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RAYMOND G. FORTNER, JR.
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June 11, 2007

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: **Annual Report of County Counsel on Litigation Cost Management**

This memorandum is to respond to the request of your Board for a report on the litigation cost management performance of County Counsel during fiscal year 2006-2007. Under separate cover, and subject to the attorney-client and attorney work product privileges, I have recently provided each of you with a copy of the County Counsel Litigation Report for the third quarter of fiscal year 2006-2007. That report, and the other quarterly reports previously submitted for this fiscal year, provide additional detailed information regarding recent County Counsel litigation activity.

I. LITIGATION ACTIVITY

A. Attorneys' Fees and Litigation Costs:

For the first three quarters the total for attorneys' fees and litigation costs for both outside counsel and in-house litigated County liability and policy related litigation is $37,018,177. This total for three quarters projects to a total of $49.36 million for the entire year. This is a slight increase (3.4%) over the average total for such fees and costs in the past two fiscal years, and continues the recent trend of holding the line on fees and costs after a substantial decrease several years ago.

The total fees and costs for this fiscal year include an overall decrease in total fees and costs to outside counsel, and an overall increase in total fees and costs for in-house litigated cases, which is consistent with the County Counsel efforts to enhance our in-house litigation capability and to shift more litigation from outside counsel to in-house attorneys. The small overall increase in total fees and costs for the first three quarters is due entirely to an increase in litigation costs. Total attorneys' fees for the first three quarters, on an annualized basis, were actually 3.5% below the level for the previous two fiscal years.

B. Settlements Approved:

For the first three quarters of 2006-2007, 117 settlements with a total value of $30,482,570 were finally approved. This total projects to over $40 million for the full fiscal year if the settlements continue at the same pace. The quarterly reports for fiscal years prior to 2006-2007 do not report settlements approved on a consistent and reliable basis and it is, therefore, difficult to make a precise comparison between the total for this year and the totals from past years. However, the projected total for all settlements approved this fiscal year is likely to exceed what we have experienced in recent past years. This increase is the result of a large number of high cost settlements this year. For example, 35 of the 117 settlements in the first three quarters exceeded $100,000 in value and required Board of Supervisors approval. These 35 settlements account for 91% of the total. Eight settlements exceeded $1 million in value, and these 8 alone account for 55% of the total. The settlements in excess of $1 million were:

Ochoa	$2,355,392	Medical malpractice
Sprinkle	$2,500,000	Arboretum tram accident
Lopez	$1,800,000	Sexual assault by Deputy Sheriff
Beas	$2,800,000	Beating by other jail inmates
Sandoval	$1,750,000	Vehicle accident
Davis	$1,800,000	Medical malpractice
Montes	$2,337,500	Vehicle accident
Schlock	$1,500,000	Medical malpractice

C. Other Litigation Activity:

The other litigation measures tracked in the quarterly reports, including cases dismissed without County liability prior to trial, trials commenced, appeals decided, and civil service cases resolved, all have activity levels similar to previous fiscal years. The County continues to generally be very successful in the cases brought to trial, in appeals, and in resolving contested civil service matters on a basis acceptable to the County department involved.

This fiscal year there has been a decrease in the number of new cases filed, especially in the third quarter. Most significantly, the third quarter saw only seven new medical malpractice cases, as compared to an average of 18 in each of the first two quarters of this fiscal year. However, it is too early to predict whether this favorable development will continue.

II. LITIGATION INFORMATION SYSTEMS

The Risk Management Information System (RMIS) continues to be refined to make it a better litigation management tool. County Counsel and the Chief Executive Office, working together, have now completed six work orders to revise RMIS to make it better fit how we do business and to increase its value as a litigation management data base. An additional project to improve the interface between RMIS and the County's eCAPS accounting system is in construction, and another work order to accommodate further County Counsel concerns is being designed.

The first "data mart" for the COGNOS system is now up and running. The remaining "data marts" will be constructed in the next few months. When this work is completed, we will be much more readily able to produce a variety of management reports based upon data stored in RMIS, and we will be better able to electronically monitor compliance with most of the litigation procedures we have implemented.

Finally, County Counsel is about to commence, on a pilot basis, the implementation of the Compulaw program. This program tracks litigation dates and generates a list of litigation deadlines for each case based upon the particular court rules applicable to that case. The program will also generate management reports, including accurate trial and hearing calenders. It will be integrated with RMIS and automatically populate the litigation date fields in RMIS.

III. LITIGATION MANAGEMENT PROCEDURES

County Counsel continues to use the Litigation Management Procedures it formalized in March 2006, but will soon announce refinements to better tailor the level of case oversight to case intensity. The monitoring of the compliance with these procedures by all County Counsel divisions has been transferred to the General Litigation Division, which has assigned dedicated staff to this function. RMIS has been modified to add fields to each case file for the entry of the dates for roundtables and case evaluation plan approvals. In addition, the notes taken at roundtables, as well as the approved cases evaluation plans, are now scanned and incorporated as attachments to the related RMIS files.

With these new measures, County Counsel is better able to track compliance with its Litigation Management Procedures and correct any deficiencies. More importantly, case evaluation plans and roundtable conclusions are now more readily accessible by each County Counsel attorney who has some responsibility for litigation oversight, or some supervisory responsibility over attorneys who handle litigation.

In addition to the roundtable process and the other formal litigation procedures, County Counsel management attorneys have a regular monthly meeting to review all significant County cases and discuss recent developments in each. During these meetings, the status of each case is reviewed and the strategy being pursued by the attorney responsible for the case is discussed. Cases are identified which have had significant recent developments and assignments are made to notify the Board of Supervisors if that has not already been completed. This process has helped assure not only that each of these cases is being given the appropriate attention, but also that surprises are avoided.

IV. LITIGATION COST MANAGER

A new Litigation Cost Manager has been identified and he will begin work this month. The attorney selected for this position has a wealth of private sector litigation management and litigation cost management experience. He is very familiar with systems and processes for managing litigation and litigation costs, as well as electronic billing systems. He also has recent experience actually handling litigation with a private law firm. It is anticipated that he will be of great benefit to County Counsel and the Board of Supervisors as we continue to improve and refine our procedures for monitoring and managing litigation and its associated expenses.

If you have questions concerning this matter, please contact me or Senior Assistant County Counsel Steven J. Carnevale at (213) 974-1810.

RGF:SJC:dd

c: David E. Janssen
Chief Administrative Officer

Sachi A. Hamai, Executive Officer
Board of Supervisors