

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

m4



FROM: Human Resources Department

SUBMITTAL DATE:
May 6, 2010

SUBJECT: Defense Panel Professional Service Agreement: Law Office of Bent Caryl & Kroll, LLP

RECOMMENDED MOTION: Approve and add the Law Office of Bent Caryl & Kroll, LLP to the defense firm panel of attorneys who represent the County of Riverside in the defense of Employee Relations and General Liability matters.**BACKGROUND:** The Board of Supervisors previously authorized and approved the Human Resources Department to implement a defense firm panel. The defense attorneys who have been selected to represent the County of Riverside are those who have demonstrated the skills and expertise necessary to assist the County of Riverside in the defense of lawsuits which are filed against the County.

Mr. Sergio Bent recently terminated his relationship with Ford & Harrison, LLP. The Human Resources Department would like to maintain its relationship with Mr. Bent due to his expertise in defending complex lawsuits.

Barbara A. Olivier
Acting Asst. County Executive Officer/Human Resources Dir.

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 20,000.00	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2009/10

SOURCE OF FUNDS: Risk ISF for Liability matters and Departmental Budget for Employee Relations mattersPositions To Be Deleted Per A-30 ☐
Requires 4/5 Vote ☐**C.E.O. RECOMMENDATION:**

APPROVE

BY:

Karen L. Johnson

County Executive Office Signature

<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Policy
<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Policy

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley

Nays: None

Absent: None

Date: May 18, 2010

xc: HR

Kecia Harper-Ihem

Clerk, of the Board

By:

Deputy

Prev. Agn. Ref.: 2/24/09 #3.33

District:

Agenda Number:

3.34

ATTACHMENTS FILED

WITH THE CLERK OF THE BOARD

BACKGROUND continued:

Mr. Bent has recently established his own firm, Bent Caryl & Kroll, LLP. The firm has been carefully screened and evaluated. Mr. Bent has a proven record of mitigating costs and expenses associated with the litigation process. Bent Caryl & Kroll, LLP will adhere to the Board's established Litigation Management Guidelines and will continue to safeguard the County's assets by providing a strategic approach to the defense of matters assigned to the firm.

Professional legal fees shall be paid at the rate of \$240.00 per hour for Partners, \$190.00 per hour for Associate Partners and \$100.00 per hour for Paralegal Services. The proposed legal fees reflect a decrease of 12% from the legal fees previously agreed upon during Mr. Bent's tenure at Ford & Harrison LLP.

AGREEMENT FOR LEGAL SERVICES

THIS CONTRACT is entered into in the State of California by and between the COUNTY OF RIVERSIDE, hereafter referred to as "County", and Liability Defense Attorneys, or other attorneys who are approved to represent the County, more specifically the law firm of **Bent Caryl & Kroll LLP** hereafter referred to as "defense attorneys".

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, the Defense Attorneys are attorneys familiar with and competent in the area of law to which they are approved to represent the County and are qualified to defend the County as required by law for claims or actions filed against the County;

NOW, THEREFORE, in consideration of the remuneration hereinafter set forth, the Defense Attorneys agree to defend all claims or actions referred by the County arising from the alleged legal liability of the County on the following terms and conditions:

1. Defense Attorneys shall have the right to decline any case referred by the County. Defense Attorneys shall determine that they will have no conflict of interest should they accept the assigned case. Defense Attorneys shall not accept cases that may include causes of actions against the County.
2. Each case referred to Defense Attorneys by County shall be submitted with the understanding that professional fees shall be paid at the rate of \$240.00 per hour for Partners, \$190.00 for Associate Attorneys and \$100.00 for Paralegal Services regarding employee relations matters, billed on a monthly basis, effective on the date it is approved by the Board of Supervisors. If defense panel rates are increased at anytime during this contract period, the per hour rate here under will automatically increase to reflect the then current defense panel rate.
3. Defense Attorneys shall contact the County Risk Manager or designee for authority to settle all claims up to the value of \$50,000.00. Defense Attorneys shall notify the County Risk Manager or designee wherein settlement is recommended and whose settlement value is \$50,000 or above for the purpose of possible settlement, which is subject to Board of Supervisors approval, for presentation at the Board closed sessions.

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- a. Defense Attorneys further agree to make available, upon request by the County Risk Manager or designee, the attorney handling a file wherein a proposed settlement is in excess of \$50,000.00 for the purpose of appearing with the Risk Manager or designee at the Board of Supervisors closed sessions to answer any questions pertaining thereto, thus facilitating the Board's decision on the matter.

4. Defense Attorneys agree to undertake a planned effort to educate and to offer educational opportunities to the Risk Management Division staff in tort law, in claims resolution procedures or any other issues of interest. The Defense Attorneys shall work in conjunction with the County Risk Management or designee to resolve all claims against the County in the best interest of the County.

5. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) – The Defense Attorneys in this Agreement are subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-91, enacted August 21, 1996, and the laws and regulations promulgated subsequent thereto. The Defense Attorneys hereto agree to cooperate in accordance with the terms and intent of this Agreement for implementation of relevant law(s) and/or regulation(s) promulgated under this Law. The Defense Attorneys further agree that it shall be in compliance, and shall remain in compliance with the requirements of HIPAA as set forth in Attachment B, and the laws and regulations promulgated subsequent hereto, as may be amended from time to time.

6. This contract shall be administered by the County Risk Management Division. All communications and billings in connection herewith shall be directed to:

County of Riverside
Risk Management Division
P.O. Box 1210
Riverside, California 92501-1210

7. The County of Riverside's Litigation Management Guidelines and Addendum thereto are attached hereto as Exhibit A and Exhibit A-1 and become an integral part of this contract. The Litigation Management Guidelines may be updated from time to time. Each superseding update shall become an integral part of this contract and will not change nor alter any other portion of this contract in anyway whatsoever.

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8. The County of Riverside's Case Evaluation and Plan is attached hereto as Exhibit B; the Case Status Report is attached hereto as Exhibit C; the Attorney Pre-Trial Status Report Guideline is attached hereto as Exhibit D; all of which become an integral part of this contract as incorporated by this reference. Defense attorneys shall submit a comprehensive pre-trial report to County Risk Management sixty (60) days prior to commencement of trial, which shall contain the essential components as outlined in Exhibit D. Additionally, defense attorneys shall meet with County Risk Management no later than forty-five (45) days prior to trial to discuss the strengths, weaknesses and defense strategy of the case.

9. The terms of this agreement shall be from the date it has been approved by the Board of Supervisors or as provided on Attachment A and shall continue until terminated as set forth herein. Any party to this contract shall have the right to terminate this contract at any time by giving thirty (30) days written notice in advance to the other party.

10. Should any party to this contract choose to terminate this contract, Defense Attorneys shall continue to provide legal services if so agreed to in writing by the Risk Manager and shall be compensated therefore on the same terms and conditions as hereinbefore set forth, until the conclusion of such case for any cases previously referred to them (prior to the notice of cancellations).

11. It is understood that the contractual relationship of the Defense Attorneys to Riverside County is that of an independent contractor.

12. Defense Attorneys agree to assume contractually a policy or policies of insurance with a reputable company in good standing licensed to do business in the State of California and other states which may be applicable, and to provide the County of Riverside a Certificate of Insurance evidencing coverage as follows:

A. Workers' Compensation:

If the Defense Attorney has employees as defined by the State of California, the Defense Attorney shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

B. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, contractual liability, completed operations liability, personal and advertising injury covering claims which may arise from or out of Defense Attorney's performance of its obligations hereunder. Policy shall name all Agencies, Districts, Special Districts, and Departments of the County of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured's. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

C. Vehicle Liability:

Defense Attorney shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name all Agencies, Districts, Special Districts, and Departments of the County of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insured's.

D. Professional Liability Insurance:

Defense Attorney shall maintain Professional Liability Insurance providing coverage for the Defense Attorney's performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If Defense Attorney's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and Defense Attorney shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that Defense Attorney has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will continue for a period of five (5) years beyond the termination of this Agreement.

E. General Insurance Provisions - All lines:

- 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager.
- 2) Defense Attorney shall cause Defense Attorney's insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or if required certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. ***Defense Attorney shall not commence operations until the County has been furnished original Certificate (s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.***
- 3) It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

Such insurance shall name the County of Riverside, its Board of Supervisors, Special Districts, its officers, employees, representatives or agents as an additional insured with regards to General Liability coverage and your coverage shall be primary.

Such insurance shall also provide a waiver of subrogation in favor of the County of Riverside and shall provide a thirty (30) day notice of cancellation including a thirty (30) day notice for any changes, additions or deletions in such policy. The original Certificate of Insurance is to be sent directly to: County of Riverside, Risk Management Division, P.O. Box 1210, Riverside, CA 92502-1210, Attention, Risk Manager.

13. Defense Attorneys further agree to indemnify, defend and otherwise hold harmless the "County of Riverside", Special Districts, Board of Supervisors, its employees, officers and representatives or agents hereinafter referred to as the County of Riverside, for any and all claims but not limited to, liabilities for bodily injury (including death), property damage or any error, omission or mishandling of any claim or any other loss and all other damages arising out of or related to any act(s) whatsoever in the performance of Defense Attorney's responsibilities as defense counsel for the County of Riverside including but not limited to costs of defense, attorney's fees, litigation costs, expense of investigation and settlement of any such claim or legal action; provided, however, that such indemnification shall not extend to any loss caused by the sole negligence or willful misconduct of the County of Riverside.

Should you (either directly or by your insurer) fail to assume the obligations set forth in this agreement, the County of Riverside may at its option, and after notice thereof, undertake such measures as are deemed necessary and appropriate with regard to any such complaint, claim or legal action and it is agreed that all reasonable expenses incurred therein will be reimbursed by you to the County of Riverside.

COUNTY OF RIVERSIDE

By 
Chairman, Board of Supervisors
MARION ASHLEY

ATTEST:
KECIA HARPER-IHEM
Clerk of the Board

By 
Deputy

Rev. 3/22/05

Bent Caryl & Kroll LLP
By 
Sergio Bent
Partner
Title

County of Riverside, Risk Management Division

Litigation Management Guidelines

Claims Philosophy

Our claims philosophy is to identify, on a timely basis, those claims for which there is liability and to make settlement offers promptly. The County of Riverside will generally not settle claims on a nuisance value basis as a matter of policy. The County of Riverside, hereinafter referred to as County, policy is to defend all claims where there is no liability or where liability is questionable. Thorough, early investigation and rigorous development of the legal defense issues will identify the strengths and weaknesses of a case and allow us to develop a negotiating or trial strategy properly which is reflective of the case's value. It is always appropriate for counsel to provide us with settlement or trial recommendations.

I. DEFENSE COUNSEL

- A. Selection. Defense counsel for each case shall be selected by the County Risk Management Division. The selection shall be based on the nature and complexity of the case, the experience and ability of the attorney, as well as other relevant factors.
- B. Terms. Upon appointment in any litigation, defense counsel shall provide the following to the County:
 - 1. The names of other professionals (partners, associates, law clerks, paralegals, etc.) who will assist in the defense of the case. The functions to be performed by each professional shall also be provided. We request no junior attorney be assigned our files. A junior attorney may be utilized for research, minor discovery and court appearances with the senior attorney being fully responsible for the quality of the work product. We also request no more than two (2) senior attorneys in the firm handle our files for each line of coverage i.e., general liability, auto liability and medical malpractice; any exceptions must be approved in writing by the Risk Management Division. See Use of Appropriate Personnel. The County of Riverside Risk Management Division retains the right to approve or disapprove of any and all attorney assignments.

II. CASE ANALYSIS, STRATEGY AND BUDGET

- A. Development of an effective and strategically sound legal defense is the responsibility of counsel and includes the following:
 - 1. Identifying and developing all liability issues.
 - 2. Bringing viable third-party actions and/or cross actions against co-defendants.
 - 3. Developing the defense of contributory or comparative negligence.

4. Raising causation issues to ascertain whether there is a nexus between the County's alleged act(s) and the actual damages sustained.
 5. Critically analyzing the basis for all damages claimed.
- B. Within ninety (90) days following receipt of a case, defense counsel shall prepare and send to County Risk Management Division, a Case Evaluation Plan (see Exhibit B) and as follows:

1. Analysis. (a comprehensive written analysis of the case). This analysis shall provide an initial evaluation of the case, including a brief synopsis of the facts of the case, an analysis of plaintiff's injuries, damages and exposures in the case, and identification of the strengths and weaknesses of the case. Counsel shall also provide an initial impression of liability and identify the pertinent statutes and/or case law that may affect the outcome of the litigation.
2. Investigation. We require investigations be done timely. This includes but is not limited to:
 - a. Identification of and taking statements of witnesses.
 - b. Accident reconstruction (including photographs, diagrams, measurements, etc.).
 - c. Production of documents.
 - d. Purchase order/contracts/lease agreements.
 - e. Internal statements, memos, and correspondence
 - f. Inspections, etc.
 - g. Blue prints, if applicable.

Defense counsel shall identify any additional information or documentation that is needed to disprove the plaintiff's claims or to establish defenses in the action. Where it is believed further investigation is necessary, please discuss this with Risk Management prior to it being initiated.

3. Strategy. Defense counsel shall define the strategy to be used in defending each lawsuit, including, but not limited to:
 - a. The anticipated course of action to be taken and prospect for success (i.e. motion to dismiss, motion for summary judgment, negotiated settlement, trial, etc.).
 - b. The facts or elements which must be proved or disproved and the discovery necessary to establish these defenses or proof.
 - c. The timing of the discovery, filing of motions, negotiations or other objectives.
 - d. A description of how the work will be distributed among those who will be working on the case.
 - e. The tactics to be used in defending the case and the advantages to be gained by use of these tactics.
 - f. When appropriate, bifurcation of liability from damages' issues should be considered.

- C. Budget. Defense counsel will also provide an estimate of the anticipated cost of each significant aspect of the litigation, pursuant to the attached Budget Guidelines Attachment C. These guidelines may change from time to time and you should always familiarize yourself with all changes.

III. COMMUNICATION

- A. Correspondence and pleadings. Copies of all pertinent correspondence, investigations, and summaries of depositions, interrogatories and pertinent pleadings shall be promptly provided by defense counsel to Risk Management and the excess and/or reinsurance carrier when the case meets the excess reporting criteria. Defense counsel will promptly respond to all letters or phone calls and will keep County Risk Management Division fully advised of the progress in each case.
- B. Depositions and hearings. We require timely notification of all scheduled depositions, deposition preparations, mediations, MSC, VSC, arbitrations, trials, etc. We consider timely notification to be not less than 2 weeks in advance with 3-4 weeks advanced notice being preferable. Notice of all hearings shall be sent by defense counsel to the County Risk Management Division and to the excess carrier when the case meets excess reporting requirements to allow them to attend the hearing. It is required that within 10 days of any County employee's deposition being taken, defense counsel will meet with the county employee for the purpose of preparing the employee for their depositions and for trials in which they will serve as witnesses and/or experts. There are to be no telephone preparations (See VII Trials and Reports).
- C. Evaluations. We request evaluations as to liability and settlement value issues as early in the case as possible. Upon request, and at such other times as deemed necessary, defense counsel shall provide written or oral evaluations of the litigation. These evaluations shall disclose any weaknesses or strengths that have been discovered, any changes in applicable statutes or case law, any increase or decrease in anticipated costs, and (if possible) the potential liability and settlement value of the case. These evaluations should be as straightforward and as objective as possible to allow the County Risk Management Division to meaningfully analyze the case and to determine the course of action to be taken.

IV. UPDATES

It is the responsibility of counsel to update any item of information contained in the initial status report, including judgments and opinions of counsel, promptly when a change occurs. All updates shall also be concise. If six months elapse since the initial report or the last previous update and no changes have occurred, counsel shall advise the County Risk Management Division of that fact in a written update. Consequently, no six-month period shall expire without written communication from counsel to the County Risk Management Division.

V. SETTLEMENT AUTHORITY

Defense counsel shall not settle any lawsuit or make a settlement offer in any amount or make any representation as to settlement possibilities without prior authorization of the County Risk Management Division and/or Board of Supervisors approval when necessary.

VI. LEGAL BILLINGS

- A. All bills for legal services and costs shall be submitted at least quarterly. Fees and costs shall be billed at the rates previously agreed upon. All bills shall state with particularity the legal work performed, the hours expended to perform the work and the costs incurred. Attorneys submitting the bills for payment are responsible for the content of the bills and will work with the County Risk Management Division to resolve problems or answer questions.

Legal fees will not be paid unless submitted in the following format:

1. Each legal activity will be dated and itemized (multiple daily descriptive explanations of activities with a single time entry is not acceptable).
2. We require all billings be itemized to indicate the following:
 - a. The attorney doing the work.
 - b. Hours spent for each specific task.
 - c. Hourly rate.
 - d. Work being done by paralegals or law clerks should be identified.

Please advise if research time and/or overtime is billed and how it is indicated on the billing.

3. The amount of time to complete the task must be broken down into tenths of hours. Block time billing is not acceptable; therefore, not reimbursable.
4. The rates charged by each attorney working on the case must be summarized with the amount of hours to depict a cost per attorney.
5. Where expenses have been incurred for others, such as copy service, court reporters, experts, etc, please submit bills directly to Risk Management Division after approving them for payment. If you inadvertently paid a bill, please submit the itemized invoice you have paid along with your billing requesting reimbursement.
6. We understand the need to pay for unusual expenses incurred by you on behalf of Riverside County, however, we should not be asked to pay for ordinary overhead expenses, which we believe includes:
 - a. Ordinary postage.
 - b. Local telephone calls and faxes.
 - c. Ordinary word processing.
 - d. Time to prepare and review billings.
 - e. Local travel (30 miles or less, round trip.)
 - f. Meals when involved in local (in-town) cases.
7. If overpayments are/have been made by the County, the attorney firm must remit a reimbursement payment to the County of Riverside, Risk Management Division, within 30 days. No credit balances will be acceptable.

B. We will gladly pay for unusual charges which we believe include:

1. Long distance telephone calls - these should be itemized whenever possible.
2. Express mail when deemed necessary.
3. Long distance fax charges.
4. Photocopy charges - must include itemization, showing the number of pages and the cost per page which must not be excessive nor above industry standards. Where expense has been extensive, we would appreciate an explanation.
5. Travel time - if you are required to fly to another destination, reimbursable time begins at the airport you are departing from and ends at the arriving destination airport. Other out of town travel is reimbursable from your office location to your destination utilizing the most direct or quickest route.
6. Out of town travel – you must obtain prior authorization for any out of town travel. We ask that you do not fly first class or business class nor stay in a hotel whose rates are expensive or above the average daily rate of \$159.00, or \$239.00 in high cost cities such as San Francisco, New York, Washington D.C., etc (averages may vary by locale). We do not reimburse alcoholic beverage consumption. Food consumption should be reasonable and not excessive. Meals must be itemized as to food, beverages and tips. Itemization of all travel expenses by each person incurring those expenses must be made. This includes airfare, hotel, food, ground travel and any other major costs. Arrangements must be made to use a local court reporter or any other local service you believe is necessary as we will not authorize travel expenses for these services. Car rentals should be compact to mid-size vehicles and not in the luxury class.

C. Use of Appropriate Personnel

Within a law firm, research and minor discovery work should be performed by the lowest level of personnel (e.g. junior attorneys, paralegals) capable of performing a given task. Responsibility for the quality of the work product remains with the assigned trial attorney.

D. Multiple Attorney Conferences/Attendance

1. We will not pay for attendance by more than one representative of a law firm at meetings, court appearances, conferences, etc. without our prior approval.
2. Attorney office conference time must be itemized and is subject to review and may be disallowed.

E. Research

1. We will not pay for extensive research of relatively routine matters which should otherwise be within the knowledge of experienced practitioners.

2. We will only pay for review and revision of prior research; we will not pay each time as if previous research was conducted de novo.

F. Copy Service

We prefer to use one copy service wherever possible so that we can participate in volume discounts. We may establish and provide a panel of copy service vendors for your reference. Until you receive this panel, please continue using your current copy service making the effort to negotiate volume discounts. We want to utilize one court reporter whenever possible for the same reason - volume discount. Please provide us names and telephone numbers of court reporters you use by area (i.e., Riverside, Indio, Blythe, etc).

G. Audit

ATTORNEYS shall have and maintain all backup documentation to support all entries included in the monthly billing statement. Such documentation shall be in a form subject to audit and in accordance with generally accepted accounting principles. ATTORNEYS shall make such documentation available to auditors upon request and at such reasonable times and locations as may be agreed to between COUNTY and ATTORNEYS.

The County of Riverside retains the right to have legal billings audited.

VII. TRIALS AND REPORTING

- A. Within ten (10) to thirty (30) days prior to trial, defense counsel will meet with County employees who will be called as witnesses.
- B. Within thirty (30) days of the conclusion of all trials, a brief summary trial report should be directed to the County Risk Management Division outlining the trial results.

VIII. FINAL REPORTS

- A. At the conclusion of the case, a short summary report should be directed to the County Risk Management Division. Original closing papers and the final billing should be attached.
- B. Within ninety (90) days following the termination of each lawsuit, the County Risk Management Division will review the file to determine compliance with the County's guidelines and the strategy and budget developed by defense counsel for the case. If appropriate, a meeting will be arranged to discuss perceived problems and/or ways to improve defense of the County's claims.

IX. Electronic Communication/Data Storage/Presentation

- A. The County of Riverside strongly suggests all attorneys handling County files have the ability to communicate individually via electronic mail (E-Mail).
- B. The County of Riverside Superior Courts has equipment that is available for presenting evidence electronically (photo's, text, animation, etc.) via the use of an Elmo and a computer. The Courts also have a large screen which is used to

project the electronic evidence and information onto so that all jurors can easily view the evidence presented. The County of Riverside believes that jurors will retain 80%-90% of what they hear if they see it simultaneously. In addition, the management and storage of data on CD-ROM is beneficial to the success of the presentations of most of our cases. Therefore, the County of Riverside strongly suggests all attorneys handling cases on behalf of the County become proficient in managing and presenting cases via electronic medium.

X. Miscellaneous

There may be additional reporting requirements required by County Risk Management. You will be notified in writing of any additional requirements which we deem necessary.

The foregoing is not meant to be burdensome - it is meant to control and manage our costs as well as to be knowledgeable and involved with each of our cases.

Exhibit A-1

Addendum to Litigation Management Guidelines November 26, 2006

III. Communication

- D. Any demand, settlement, or judgment that includes or requests a "non-monetary" remedy from the court will be immediately communicated to the director(s) of the involved agency(ies), district(s), or department(s). Non-monetary remedies can include, but is not limited to injunctions (mandatory or prohibitory), remedies with policy implications, including labor relations, and/or any other non-monetary remedies. Such communication will include a request for either approval or rejection of the proposed remedy.
- E. Insofar as the non-monetary remedies may require approval of the Board of Supervisors, defense counsel shall communicate to Risk Management the nature and effect of the proposed remedy for determination by Risk Management as to any Board involvement.

INITIAL CASE EVALUATION AND PLAN GUIDELINE

To be completed by Firm's Supervising Attorney

1. FIRM NAME:

CASE NAME:

COURT CASE #:

COUNTY FILE #:

INCIDENT DATE:

CLAIM DATE:

COMPLAINT FILED DATE:

TYPE OF CASE:

CASE/MATTER DESCRIPTION AND FACTS:

OPPOSING ATTORNEY'S NAME (if applicable):
2. INVESTIGATION NEEDED:
3. INJURIES OR DAMAGES CLAIMED (list punitive damages separately):
- | | | | |
|----|------------------|------------------|----|
| 4. | SPECIAL DAMAGES: | MEDICAL | \$ |
| | | LOSS OF EARNINGS | \$ |
| | | OTHER (specify) | \$ |
5. PLAINTIFF'S CONTENTION:
6. AFFIRMATIVE DEFENSES:
7. INITIAL DISCOVERY (designate expert/parties):

 - a. Depositions to be taken (list names).
 - b. Interrogatories to be sent (list names).
 - c. Records/Documents to be produced (list names).
8. RESEARCH REQUIRED (general description of issues and extent): Specifically identify any research requiring original effort as opposed to research that has generally been done previously by your FIRM.

Exhibit B continued

INITIAL CASE EVALUATION AND PLAN GUIDELINE

To be completed by Firm's Supervising Attorney

9. MONETARY EVALUATION OF CASE:

	Potential Liability/Exposure:	\$
	Verdict Range:	\$
	Settlement Value:	\$
10. RECOMMENDED CASE STRATEGY:
11. STAFFING/HOURLY RATE (list names, titles, hourly rate, and estimated number of hours for each partner, associate and/or paralegal).
12. CONSULTANT AND/OR EXPERT WITNESS (list names, specialty, hourly rate, and estimated number of hours for each consultant and/or expert).
13. INITIAL COST ESTIMATE (projected budget, including attorney fees and expenses for handling each case to/through each of the stages as provided in the Attachment C for our (estimated) Budget Guidelines. Trial costs **should not** be included until MSC and/or Trial date has been set. Please base your best estimate on past experience with similar case(s).
14. Estimated final disposition date.

Approved by: _____
(Firm's Supervising Attorney)

Date: _____

CASE STATUS REPORT GUIDELINE

To be completed by Firm's Supervising Attorney

1. FIRM NAME:

CASE NAME:

COURT CASE #:
COUNTY FILE #:

INCIDENT DATE:
CLAIM DATE:
COMPLAINT FILED DATE:
2. STATUS OF DISCOVERY (since last status report). List depositions taken.
3. INTERROGATORIES SENT/RECEIVED (list names):
4. REQUESTS FOR MEDICAL EXAMS:
5. STATUS OF EXPERT WITNESS/CONSULTANT INVESTIGATIONS:
6. RESULTS OF MOTIONS (describe all Motions and indicate outcome):
7. SIGNIFICANT DEVELOPMENTS WHICH MAY INCREASE OR DECREASE COUNTY'S EXPOSURE/LIABILITY:
8. RECOMMENDED CASE STRATEGY (state clearly changes from previously agreed to strategy):
9. SIGNIFICANT EVENTS:
Trial Setting Conference Date:
Arbitration Date:
Voluntary Settlement Conference Date:
Mandatory Settlement Conference Date:
Department
Jury ____ Non-Jury ____ (check one)
10. Please update Attachment C - Cost Estimates and Budget Guidelines.

Approved by: _____ Date: _____
(Firm's Supervising Attorney)

ATTORNEY PRE-TRIAL STATUS REPORT GUIDELINE

TO:

CASE NAME:

FROM:

COUNTY FILE NO.:

DATE:

EXPECTED TRIAL DATE:

VENUE:

I. DEFENDANT

- A. Effectiveness of each anticipated witness; rate (from excellent to poor) his/her demeanor, general credibility, memory and particular tendencies as a witness.
- B. Other Insurance Coverage - type of policy, policy number and/or claim number, carrier name, address and phone number, claims person, type of other insurance clause (excess, escape or proratal), limits, deductible, known coverage defenses and/or reservation of rights (attach copy if available).

II. PLAINTIFF

- A. Name, address, age, marital status and occupation. If plaintiff is a business, provide a description.
- B. Dependents, if any; their names, ages, and relationships..
- C. Effectiveness as a witness - rate (from excellent to poor) his/her demeanor, general credibility, memory and particular tendencies as a witness.
- D. Name of plaintiff attorney and his/her ability. You may also want to include any comments as to his/her success on high profile or high value cases. High values cases would be those above \$750,000.00.

III. SUMMARY OF FACTS WHICH ENGENDERED THIS CLAIM

IV. CO-DEFENDANTS AND/OR THIRD PARTY DEFENDANTS

- A. Identity of parties.
- B. Respective attorneys - Names, business address, telephone numbers.
- C. Factual and legal basis for plaintiff's/cross-complainant's claims against other parties.
- D. Brief summary of probable exposure.
- E. Other Insurance Coverage - type of policy, policy number, claim number, carrier name, address and phone number, name of claims person, type of other insurance clause (excess, escape, etc), limits, deductible, known coverage defenses and/or reservation of rights (attach copy if available).

V. WITNESSES

- A. Name, address, age and occupation.
- B. Event they perceived.
- C. Effectiveness as a witness - rate (from excellent to poor) his/her demeanor, general credibility, memory and particular tendencies as a witness.

VI. ANALYSIS OF CLAIM: LIABILITY AND DAMAGES

- A. Plaintiff's theories.
- B. Defense theories.
- C. Co-defendants and/or third-party defendant theories.
- D. Strengths and weaknesses of subsections A, B, and C above.
- E. Chance of defense verdict for County, co-defendant and/or third party defendant (discuss each separately).
- F. If the County, co-defendant and/or third-party defendant settle, the probability of success of the non-settling defendant(s) in obtaining indemnity against the settling defendant (discuss each separately).
- G. Causation issues, i.e., was the County's alleged negligence a cause in fact of the damages claimed.
- H. Probable damages (compensatory) if case is lost.
- I. Punitive damage exposure? Will Plaintiff's attorney's fees be recoverable?
- J. Probability of contributory negligence finding (i.e., defense verdict) or probable percentage of comparative negligence (i.e., plaintiff's percentage of fault).
- K. Probable apportionment of fault among defendants (assign percentages).
- L. Net exposure (state a dollar amount) to County after all apportionment and based on probable damages.
- M. Settlement value and basis for evaluation.
- N. Should case be tried? Explain risks.
- O. Brief summary of probable outcome as to both liability and damage issues, indicating whether you consider this a case of liability and why.

VII. SETTLEMENT DISCUSSIONS

- A. What is the demand?
 - (a) Original amount and date.

(b) Present amount and date.

- B. What, if anything, has the County offered? If a definite offer has not been made, but an indicator or range has been discussed, so state, listing each indicator or range figure discussed.
- C. What, in your opinion, can the case be settled for at this time?
- D. Do you recommend that we settle? Why?

VIII. FUTURE HANDLING

- A. In your opinion, is the investigation of this case complete?
- B. If not complete, what further investigation do you suggest and what would it cost?
- C. What further discovery is needed; what would it cost to conclude the discovery and when do you expect discovery to be completed?
- D. Experts - explain need, their field, the number, probable testimony, cost of each, and whether plaintiff has experts (if so, who and how effective is he/she?).

IX. LEGAL EXPENSES

- A. What are the total legal expenses to date?
- B. If the case is tried, what would be the approximate cost of defense through trial excluding IX.A. above (include the expense described in VIII.D.)?

Attachment 'A'

For use with the AGREEMENT FOR PROFESSIONAL SERVICE

1. Professional Services: ☒ General and Auto Liability
☐ Medical Malpractice
☐ Appellate
☐ Investigator
☒ Employee Relations/Administrative
2. Hourly rate: \$ 240 Hourly rate for partner
\$ 190 Hourly rate for associate
\$ 100 Hourly rate for paralegal
3. Billing Cycle: ☐ Quarterly
☒ Monthly
☐ Special: _____
4. Effective date: Effective date when signed by Board of Supervisors
2. Self Administered by: County of Riverside
Human Resources Department
Risk Management Division
P. O. Box 1210
Riverside, CA 92502-1210
(951) 955-3540
(951) 955-5855 (fax)
3. Contract is for: ☐ Panel Counsel
☐ Single case assignment
☐ Investigator
☒ Special
4. Firm Name:



Attorney Signature



Print Name

Date

HIPAA Business Associate Agreement
Addendum to Contract

Attachment B

Between the County of Riverside and
Bent Caryl & Kroll, LLP

This HIPAA Business Associate Agreement Addendum ("Addendum") supplements, and is made part of the Professional Services Agreement (the "Underlying Agreement") between the County of Riverside ("County") and Bent Caryl & Kroll LLP ("Contractor") as of the date of approval by both parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which Contractor provides services to County, and in conjunction with the provision of such services certain Protected Health Information ("PHI") and/or certain electronic Protected Health Information (ePHI) may be made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act, Pub. L. No. 104-161 of 1996 ("HIPAA"), more specifically the regulations found at Title 45, CFR, Parts 160 and 164 (the "Privacy Rule") and/or Part 162 (the "Security Rule"), as may be amended from time to time, which are applicable to the protection of any disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a Covered Entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor, when a recipient of PHI and/or ePHI from County, is a Business Associate as defined in the Privacy Rule; and,

WHEREAS, the parties agree that any disclosure or use of PHI and/or ePHI be in compliance with the Privacy Rule, Security Rule, or other applicable law;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Definitions. Unless otherwise provided in this Addendum, capitalized terms shall have the same meanings as set forth in the Privacy Rule and/or Security Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by Contractor of County Disclosed PHI and/or ePHI
 - A. Contractor shall be permitted to use PHI and/or ePHI disclosed to it by the County:
 - (1) On behalf of the County, or to provide services to the County for the purposes contained herein, if such use or disclosure would not violate the Privacy Rule and/or Security Rule;

- (2) As necessary to perform any and all of its obligations under the Underlying Agreement.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, Contractor may:
- (1) Use the PHI and/or ePHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) Disclose the PHI and/or ePHI in its possession to a third party for the purpose of Contractor's proper management and administration or to fulfill any legal responsibilities of Contractor. Contractor may disclose PHI and/or ePHI as necessary for Contractor's operations only if:
 - (a) The disclosure is required by law; or
 - (b) Contractor obtains written assurances from any person or organization to which Contractor will disclose such PHI and/or ePHI that the person or organization will:
 - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose of which Contractor disclosed it to the third party, or as required by law; and,
 - (ii) The third party will notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached.
 - (3) Aggregate the PHI and/or ePHI and/or aggregate the PHI and/or ePHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
 - (4) Not disclose PHI and/or ePHI disclosed to Contractor by County not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI as authorized in writing by County.
 - (5) De-identify any and all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Contractor agrees that it will neither use nor disclose PHI and/or ePHI it receives from County, nor from another business associate of County, except as permitted or required by this Addendum, or as required by law, or as otherwise permitted by law.
- D. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are stricter in their requirements than the provisions of HIPAA and prohibit the disclosure of mental health, and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. Obligations of County.

- A. County agrees that it will make its best efforts to promptly notify Contractor in writing of any restrictions on the use and disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
 - B. County agrees that it will make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
 - C. County agrees to make it's best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
 - D. County shall not request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under the Privacy Rule and/or Security Rule.
 - E. County will obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or the Underlying Agreement.
4. Obligations of Contractor. In connection with its use of PHI and/or ePHI disclosed by County to Contractor, Contractor agrees to:
- A. Use or disclose PHI and/or ePHI only as permitted or required by this Addendum or as required by law.
 - B. Use reasonable and appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
 - C. To the extent practicable, mitigate any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
 - D. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum of which Contractor becomes aware.
 - E. Require sub-contractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor pursuant to this Addendum.
 - F. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use or disclosure of PHI and/or ePHI created or received for or from the County.
 - G. Obtain and maintain knowledge of the applicable laws and regulations related to HIPAA, as may be amended from time to time.
5. Access to PHI, Amendment and Disclosure Accounting. Contractor agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County.

- B. To make any amendment(s) to PHI in a Designated Record Set that the County directs or agrees to at the request of County or an Individual within sixty (60) days of the request of County.
- C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) Contractor agrees to document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (2) Contractor agrees to provide to County or an Individual, within sixty (60) days, information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - (3) Contractor shall have available for the County the information required by this section for the six (6) years preceding the County's request for information (except the Contractor need have no information for disclosures occurring before April 14, 2003).
- D. Make available to the County, or to the Secretary of Health and Human Services, Contractor's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining Contractor's compliance with the Privacy Rule, subject to any applicable legal restrictions.
- E. Within thirty (30) days of receiving a written request from County, make available any and all information necessary for County to make an accounting of disclosures of County PHI by Contractor.
- F. Within thirty (30) days of receiving a written request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in Contractor's possession constitutes a Designated Record Set.
- G. Not make any disclosure of PHI that County would be prohibited from making.
- 6. Access to ePHI, Amendment and Disclosure Accounting. In the event contractor needs to create or have access to County ePHI, Contractor agrees to:
 - A. Implement and maintain reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality of, the integrity of, the availability of, and authorized persons' accessibility to, County ePHI as applicable under the terms and conditions of the Underlying Agreement. The ePHI shall include that which the Contractor may create, receive, maintain, or transmit on behalf of the County.
 - B. Ensure that any agent, including a subcontractor, to whom Contractor provides ePHI agrees to implement reasonable and appropriate safeguards.
 - C. Report to County any security incident of which Contractor becomes aware that concerns County ePHI.
- 7. Term and Termination.

- A. Term – this Addendum shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, except as terminated by County as provided herein.
- B. Termination for Breach – County may terminate this Addendum, effective immediately, without cause, if County, in its sole discretion, determines that Contractor has breached a material provision of this Addendum. Alternatively, County may choose to provide Contractor with notice of the existence of an alleged material breach and afford Contractor with an opportunity to cure the alleged material breach. In the event Contractor fails to cure the breach to the satisfaction of County in a timely manner, County reserves the right to immediately terminate this Addendum.
- C. Effect of Termination – upon termination of this Addendum, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from the County, or created or received by Contractor on behalf of County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which is in possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the PHI and/or ePHI.
- D. Destruction not Feasible – in the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions which make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

8. Hold Harmless/Indemnification

Contractor shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any claim or action based upon such alleged acts or omissions.

With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or

circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Addendum.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.

In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.

9. General Provisions.

- A. Amendment – the parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- B. Survival – the respective rights and obligations of this Addendum shall survive the termination or expiration of this Addendum.
- C. Regulatory References – a reference in this Addendum to a section in the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- D. Conflicts – any ambiguity in this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, and HIPAA generally.
- E. Interpretation of Addendum – this Addendum shall be construed to be a part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of HIPAA.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as set forth below:

CONTRACTOR

By: 

Date: 5/3/10

COUNTY OF RIVERSIDE

By: _____
Director of Purchasing

Date: _____

DEFENSE COUNSEL CASE EVALUATION FORMAT

The comprehensive report, which we have requested on this file, should contain, but not necessarily be limited to, the information set forth below. The purpose of this report is to provide a complete, concise analysis of the case, as it currently exists. Usually, such reports do not exceed 10 pages in length.

Please use the paragraph headings exactly as set forth below. Additional descriptive paragraph headings may be useful for cases with unusual facts.

FACTS OF LOSS:

This section should include a summary of the events leading up to the loss.

Times, as well as dates, should be provided only if a time span is relevant to analysis of the case.

If two or more witnesses have given testimony or statements which differ as to facts or opinion, this should be set forth with your analysis of which witness will likely be believed by a jury and why.

In summary, this section of the report should be a concise summarization drawn from all sources available. It should not contain references to previous reports or other documents. After reading this section, the person who receives the report should be able to proceed to the next section without having to locate and read other documents for further information.

LIABILITY

The initial statement in this section should consist of a conclusion as to whether or not liability exists and to what extent. It should not contain any statements regarding adverse verdict or damage range estimates. Obviously, it is not appropriate to make definite statements concerning liability until the proper aspects of the case have been evaluated.

Following the one-line conclusion on liability, the reasoning leading to the conclusion should be set forth. The identities of any experts consulted or witnesses interviewed should be set forth together with a summary of their opinions. Particular care should be paid to discussing any differences in opinions among the experts or witnesses, and whom a jury will likely believe.

Case Evaluation Report Format (cont'd)

If appropriate, a statement should be made as to which expert(s) will be used at the time of trial, assuming the case is not resolved prior to trial.

If any information has been developed from the plaintiff's expert, this should be included. A statement should be made as to whether the information developed from the expert was via deposition testimony, or from another source.

PROXIMATE CASE/ LEGAL CAUSE:

Information in this section should include a statement as to whether or not there are any issues of proximate and/or legal cause. If there are issues, they should be discussed fully.

DAMAGES:

This section should include the amount and type of special damages claimed, and a statement as to whether these items are proper claims for damages.

A summarization of all aspects permitting an evaluation of extent of damages is necessary.

Where there is a claim for lost wages or future income, or where damages are tied to the life span of one or more of the plaintiffs, dates of birth, life expectancies and work life expectancies should be included where appropriate. Your source for this information is needed. Similarly, projected lifetime earnings should be included.

If you have any information as to the total amount of special damages, including projects, which the plaintiff will attempt to blackboard, this should be included.

PUNITIVE DAMAGES

This section should include the amount and type of punitive damages alleged, and the identities of the defendants against whom punitive damages are alleged. The chances of the plaintiff actually recovering punitive damages should be discussed. A statement should be made as to whether or not individually named defendants against whom punitive damages have been alleged, have been notified in writing.

If any conflict of interest in your representation of any defendant exists, please discuss this fully, along with your plan to resolve the conflict.

Please set forth your concept as to how you plan to handle the punitive damage aspect of the case from this point on.

Case Evaluation Report Format (cont'd)

IMMUNITIES AND OTHER AFFIRMATIVE DEFENSES:

If immunities exist or other affirmative defenses can be raised, they should be specifically identified. If they are drawn from statutes, the statute should be specifically set forth. The exact wording of the statute should be quoted.

This section should also include your estimate of how the immunity or other affirmative defense should be raised procedurally, and the chances of prevailing. If, in your opinion, an opinion should be solicited from appellate counsel, please so indicate.

If the immunities or affirmative defenses could be bifurcated and tried first, please so indicate, setting forth your reasoning.

Statutes of limitation should be discussed fully.

PLAINTIFF(S):

Information in this section should include the age, marital and family status of the plaintiff. Please indicate occupation.

If any of these plaintiffs are not entitled to recover damages, a brief statement as to the nature of their failure to qualify as plaintiffs is necessary.

WITNESSES:

The witnesses that you intend to use should be identified. You should advise us whether these witnesses have been located and notified of the impending trial date, if such trial date has been set, and a SHORT SUMMARY (one or two lines) of the interviews with these witnesses, if they have been interviewed or contacted.

PLAINTIFF'S COUNSEL:

This section should identify the plaintiff's attorney, his or her law firm, and a brief statement of his or her capabilities as to the subject matter of the case.

DEFENSE COUNSEL:

This section should identify intended trial counsel, should the case proceed to trial. If more than one attorney is assigned to the case, please include their names and roles in case development.

Case Evaluation Report Format (cont'd)

POTENTIAL CONTRIBUTIONS FROM COLLATERAL SOURCES OF PAYMENT,
PRIOR TORT-FEASORS, POTENTIAL OR ACTUAL CROSS-DEFENDANTS:

If the city or its employees could be entitled to a credit as against a settlement or judgment from collateral payors, defendants in other actions involving the plaintiff, or actual or potential cross-defendants, please indicate how this may be effected, or how it should be pursued. Other collateral sources should be identified and discussed fully.

SETTLEMENT DISCUSSIONS/DEMAND:

This section should include the results of any settlement discussions with the opposing parties, demands or statements by the plaintiff's attorney as to the value to the case.

TRIAL/MANDATORY SETTLEMENT CONFERENCE INFORMATION:

This section should include dates of settlement conferences and trials, as well as their locations and times. Estimated length of trial and projected defense costs should be included.

CASE EVALUATION:

This final section should act as a summary, including recommended settlement amount. It is always appropriate to discuss a range of settlement values, but this section should include a figure which represents the maximum amount which you recommend should be offered in settlement of the case at this time. If you are willing to recommend an absolute amount, above which no offer should be made at any time, please so indicate.

A statement of your opinion as to adverse jury verdict range should also be included. If you were able to provide information as to similar cases and verdicts or settlements, this would be very helpful.

If it is your recommendation that the case be settled at the present time, please so indicate, and also indicate the amount that you are recommending be offered in settlement. If there are extraneous facts, which might affect negotiation processes, please discuss fully. If additional work needs to be done, or if the case is prepared for trial or settlement and nothing further needs to be done, please so indicate.

Anything of an unusual or extraordinary nature which has resulted or might result in publicity or media interest should be discussed in full detail.

COUNTY OF RIVERSIDE BUDGET GUIDELINES

Date: _____

New ☐Revised ☐

Case Assessment, Development and Administration	
Facts Investigation/Development	\$
Analysis/Strategy	\$
Experts/Consultants	\$
Document/File Management	\$
Budgeting	\$
Settlement	\$
Other Case Activity	\$
Total	\$

Pre-Trial Pleadings and Motions	
Pleadings	\$
Preliminary Injunctions/Provisional Remedies	\$
Court Mandated Conferences	\$
Dispositive Motions	\$
Other Written Motions and Submissions	\$
Class Action Certification and Notice	\$
Total	\$

Discovery	
Written Discovery	\$
Document Production	\$
Depositions	\$
Expert Discovery	\$
Discovery Motions	\$
Other Discovery	\$
Total	\$

Trial Preparation and Trial	
Fact Witnesses	\$
Expert Witnesses	\$
Written Motions and Submissions	\$
Other Trial Preparation	\$
Trial and Hearing Attendance	\$
Post-Trial Motions and Submissions	\$
Enforcement	\$
Total	\$

Appeal	
Appellate Motions and Submissions	\$
Appellate Briefs	\$
Oral Argument	\$
Total	\$

<u>Expenses (Itemize)</u>	
	\$
Copying	\$
Outside Printing	\$
Facsimile	\$
Telephone	\$
Online Research	\$
Delivery services/Messengers	\$
Postage	\$
Local Travel	\$
Out-Of-Town Travel	\$
Meals	\$
Court Fees	\$
Subpoena Fees	\$
Witness Fees	\$
Deposition Transcripts	\$
Trial Transcripts	\$
Litigation Support Venders	\$
Experts	\$
Private Investigators	\$
Arbitrators/Mediators	\$
Local Counsel	\$
Other Professionals	\$
Other	\$
Total	\$
Grand Total	\$
Revised Grand Total	\$