, at the September 12, 2012, meeting of the Governing Board, it was requested that staff initiate a Request for Qualifications (RFQ) process to select a firm to provide legal services, primarily for facilities, with the ability to provide general advice and contracts review. On October 19, 2012, an RFP was published to solicit quotes from legal firms with a deadline response date of November 29, 2012.

### **Analysis**

A total of eight responses were received by the deadline date of November 29, 2012, to the current RFP, primarily for facilities services. These proposals were reviewed by a panel on December 3, 2012. After scoring and discussing each of the eight firms, the three highest scoring firms were selected for final interviews based upon their qualifications. Final interviews were held on January 24, 2013, with Fagen Friedman & Fulfrost (FFF) being recommended by the panel. The key factors in this decision were: demonstrated community college facilities experience, which included extensive experience in claims and labor compliance; an understanding of the needs and issues of the District; a moderate government workload; and no retainer fees along with lowest submitted cost per hour bid.

After review of these materials, staff then discussed the current and future legal needs of the District as well as other relevant information that should be considered in making a final recommendation for legal services to the Governing Board. AALRR has been the District's primary counsel in the handling of numerous personnel matters over the years, is a subject expert in employment law, and is considered one of the best firms in the state when it comes to addressing community college issues. LCW, as well as SCLS, are relatively new to the District. Both firms were brought on by the District this past fall to assist with the review of real estate contracts,

facilities issues, training, and to provide general legal advice. Both firms have provided valuable assistance.

As directed by the Board, staff explored the possibility of creating an internal general counsel position for the District. Some community colleges have internal counsel and, given the size of the District, this option seems viable. However, a single attorney will not have expertise in the wide array of matters for which counsel is needed. While having internal counsel could be helpful in addressing general contract issues and providing legal advice, the cost is not known and there are other considerations, such as the potential for claims of bias and conflict challenges. The District's current legal counsel operates independently from the management structure, which provides greater flexibility and protection from bias, prejudice and conflict claims. While the District does provide general direction over contractors' work, their analyses and recommendations are not subject to any undue influence or pressure from the Governing Board or District staff. Having internal counsel would not negate the need for outside counsel.

After review of these factors, staff considered the following options:

- select one firm to provide all counsel;
- continue using external counsel (panel approach) for legal services;
- create an internal counsel position to provide legal services; and,
- create an internal counsel position, and supplement with external counsel, as needed.

### **Recommendations**

There are both short-term and long-term decisions to be made. The following three recommendations address these decisions.

#### **Recommendation #1: Contract with FFF.**

- As a result of the most recent RFP, and for the remainder of the 2012-13 fiscal year, use this firm for facilitates and related counsel.

#### **Recommendation #2: Create an internal general counsel position.**

- District management will review how other districts use internal counsel, analyze advantages and disadvantage, and draft a job description. The findings and further recommendations will be brought to the Board in the coming months, with a target hire date of January 1, 2014.

#### **Recommendation #3: Continue with a panel approach to legal services, using the following firms.**

- SCLS (general counsel/contracts and agreements, excluding real estate/Education Code) SCLS has provided services in several areas in the current year and has become the District's general counsel.
- AALRR (human resources/employment law). The District has a long-term history with AALRR in addressing personnel matters. Staff feels strongly that it is in the best interest of the District to continue the services of AALRR for some personnel and other matters, regardless of the District's direction in pursuing other firms or moving forward with internal counsel.



- **LCW (training/general counsel, as needed)**  
LCW provides a variety of training programs in areas such as ethics and diversity in hiring, which are needed by the District.
- **FFF (facilities/real estate law)**  
As a result of the interview process, staff members recommend that FFF be retained for facilities and real estate issues.

Using the combination of internal counsel and contracting with outside firms provide the District with the flexibility to choose services based on subject-matter expertise, whereas engaging solely with internal counsel will pose challenges as one individual will not have the knowledge and skill set to litigate general legal issues, contract law, real estate law, human resources law, as well as educational law. Each of these firms has provided competitive rates for services and have staff and/or offices located within the San Francisco/Oakland Bay Area. District staff will continue to perform outreach to Contra Costa County firms in order to solicit bids for legal services as well as other contracts and services.