COUNTY OF LOS ANGELES

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RAYMOND G. FORTNER, JR.
County Counsel

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Agenda No. 12
07/10/07

TO: SUPERVISOR ZEV YAROSLAVSKY, Chairman
SUPERVISOR GLORIA MOLINA
SUPERVISOR YVONNE B. BURKE
SUPERVISOR DON KNABE
SUPERVISOR MICHAEL D. ANTONOVICH

FROM: RAYMOND G. FORTNER, JR.
County Counsel

RE: **County Counsel Claims Board Memoranda**

Pursuant to your Board's direction, this is to provide a report on restrictions on public dissemination of County Counsel memoranda submitted to the Los Angeles County Claims Board recommending settlement of lawsuits. Also, we are proposing, with the concurrence of the Chief Executive Office, a process which will enable the striking of an appropriate balance between the County's responsibility to open government and transparency, and its fiduciary duties to the public. This process will involve providing a public information document on all proposed settlements in advance of consideration by the Claims Board and your Board, which will provide basic information concerning settlement proposals while enabling us to maintain the confidentiality of the County Counsel's detailed legal analysis memoranda and avoid adverse consequences to the County's fiscal interests.

Such public information document would include, but not be limited to, a summary of the nature of the case, allegations of liability and damages, proposed settlement amount, and the County's costs in the litigation. This document would be available to the public with the Claims Board meeting agenda. On settlements in excess of $100,000 which have been approved by the Claims Board, it would also be submitted to the Board of Supervisors and made available to the public along with the Claims Board's recommendation for approval. The County Counsel's detailed settlement memoranda will be submitted only to the Claims Board and your Board, which are the ultimate decision-makers,

on a confidential attorney-client basis. This will enable the public to have access to pertinent information relating to settlement proposals while protecting the detailed legal analyses and strategies of the County's attorneys and avoiding adverse consequences which could result from public disclosure of such attorney-client communications.

The Claims Board has authority, granted by the Board, to make final decisions approving settlements in excess of $20,000 up to $100,000. Settlements in excess of $100,000, if approved by the Claims Board, are submitted by the Claims Board to your Board for consideration and final approval as a public action item. Settlements in amounts of $20,000 or less have been delegated by your Board to the Office of the County Counsel.

It is not clear how the practice of making public the County Counsel's detailed memoranda recommending settlements to the Claims Board, and ultimately to your Board as to settlements in excess of $100,000, developed. While summary information relating to the subject matter of litigation being considered for settlement and reports of settlements approved by the Claims Board have been made public since the Claims Board was established in the mid-1980s, we believe the general practice of making the detailed memoranda from legal counsel analyzing the factual, legal and other factors relevant to the recommendation for settlement, including legal strategies and views on potential liability and damages, was commenced several years after the Claims Board was first established.

The reasons for development of the general practice of making public such detailed memoranda, rather than providing summary public information, are also unclear. Ordinarily, these detailed memoranda would be, and in all other public jurisdictions of which we are aware are, submitted as confidential attorney-client communications. We are not aware of any other jurisdiction or entity, public or private, in which legal counsel's case evaluations, strategies and settlement recommendations to the client governing body are made public as a general practice. The universal practice is to maintain the confidentiality of such communications on an attorney-client basis.

It should be noted that not all of the detailed County Counsel memoranda recommending settlements to the Claims Board have been made public. Over the past eight years, some memoranda, usually in cases involving statutorily protected material, such as medical records and juvenile and personnel records and information, have not been made public despite the general practice. We would recommend that this practice continue regardless of your Board's decision as to other cases.

For a number of years, there has been discussion within the County Counsel's Office questioning why the general practice of making such detailed attorney-client memoranda available to the public was initiated, and whether the practice should be continued. In the past couple of years, especially since public communications to your Board and the Claims Board concerning matters on meeting agendas have been placed on the County website, widespread publication of the detailed memoranda have had consequences adverse to the County's legal and fiscal interests.

For example, publication of the legal counsel settlement memoranda detailing the specific facts underlying settlements in employment discrimination lawsuits has resulted in charges of violations of employees' personal privacy rights and retaliation, and has prompted further litigation. In addition, our trial attorneys are reporting that plaintiffs' counsel in current litigation against the County are increasingly utilizing the detailed memoranda in what they argue are, but may not necessarily be, similar cases, to oppose the County's positions and demand more money in settlement negotiations, including mediations and court settlement conferences. This has frustrated settlement negotiations and inhibited the possibilities of more expeditious settlement of a number of lawsuits in the County's best economic interests.

Nevertheless, we recognize the Board's desire and the County's interests in being accountable and responsible to the public concerning the settlement of lawsuits. To achieve this balance, should your Board desire, certain summary information may be released without significant adverse impact on the County's fiduciary responsibilities with regard to the ongoing resolution of litigation.

This report and the proposals for satisfying the Board's and County's interests in providing as much public information concerning proposed settlements as possible in advance of consideration and action by the Claims Board and your Board, without adversely affecting the County's fiscal responsibilities, has been discussed with and has the concurrence of the Chief Executive Officer's Operations and Risk Management staff.

If you have questions concerning this matter, please contact me or Chief Deputy County Counsel Donovan M. Main at (213) 974-1804.

RGF:mr

c: William T Fujioka, Chief Executive Officer

Sachi A. Hamai, Executive Officer, Board of Supervisors