



Bill Perrone, CIA
Manager, Internal Audit

January 14, 2009

Assignment 10197/8

To: Distribution List

Subject: Legal Aid Society – Contract Expenses

We have completed an audit of the County's contract expenses with the Legal Aid Society for the Fiscal Years 2007 and 2008. We conducted the audit from August 2008 through November 2008.

We thank the employees of the Legal Aid Society, the County Executive's Office, and County Counsel's Office for their cooperation. Their assistance contributed significantly to the successful completion of the audit.

Respectfully submitted,

Signature on file

Bill Perrone, CIA
Manager, Internal Audit

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COUNTY OF SANTA CLARA

CONTROLLER-TREASURER DEPARTMENT – INTERNAL AUDIT DIVISION

INTERNAL AUDIT REPORT

Legal Aid Society – Contract Expenses



Assignment 10197/8
January 14, 2009

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Executive Summary

Conclusion In our opinion, the County did properly pay legal fees incurred by the Legal Aid Society (LAS), but overpaid the LAS for program administrative expenses in FY07 and FY08. The contract stipulated the County pay a predetermined annual fee for the program administrative expenses; however, there were additional administrative expenses billed to and paid by the County. The LAS also billed the County for some of the LAS's contracting attorneys' professional continuing education expenses; the County had no contractual obligation to pay expenses of this nature. For the two fiscal years under audit, these expenses totaled \$241,425. This amount is partially offset by \$15,900 owed to the LAS for the April 2007 Coordinating Attorney's monthly salary.

The contract stipulated the hourly rates charged by non-attorney professionals, the standard case fees, and the maximum case expenditure allowances. There were charges paid by the County that exceeded these stipulated rates and allowances, however, the contract authorized the LAS's Coordinating Attorney to waive these limits on a case-by-case basis.

The LAS maintained very good document support for the service reimbursements billed and, there was no evidence of charges for non-contract approved activities aside from the professional continuing education expenses.

The LAS's contracting attorneys receiving stipends and advance payments during the years under audit fulfilled their caseload requirements by this audit date. There is no evidence of the Society paying its contracting attorneys in violation of the contract's stipend and advance payment terms.

The Legal Aid Society is not in agreement with all our findings and recommendations contained in this report. The County Executive's Office is in agreement with our findings and recommendations contained in this report.

Audit Objectives The audit objective was to verify that the County had only paid for appropriate expenses as defined in the contract for FY07 and FY08.

Audit Scope The scope of the audit included:

- Verifying proper document support exists for the service reimbursements billed to the County by the Legal Aid Society.
- Verifying the annual charges are within the contract's stated budgets.
- Identifying trial cases that may exceed the contracted maximum expenditures.
- Identifying any charges that were not for contract-approved activities.
- Identifying any services billed in excess of the contract's stated rates.
- Verifying that attorneys receiving stipends were contracted attorneys and completed their workloads.
- Verifying that attorneys receiving advance payments completed their commitments prior to billing for additional services or receiving additional advances.

Audit Background Effective July 1, 2006, the County renewed its contract with the Legal Aid Society, a nonprofit California corporation, to provide legal defense services to indigent individuals when the Public Defender's Office or the Alternate Public Defender's Office could not provide representation due to conflicts of interest or caseload conflicts. For the cases referred to them, the LAS contracted with, and paid to, individual attorneys and others to provide these services; subsequently, the LAS received monthly reimbursements from the County. The County also paid a specified program administrative fee. At the request of the Office of the County Executive, we audited the LAS's billings and the corresponding County payments for contract compliance for FY07 and FY08.

We conducted our audit in accordance with the Professional Practices Framework as established by the Institute of Internal Auditors.

Details about our findings and recommendations are provided below.

Signatures on file

Bill Perrone, CIA
Manager, Internal Audit

Brian P. Mark, CIA
Sr. Internal Auditor

Findings and Recommendations

Finding 1

The County paid a net amount of \$241,425 above the contractual limits for administrative expenses and attorney continuing professional education expenses.

As required by the contract, the County paid the Legal Aid Society an annual predetermined administrative fee. Currently, \$200,000 of the Fiscal Year 2007 fee is unpaid pending completion of the year-end adjustment process.

Monthly, the Legal Aid Society submitted a detailed reimbursement claim package itemizing the LAS's case-related payments to attorneys, paralegals, and others. Each package included a cover letter indicating that the total amount invoiced covered all valid conflict vendor claims for the period, and a summary sheet segregating the expenses into three categories, "Case fees total by vendor by client," "Miscellaneous bills, Conflicts administrative payment and attorney/investigator training," and "Order to Show Cause (OSC) – Contempt of Court." In a separate section within each claim package was a single page titled "Miscellaneous Vendors;" this page identified other program payments to vendors for which the LAS sought reimbursement. The page listed the vendor's name, the payment's nature, and the amount. These miscellaneous charges included administrative expenses such as clerical labor, court calendar delivery expenses and copying charges; it also included attorney continuing education expense payments. For FY07 and FY08, these additional administrative expenses totaled \$268,810 and the professional education expenses totaled \$20,314. Thus, the County paid a total of \$289,124 beyond the contractual requirements. The Appendix summarizes these expenses.

The annual fixed administrative fee paid by the County pays for the LAS's administrative staff labor expense and various non-labor expenses required to support the contracted programs. There was no contract provision to adjust the administrative fee to the LAS's actual administrative expenses, nor was there any requirement for the County to pay attorney professional education expenses.

Within these \$268,310 additional administrative expenses are legal fees totaling \$47,699 incurred by the Legal Aid Society to defend itself against a lawsuit filed by a contracted attorney. The LAS billed these fees to the County and the County paid them. Prior to this audit's commencement, the County and the Legal Aid Society initiated discussion regarding this matter. Thus, this \$47,699 is excluded from this audit report.

The administrative expenses paid beyond the contractual agreement, net of the legal fees, plus the professional education expenses total \$241,425 (\$268,810 - \$47,699 + \$20,314).

Recommendation 1 The County Executive's Office should obtain a \$241,425 reimbursement from the Legal Aid Society for the FY07 and FY08 overpayments. [Priority 2]

Finding 2

Due to an accounting error, the Legal Aid Society failed to claim \$15,900 for the Coordinating Attorney's April 2007 salary.

The Contract between the County and the Legal Aid Society provided for payment to the LAS for the Coordinating Attorney's salary. During the contract's duration, the Legal Aid Society paid the attorney his monthly salary and claimed the amount on the following month's County invoice. Due to a timing error in 2007, the LAS neglected to claim the April 2007 salary (\$15,900) on its invoice.

Recommendation 2

After ensuring that there are no outstanding amounts owed to the County, the County Executive's Office should reimburse the Legal Aid Society \$15,900 for the Coordinating Attorney's April 2007 salary. [Priority 2]

APPENDIX

Administrative Expenses Paid Beyond the Contractual Requirement
Attorney Professional Educational Expenses
FY07 and FY08

Description	Amount
Thompson vs. LAS legal fees	47,699
court calendar distribution	7,580
printing and subscriptions	5,705
office worker indirect labor charges	21,425
paralegal indirect labor and non-labor charges	160,260
paralegal advance payments exceeding actual expenses	<u>26,141</u>
Total administrative expenses paid beyond the contractual requirements	268,810
Attorney professional educational expenses	<u>20,314</u>
Total excess payments to the Legal Aid Society	289,124
Less: Thompson vs. Legal Aid Society legal fees	<u>-47,699</u>
Net excess payments to the Legal Aid Society	<u><u>241,425</u></u>

January 5, 2009

Mr. Bill Perrone, CIA
Manager, Internal Audit
County of Santa Clara
70 West Hedding Street, East Wing 2nd Floor
San Jose, CA 95110-1705

RE: LEGAL AID SOCIETY OF SANTA CLARA COUNTY
RESPONSE TO AUDIT OF COUNTY'S CONTRACT EXPENSES
FISCAL YEARS 2007 AND 2008

Dear Mr. Perrone,

We write to respond to your draft Internal Audit Report of the County's Contract expenses for fiscal years 2007 and 2008. We have had an opportunity to review your draft internal audit report and offer the following responses, explanations and alternate recommendations:

- 1) **Finding:** "The County paid a net amount of \$241,425 above the contractual limits for administrative expenses and attorney continuing professional education expenses."

Recommendation: "The County Executive's Office should obtain a \$241,425 reimbursement from the Legal Aid Society for the FY07 and FY08 overpayments."

Response: The Legal Aid Society disagrees with the auditor's first finding and offers explanations and an alternative recommendation.

The auditor is correct that Legal Aid Society of Santa Clara County (hereinafter LAS) submitted a detailed claim package to the county, itemizing our case related payments to attorneys, paralegals and others, as more particularly described in the auditor's report. The claim package requested reimbursement for small sums that LAS was required to pay out of pocket. The substantial sums to contractors included therein were presented to the County for approval and payment. The County Executive's Office would review and

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RESPONSE TO AUDIT OF COUNTY'S CONTRACT EXPENSES
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approve the invoices presented for payment, then would provide LAS with a direct deposit of funds into our account. LAS would then pay the contractors from deposited sums.

Thus, the County reviewed and approved payment on each and every invoice presented in LAS's monthly claim package. Throughout the twelve months of FY07 and almost all of FY08, the County Executive's Office approved each of these payments without a single objection. LAS agrees with the Auditor's finding that there is no question that all work performed was in furtherance of the Conflicts Project and for the benefit of the County's constitutional obligation to provide representation to indigents charged with crimes. Although the Auditor concluded that "There was no contract provision to adjust the administrative fee to the LAS's actual administrative expenses..", however, there was also no provision prohibiting such payments, particularly when each amount was individually presented to the County for its review and approval prior to making any payments. Provided that our contract did not directly prohibit these payments, the County could have objected at any time in any given month and an accommodation could have been mutually negotiated and agreed upon, just as occurred many times during the past twelve years. These were services that the Coordinating Attorney deemed necessary for the proper functioning and operating of the Program and the County had a monthly opportunity to object and refuse payment.

The expenses for professional education, more commonly referred to as professional development, is a case in point. LAS provided reimbursements to panel attorneys providing services in homicide and death penalty cases for attending an annual seminar held in Monterey to maintain the exceptionally high level of legal expertise necessary for competent representation. We then submitted their reimbursement claims to the County. Although LAS and the County were not contractually required to provide such reimbursement, we did so solely for the benefit of the Conflicts Program. The Program's performance was telling: of the 36,000 cases we assigned in our twelve years of performance, no attorney was ever found to be incompetent. There was not even one death verdict out of the 22 death penalty cases which we closed during our operation, with three full trials involving 7 defendants. We attributed this accomplishment, in part, to our insistence and support of continuing professional educational seminars. Thus, the community contemplated in our contract with the County directly received the benefit of providing for such educational expenses and the County benefited from obviating the payment of substantial costs required to re-try cases after sustained appeals.

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Finally, the services included in the invoices for the latter part of FY08 (January through June) were expended for transition efforts. Transition costs were not contemplated in the "annual pre-determined administrative fee" and were not provided for in our contract. Rather than disrupting ongoing program operations to shift our administrative staff over to transition planning, we arranged for contracted staff to assist in the transition process. No budget existed and none was separately approved for transition purposes. No prior arrangements were made for these costs, nor for these necessary activities.

Immediately upon the Board of Supervisors' Committee vote to recommend removal of LAS as the Conflicts Program contracting agency, our office commenced the laborious task of closing down our Conflicts Program. This required the simultaneous preparation of critical transition materials and continuing operations as the Conflicts provider. The rapid closure of a twelve year Conflicts Program, handling, on an annual basis, almost 6,000 new and pending cases, was an immensely difficult, time-consuming endeavor.

Transition services required included the preparation and updating of a variety of reports in order to provide a detailed overview of our Conflicts Program operations. These reports were organized in two comprehensive three ring binders and provided to the new IDO executive director, Mr. Jim Gleason. Each report was reviewed in detail with the new executive director, answering any questions posed and supplementing the provided reports as requested by Mr. Gleason. During the process, the reports were updated to provide additional information as it became available. Substantial procedural, historical and case information was laboriously compiled and provided to the new Conflicts Administrator.

Mr. Gleason was provided direct contact with numerous members of our staff and independent contractors who were assigned to the transition. Our attorneys assigned to the Juvenile Review Program and to our Order to Show Cause Project assisted with organizing and preparing the almost 2,000 case files that were to be transferred to the new IDO. Our independent contractor paralegal Michelle Gredinberg was specifically instructed to remain in close communication with Mr. Gleason in order to insure a timely response to any inquiries.

In summary, we were required to continue operating the Conflicts Program after laying off all of the staff employed in the Program and while providing a smooth transition to a new

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County office which had to be operational immediately after our Program terminated. We needed all hands on deck and extra help to guarantee a smooth transition.

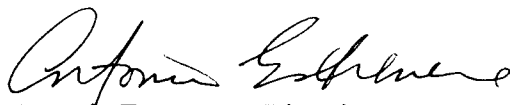
In view of the foregoing, we offer an alternative solution to the auditor's first recommendation: If the auditor's finding is upheld despite the County's having approved all of the subject invoices, LAS should nevertheless be excused from reimbursing the County for the professional educational reimbursements and for all of the FY08 "indirect costs" since they constituted extra contractual services because they were expended for transition purposes.

- 2) **Finding:** "Due to an accounting error, the Legal Aid Society failed to claim \$15,900 for the Coordinating Attorney's April 2007 salary."

Recommendation: "After ensuring that there are no outstanding amounts owed to the County, the County Executive's Office should reimburse the Legal Aid Society \$15,900 for the Coordinating Attorney's April 2007 salary."

Response: The Legal Aid Society agrees with the auditor's 2nd finding and agrees with its recommendation.

Respectfully Submitted:



Antonio Estremera, Directing Attorney

AE/jae