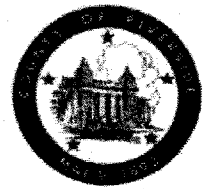


**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

814



FROM: Assessor/Clerk/Recorder

SUBMITTAL DATE:
May 3, 2012

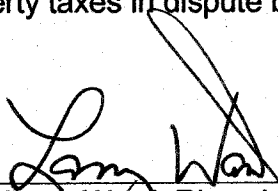
SUBJECT: Legal Services Agreement with outside counsel Barth, Tozer & Daly, LLP.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Legal Services Agreement with outside counsel Barth, Tozer & Daly, LLP in an amount not to exceed \$160,000 in accordance with the provisions of Board Policy A-18 permitting waiver of a request for proposals; and
2. Authorize the Chairman to execute the agreement.

BACKGROUND: Riverside County Superior Court Case No. RIC 1103506, *Tenet Healthsystem Desert, Inc. et al. vs. County of Riverside, et al.* (the "Lawsuit") is for the refund of Ad Valorem Real Property Taxes. The real property that is the subject of the suite is the Desert Regional Medical Center in Palm Springs, California, with the principal amount of property taxes in dispute being approximately 1.1 million dollars.

(cont'd on second page)


 Larry Ward, Riverside County
 Assessor/Clerk/Recorder

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 160,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 160,000	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	FY 11/12

SOURCE OF FUNDS: NCC	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE


BY: 
 Karen L. Johnson

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Benoit 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 15, 2012
xc: ACR

Kecia Harper-Ihem
 Clerk of the Board
 By: 
 Deputy

Prev. Agn. Ref.: | **District:** ALL | **Agenda Number:**

3.6

FORM APPROVED BY COUNTY COUNSEL
 BY: Glenn R. Beloit 5/8/2012
 DATE

Department Recommendation: Policy Consent
 Per Executive Office: Policy Consent

SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
FORM 11: Legal Services Agreement with outside counsel Barth, Tozer & Daly, LLP.

DATE: May 3, 2012

PAGE 2

BACKGROUND continued: The Lawsuit is one to recover taxes that were assessed and paid over seven tax years. The Lawsuit concerns complex issues of fact and law dealing with property valuation, including 91 valuation opinions concerning the Desert Regional Medical Center. The plaintiffs are represented in the Lawsuit by three attorneys from a Los Angeles law firm (Cahill, Davis & O'Neill) that is well-known for representing taxpayers in high profile tax refund lawsuits. This agenda item is to approve a Legal Services Agreement with Thomas W. Barth of Barth Tozer & Daly LLP to provide litigation services to the County in the Lawsuit.

Thomas W. Barth is a well-respected real property and business attorney who has represented private and public sector clients in a wide range of legal matters. A few years ago, Mr. Barth skillfully defended the Riverside County Auditor-Controller in a property tax allocation lawsuit brought by the City of Moreno Valley. The sum total budget for the outside counsel defense of the Lawsuit is estimated to be \$160,000. It is further estimated that the budget amount will be expended during the remainder of this current (2011-2012) fiscal year and during the following (2012-2013) fiscal year. It is estimated that a substantial portion of the budget amount may be expended during this current (2011-2012) fiscal year.

1 LEGAL SERVICES AGREEMENT

2 The COUNTY OF RIVERSIDE, hereinafter called "COUNTY", and Barth Tozer & Daly LLP hereinafter
3 called "ATTORNEYS", hereby agree as follows:

4 1. TERMS OF AGREEMENT. This Agreement shall commence upon May 15, 2012, and continue
5 until completion of the current litigation, Tenet Healthsystem Desert Inc. and Tenet Healthcare Corporation v.
6 County of Riverside, RIC1103506, or completion of the last work assignment, whichever occurs first, unless sooner
7 terminated pursuant to Section 5, or Section 13.

8 2. ATTORNEY SERVICES AND RESPONSIBILITIES. Upon appointment, ATTORNEYS shall
9 provide legal counsel and litigation services, including representation of COUNTY in all aspects of the case of
10 *Tenet Healthsystem Desert Inc. and Tenet Healthcare Corporation v. County of Riverside, RIC1103506* (except for
11 any appeal(s) or any extraordinary writ(s)), including but not limited to:

12 (a) Review of the law and legal guidance in regard to the assessment of the involved
13 properties;

14 (b) Assistance in possible settlement negotiations;

15 (c) Legal representation of the County in the case.

16 3. KEY ATTORNEY. ATTORNEY agrees that Thomas Barth, will be the supervising attorney
17 assigned to perform the work under this Agreement. Support attorneys and paralegals shall be designated by
18 ATTORNEYS' lead. The Supervising Attorney shall have full authority to act for ATTORNEYS on all matters
19 encompassed by this Agreement and shall be fully responsible for the quality of the work produced.

20 3.1 Upon execution of this Agreement, the Supervising Attorney shall provide to Office of County
21 Counsel the names of other professionals (senior partners, junior partners, associates, paralegals, of counsel, etc)
22 who will assist in the provision of services under this Agreement. The Supervising Attorney shall also specify the
23 functions to be performed by each professional and shall ensure that services are performed by the lowest level of
24 personnel qualified to perform the service. Any change in the personnel assignments shall be made only upon
25 telephonic or written notice to, and written consent by, the Office of County Counsel. COUNTY retains the right to
26 approve or disapprove any and all attorney assignments.

27 4. COMPENSATION. COUNTY shall pay ATTORNEYS at the following hourly rates for services
28 rendered:

	<u>Partner/Associate</u>	<u>Litigation/Special Project Rates</u>	<u>Transactional/</u>	<u>General Advice Rates</u>
1				
2	Thomas Barth	\$250 per hour		\$250 per hour
3	Junior Partner	\$		\$
4	Associate	\$		\$
5	Paralegal	\$		\$

6 4.1 The total amount of compensation paid to ATTORNEYS under the terms of this Agreement shall
7 not exceed the amount of One Hundred Sixty Thousand Dollars (\$160,000).

8 This amount may be amended by the parties to this Agreement, provided a written amendment is
9 executed by both parties prior to performance of any additional services. ATTORNEYS shall notify the COUNTY
10 immediately in writing when ATTORNEYS have expended seventy-five percent (75%) of the total payment by
11 COUNTY beyond the approved compensation.

12 5. UNAVAILABILITY OF FUNDS. When funds are not appropriated or otherwise made available in
13 any Fiscal Year, this Agreement shall be terminated by COUNTY upon immediate notice to ATTORNEYS.
14 ATTORNEYS shall be reimbursed for the reasonable value of any non-recurring costs incurred and covered under
15 the terms of this Agreement.

16 6. EXPENSES. COUNTY shall reimburse ATTORNEYS for their actual out-of-pocket expenses but
17 without any additional costs for having advanced the funds or for expenses generally considered as overhead
18 already reflected in the ATTORNEYS' hourly rate.

19 6.1 Reimbursable ordinary expenses shall include those expenses incurred on COUNTY'S behalf, to
20 include but not limited to: (i) postage; (ii) courier service; title reports; (iii) in-house photocopies of documents;
21 (iv) long distance phone calls; and (v) when reasonably necessary, travel between ATTORNEYS' office in
22 Sacramento and the Riverside County Superior Court in Riverside in a sum total cost of not more than \$500
23 (including reasonable costs for airfare and car rental and meals). No single expense shall exceed \$500 without the
24 prior consent of the COUNTY.

25 6.2 Reimbursable extraordinary expenses shall include charges for which ATTORNEYS have obtained
26 prior approval of COUNTY, and shall include: (i) consultants or expert witnesses; (ii) travel other than the travel
27 described in above provision 6.1; (iii) investigative services; (iv) and any expense item exceeding Five Hundred
28 Dollars (\$500.00).

1 6.3 Non-reimbursable expenses shall include, but not be limited to: (i) staff time or overtime for
2 performing secretarial, clerical, or word processing functions; (ii) charges for the time spent to provide necessary
3 information for COUNTY'S audits or billing inquiries; and (iii) charges for work performed which had not been
4 authorized by COUNTY.

5 7. PAYMENT. ATTORNEYS shall submit its billing statement monthly, in arrears, no later than the
6 last day of the month following the month(s) for which services were rendered. The original billing statement(s)
7 and one copy shall be submitted to:

8 Riverside County Counsel
9 Glenn Beloian
10 3960 Orange Street, Fifth Floor
11 Riverside, CA 92501
12 (951) 955-6300

13 The original of each billing shall have the declaration of ATTORNEYS' Supervising Attorney and shall be itemized
14 to include (i) staffing level(s), hourly rates and specific activities for each attorney and/or paralegal; (ii) listing of
15 each activity as a line item in a time reporting format acceptable to COUNTY with a detailed description of specific
16 activities for each attorney and/or paralegal; (iii) total current period fees and total cumulative fees billed for each
17 staffing level; and (iv) current period expenses and total cumulative expenses billed in itemized categories,
18 including all invoices for disbursements paid to others.

19 It is the expectation of COUNTY that it will not be billed for ordinary overhead expenses, including
20 (i) ordinary work processing; (ii) time to prepare and review billings; (iii) and local travel.

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

25 Payments shall be made by COUNTY within thirty (30) days of receipt of itemized billing
26 statements from ATTORNEYS. COUNTY shall not pay interest or finance charges on any outstanding balance(s).

27 8. LICENSES. ATTORNEYS, its employees, agents, contractors and subcontractors shall maintain
28 professional licenses required by the laws of the State of California at all times while performing services under this
agreement.

1 9. NOTICES. Any and all notices and required reports shall be written and hand-delivered or mailed
2 by first class, postage prepaid, addressed to the COUNTY or ATTORNEYS at the following addresses below, or at
3 any other address COUNTY or ATTORNEYS shall provide in writing to each other:

4 Riverside County Counsel
5 3960 Orange Street, Fifth Floor
6 Riverside, CA 92501
7 Attn: Glenn Beloian

 Barth Tozer & Daly LLP
 431 I Street, Suite 201
 Sacramento, CA 95814
 Attn: Thomas Barth

8 10. LITIGATION. The County of Riverside's Litigation Management Guidelines
9 ("Guidelines") are attached hereto as Exhibit A and are incorporated herein by this reference and made an
10 integral part of this Agreement. The Guidelines may be updated from time to time. ATTORNEYS agree
11 that any superseding update shall become an integral part of this contract and will not change nor alter any
12 other portion of this contract in anyway whatsoever.

13 10.1 The Guidelines contain required reporting forms to be completed and submitted to the
14 PROBATION by the ATTORNEYS on each case. The required reporting forms are listed and included
15 herewith. The *Budget Guideline* is attached to the Guidelines as Exhibit 1; the *Case Evaluation and Plan*
16 is attached to the Guidelines as Exhibit 2; the *Case Status Report* is attached to the Guidelines as Exhibit
17 3; and the *Attorney Pre-Trial Status Report* is attached to the Guidelines as Exhibit 4. The ATTORNEYS
18 agree that these forms shall be completed properly for each assigned case and will be submitted to
19 COUNTY on a timely basis as described in the Guidelines and when requested by COUNTY.
20 ATTORNEYS shall submit a comprehensive Pre-Trial Status Report to COUNTY no later than sixty (60)
21 days prior to commencement of trial, which shall contain the essential components as outlined in Exhibit
22 4. Additionally, ATTORNEYS shall meet with COUNTY no later than forty-five (45) days prior to trial
23 to discuss the strengths, weaknesses and defense strategy of the case.

24 11. REQUIRED INSURANCE. Without limiting or diminishing ATTORNEY'S obligation to
25 indemnify or hold COUNTY harmless, ATTORNEYS shall procure and maintain or cause to be maintained, at its
26 sole cost and expense, the following insurance coverage during the term of this Agreement:

27 a. Workers' Compensation:

28 If ATTORNEYS have employees as defined by the State of California, ATTORNEYS shall maintain
statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California.

1 Policy shall include Employer's Liability (Coverage B) including Occupational Disease with limits not less than
2 \$1,000,000.00 per person per accident. Policy shall be endorsed to waive subrogation in favor of COUNTY and, if
3 applicable, to provide a Borrowed Servant/Alternate Employer endorsement.

4 **b. Commercial General Liability:**

5 Commercial General Liability insurance coverage, including but not limited to, premises liability,
6 contractual liability, products and completed operations liability, personal and advertising injury, and cross liability
7 coverage, covering claims which may arise from or out of ATTORNEYS performance of its obligations hereunder.
8 Policy shall name the County of Riverside, its Agencies, Districts, Special Districts and Departments, their
9 respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or
10 representatives as Additional Insured's. Policy's limit of liability shall not be less than \$1,000,000.00 per occurrence
11 combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this
12 Agreement or be no less than two (2) times the occurrence limit.

13 **c. Vehicle Liability:**

14 If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then
15 ATTORNEY shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not
16 less than \$1,000,000.00 per occurrence combined single limit. If such insurance contains a general aggregate limit,
17 it shall apply separately to this Agreement or be no less than two (2) times the occurrence limit. Policy shall name
18 the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors,
19 officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional
20 Insureds.

21 **d. Professional Liability:**

22 ATTORNEYS shall maintain Professional Liability Insurance providing coverage for ATTORNEYS'
23 performance of work included within this Agreement, with a limit of liability of not less than \$1,000,000.00 per
24 occurrence and \$1,000,000.00 annual aggregate. If ATTORNEYS' Professional Liability Insurance is written on a
25 claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement
26 and ATTORNEYS shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also known as
27 Tail Coverage); or 2) Prior Dates Coverage from a new insurer with a date retroactive to the date of or prior to, the
28 inception of this Agreement; or 3) demonstrate through Certificates of Insurance that ATTORNEYS have

1 maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2) or 3) will
2 continue for a period of five (5) years beyond the termination of this Agreement.

3 e. General Insurance Provisions – All Lines:

4 1) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of
5 California and have an A.M. BEST rating of not less than an A:VIII (A:8) unless such requirements are
6 waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a
7 particular insurer such waiver is only valid for the specific insurer and only for one policy term.

8 2) ATTORNEYS' insurance carrier(s) must declare its insurance self-insured retentions. If such self-
9 insured retentions exceed \$500,000.00 per occurrence such retentions shall have the prior written consent of
10 the County Risk Manager before the commencement of operations under this Agreement. Upon
11 notification of self-insured retentions which are deemed unacceptable to the COUNTY, at the election of
12 the County's Risk Manager, ATTORNEYS' carriers shall either 1) reduce or eliminate such self-insured
13 retentions with respect to this Agreement with COUNTY or 2) procure a bond which guarantees payment of
14 losses and related investigations, claims administration, defense costs and expenses.

15 3) ATTORNEYS shall cause their insurance carrier(s) to furnish COUNTY with 1) a properly
16 executed original certificate(s) of insurance and original certified copies of endorsements effecting coverage
17 as required herein and, 2) if requested to do so orally or in writing by the County Risk Manager, provide
18 original certified copies of policies including all Endorsements and all attachments thereto, showing such
19 insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the
20 covenant of the insurance carrier(s) that thirty (30) days written notice be given to COUNTY prior to any
21 material modification, cancellation, expiration, or reduction in coverage of such insurance. In the event of a
22 material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate
23 forthwith, unless COUNTY receives, prior to such effective date, another properly executed original
24 Certificate of Insurance and original copies of endorsements or certified original policies, including all
25 endorsements and attachments thereto, evidencing coverage's set forth herein and the insurance required
26 herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf
27 shall sign the original endorsements for each policy and the Certificate of Insurance. ATTORNEYS
28 shall not commence operations until COUNTY has been furnished with original Certificate(s) of Insurance

1 and certified original copies of endorsements and, if requested, certified original policies of insurance
2 including all endorsements and any and all other attachments as required in this Section.

3 4) It is understood and agreed by the parties hereto and ATTORNEYS' insurance shall be
4 construed as primary insurance and COUNTY'S insurance and/or deductibles and/or self-insured retentions
5 or self-insured programs shall not be construed as contributory.

6 5) If during the term of this Agreement or any extension thereof, there is a material change in
7 the scope of services; or, there is a material change in the equipment to be used in the performance of the
8 scope of work which will add additional exposures (such as the use of aircraft, watercraft, cranes, etc.); or,
9 the term of this Agreement, including any extensions thereof, exceeds five (5) years, the County reserves
10 the right to adjust the types of insurance required under this Agreement and the monetary limits of liability
11 for the insurance coverage's currently required herein, if in the County Risk Manager's reasonable
12 judgment, the amount or type of insurance carried by the ATTORNEYS has become inadequate.

13 6) The insurance requirements contained in this Agreement may be met with a program(s) of
14 self-insurance acceptable to the County.

15 7) The ATTORNEYS shall pass down the insurance obligations contained herein to all tiers of
16 subcontractors working under this Agreement.

17 8) ATTORNEYS agree to notify COUNTY of any claim by a third party or any incident or
18 event that may give rise to a claim arising from the performance of this Agreement.

19 12. INDEMNITY AND HOLD HARMLESS. ATTORNEYS shall indemnify and hold harmless the
20 County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers,
21 Board of Supervisors, elected and appointed officials, employees, agents and representatives (the "Indemnified
22 Parties") from any liability whatsoever, including but not limited to, property damage, bodily injury, or death, based
23 or asserted upon any services of ATTORNEYS, its officers, employees, subcontractors, agents or representatives
24 arising out of or in any way relating to this Agreement; and ATTORNEYS shall defend at its sole expense and pay
25 all costs and fees, including but not limited to, attorney fees, cost of investigation, defense and settlements or
26 awards, on behalf of the Indemnified Parties in any claim or action based upon such liability.

27 With respect to any action or claim subject to indemnification herein by ATTORNEYS, ATTORNEYS
28 shall, at their sole cost, have the right to use counsel of their choice and shall have the right to adjust, settle, or

1 compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such
2 adjustment, settlement or compromise in no manner whatsoever limits or circumscribes ATTORNEYS'
3 indemnification to the Indemnified Parties as set forth herein.

4 ATTORNEYS' obligation hereunder shall be satisfied when ATTORNEYS has provided COUNTY the
5 appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

6 The specified insurance limits required in this Agreement shall in no way limit or circumscribe
7 ATTORNEYS' obligations to indemnify and hold harmless the Indemnified Parties herein from third party claims.

8 13. TERMINATION. Services performed under this Agreement may be terminated in whole or in part
9 at any time the COUNTY determines to be in its best interest, as determined by the Board of Supervisors upon the
10 recommendation of the County Counsel, Assessor, or designee. COUNTY shall terminate services by delivering to
11 ATTORNEYS a written termination notice executed by COUNTY and specifying the extent to which services are
12 terminated and the effective date.

13 13.1 After receiving a termination notice, and unless otherwise directed by COUNTY, ATTORNEYS shall
14 take all steps necessary to stop services on the date and to the extent specified in the termination notice, and submit
15 billing for all services performed to date of notice of termination and any services to be completed as set forth in the
16 notice of termination within thirty (30) days from effective termination date. ATTORNEY shall promptly submit a
17 brief report advising of the status of all matters, including any unresolved matters being handled by ATTORNEYS
18 for COUNTY. ATTORNEYS shall give COUNTY copies or originals, as appropriate of all files and attorney work
19 product for all matters on which it has been working. This includes any computerized index, computer programs
20 and document retrieval system created or used for these matters.

21 14. SUPERVISION OF AGREEMENT. The COUNTY COUNSEL shall designate an individual in
22 her office to act in her stead. The COUNTY COUNSEL, or her designee, shall have authority to act for COUNTY
23 on all daily operational matters under this Agreement and shall review and approve all ATTORNEYS' invoices,
24 reports, whether written or verbal, and any change in ATTORNEYS' Supervising Attorney.

25 15. ASSIGNMENT. No part of this Agreement or any right or obligation arising from it is assignable
26 without the written consent of COUNTY. Any attempt by ATTORNEYS to assign or subcontract services relating
27 to this Agreement without the consent of COUNTY shall constitute a material breach of this Agreement. However,
28

1 ATTORNEYS may retain consultants and experts as ATTORNEYS deem appropriate after receiving the written
2 approval of COUNTY.

3 16. NON-DISCRIMINATION. In the performance of the terms of this Agreement, ATTORNEYS
4 shall not engage in nor permit others he may employ to engage in discrimination in the employment of persons
5 because of the race, color, national origin or ancestry, religion, physical handicap, disability as defined by the
6 Americans with Disabilities Act (ADA), medical condition, marital status or sex of such persons, in accordance
7 with the provision of California Labor Code Section 1735.

8 17. PROFESSIONAL CONFLICT OF INTEREST. ATTORNEYS represent and warrant that no
9 COUNTY employee whose position in COUNTY enables him/her to influence the award of this Agreement or any
10 competing agreement, and no spouse or economic dependent of such employee is or shall be employed in any
11 capacity by ATTORNEYS, or shall have any direct or indirect financial interest in this Agreement.

12 Anyone who is a former employee of County at the time of execution of this Agreement or who
13 subsequently becomes affiliated with ATTORNEYS in any capacity (employee, associate or partner) shall not (i)
14 participate in the services provided by ATTORNEYS to County; or (ii) become a partner, shareholder or otherwise
15 share in the profits of ATTORNEYS for a period of one year from the date the former County employee left County
16 employment.

17 It is possible that some of the ATTORNEYS' present or future clients will have disputes with
18 COUNTY during the time that ATTORNEYS are representing the COUNTY. COUNTY and ATTORNEYS agree
19 that should the situation arise where a new or existing client engages ATTORNEYS in any matter in a position
20 adverse to COUNTY or in which COUNTY'S interest may be adversely affected, that ATTORNEYS will so advise
21 COUNTY and upon receipt of such notice COUNTY may determine that the conflict may be waived or may
22 determine that it is in the COUNTY'S best interest to terminate the services of ATTORNEYS. Should COUNTY
23 determine that it is best to terminate the services of ATTORNEYS, COUNTY will notify ATTORNEYS of such
24 decision. ATTORNEYS may then submit any outstanding invoices for payment up to the date of termination as
25 determined by the notice from COUNTY.

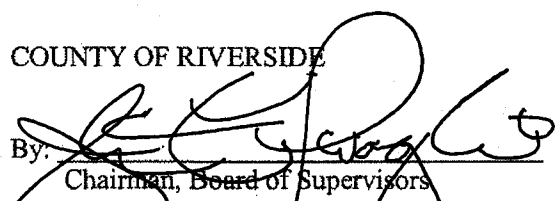
26 18. CONFIDENTIALITY. ATTORNEYS shall maintain the confidentiality of all information which it
27 may acquire arising out of or connected with activities under this Agreement in accordance with all applicable
28 Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code

1 of Professional Responsibility. ATTORNEYS shall inform all of its principals, employees and agents providing
2 services hereunder of the confidentiality provisions of this Agreement. These confidentiality obligations shall
3 survive the termination or expiration of this Agreement.

4 19. COMMUNICATIONS WITH COUNTY. ATTORNEYS recognize that their relationship with
5 COUNTY and its agents, employees, officers and/or representatives is subject to the attorney-client privilege and
6 that any information acquired during the term of this Agreement from or through COUNTY is confidential and
7 privileged. ATTORNEYS warrant that they shall not disclose or use in any manner whatsoever any of the
8 information from COUNTY and its officers, employees and agents in connection with said relationships or
9 proceedings. ATTORNEYS understand that the County Counsel is the empowered legal representative of
10 COUNTY and its officers and employees and ATTORNEYS shall not without specific direction from the County
11 Counsel communicate with, advise or represent the COUNTY legislative body.

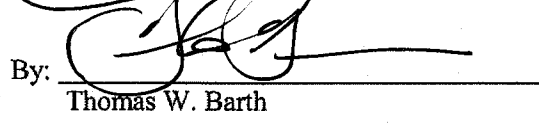
12 20. COMPLETE AGREEMENT. This Agreement shall constitute the complete and exclusive
13 statement of understanding between COUNTY and ATTORNEY which supercedes all previous written or oral
14 agreements, and all prior communications between COUNTY and ATTORNEYS relating to the subject matter of
15 this Agreement.

16
17 Dated: 6/21/2012

COUNTY OF RIVERSIDE
By: 
Chairman, Board of Supervisors

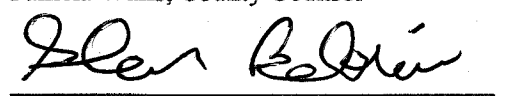
BARTH TOZER & DALEY LLP


18
19
20 Dated: 5/10/12

By: 
Thomas W. Barth

21
22
23 APPROVED AS TO FORM
Pamela Walls, County Counsel

24 Dated: 6/21/2012


By: Deputy County Counsel Glenn Beloian

ATTEST:
KECIA HARPER-JHEM, Clerk
By:  DEPUTY

26 ATTACHMENTS:
27 Exhibit A: Litigation Management Guidelines
28 Attachment C: County Of Riverside Budget Guidelines

Exhibit A

County of Riverside

Litigation Management Guidelines

Claims Philosophy

The County's 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 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. LITIGATION COUNSEL

- A. Selection. Litigation counsel for each case shall be selected by the Office of County Counsel in conjunction with the individual county department involved. 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, 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. The County 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 approach 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 claims alleged or damages claimed.

B. Within thirty (30) days following receipt of a case, counsel shall prepare and send to County Counsel, 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, 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. Production of documents.
 - c. Purchase order/contracts/lease agreements.
 - d. Internal statements, memos, and correspondence
 - e. Inspections, etc.
 - f. Blue prints, if applicable.

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 County prior to it being initiated.

3. Strategy. Counsel shall define the strategy to be used in 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 handling 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 County Counsel. Defense counsel will promptly respond to all letters or phone calls and will keep County Counsel 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 County Counsel. 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 straight-forward and as objective as possible to allow County Counsel to meaningfully analyze the case and to determine the course of action to be taken.
- D. Any demand, settlement, or judgment that includes or requests a "non-monetary" remedy from the court will be immediately communicated to County Counsel. 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, litigation counsel shall communicate to County Counsel the nature and effect of the proposed remedy for determination by County Counsel as to any Board involvement.

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 County Counsel of that fact in a written update. Consequently, no six-month period shall expire without written communication from litigation counsel to County Counsel.

V. SETTLEMENT AUTHORITY

Litigation 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 Counsel 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 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 County Counsel 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, 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 Counsel outlining the trial results.

VIII. FINAL REPORTS

- A. At the conclusion of the case, a short summary report should be directed to the County Counsel. Original closing papers and the final billing should be attached.
- B. Within ninety (90) days following the termination of each lawsuit, the County Counsel 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 handling of the County's cases.

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 Counsel. 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.

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. CLAIMANT'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: _____

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2 CASE STATUS REPORT GUIDELINE

3 To be completed by Firm's Supervising Attorney

- 4 1. FIRM NAME:
5 CASE NAME:
6 COURT CASE #:
7 COUNTY FILE #:
8 INCIDENT DATE:
9 CLAIM DATE:
10 COMPLAINT FILED DATE:
11 2. STATUS OF DISCOVERY (since last status report). List depositions taken.
12 3. INTERROGATORIES SENT/RECEIVED (list names):
13 4. REQUESTS FOR MEDICAL EXAMS:
14 5. STATUS OF EXPERT WITNESS/CONSULTANT INVESTIGATIONS:
15 6. RESULTS OF MOTIONS (describe all Motions and indicate outcome):
16 7. SIGNIFICANT DEVELOPMENTS WHICH MAY INCREASE OR DECREASE COUNTY'S
17 EXPOSURE/LIABILITY:
18 8. RECOMMENDED CASE STRATEGY (state clearly changes from previously agreed to
19 strategy):
20 9. SIGNIFICANT EVENTS:
21 Trail Setting Conference Date:
22 Arbitration Date:
23 Voluntary Settlement Conference Date:
24 Mandatory Settlement Conference Date:
25 Department
26 Jury _____ Non-Jury _____ (check one)
27 10. Please update Attachment C - Cost Estimates and Budget Guidelines.
28

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

1 Exhibit D

2 ATTORNEY PRE-TRIAL STATUS REPORT GUIDELINE

3
4 TO:

CASE NAME:

5 FROM:

COUNTY FILE NO.:

6 DATE:

7 EXPECTED TRIAL DATE:

8 VENUE:

9 I. DEFENDANT

- 10 A. Effectiveness of each anticipated witness; rate (from excellent to poor) his/her
11 demeanor, general credibility, memory and particular tendencies as a witness.
12 B. Other Insurance Coverage - type of policy, policy number and/or claim number, carrier
13 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).

14 II. PLAINTIFF

- 15 A. Name, address, age, marital status and occupation. If plaintiff is a business, provide a
16 description.
17 B. Dependents, if any; their names, ages, and relationships.
18 C. Effectiveness as a witness - rate (from excellent to poor) his/her demeanor, general
19 credibility, memory and particular tendencies as a witness.
20 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.

21 III. SUMMARY OF FACTS WHICH ENGENDERED THIS CLAIM

22 IV. CO-DEFENDANTS AND/OR THIRD PARTY DEFENDANTS

- 23 A. Identity of parties.
24 B. Respective attorneys - Names, business address, telephone numbers.
25 C. Factual and legal basis for plaintiff's/cross-complainant's claims against other parties.
26 D. Brief summary of probable exposure.
27 E. Other Insurance Coverage - type of policy, policy number, claim number, carrier name,
28 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).

1 V. WITNESSES

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

5 VI. ANALYSIS OF CLAIM: LIABILITY AND DAMAGES

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

28 VII. SETTLEMENT DISCUSSIONS

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

1 B. What, if anything, has the County offered? If a definite offer has not been made,
2 but an indicator or range has been discussed, so state, listing each indicator or range
3 figure discussed.

4 C. What, in your opinion, can the case be settled for at this time?

5 D. Do you recommend that we settle? Why?

6 VIII. FUTURE HANDLING

7 A. In your opinion, is the investigation of this case complete?

8 B. If not complete, what further investigation do you suggest and what would it cost?

9 C. What further discovery is needed; what would it cost to conclude the discovery and when
10 do you expect discovery to be completed?

11 D. Experts - explain need, their field, the number, probable testimony, cost of each, and
12 whether plaintiff has experts (if so, who and how effective is he/she?).

13 IX. LEGAL EXPENSES

14 A. What are the total legal expenses to date?

15 B. If the is case is tried, what would be the approximate cost of defense through trial excluding
16 IX.A. above (include the expense described in VIII.D.)?
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Attachment C

County of Riverside Budget Guidelines			
Case Name:	Date of this Evaluation:		
Attorney(s):	Case No.:		
Type of Litigation Expense	Attorney Hours	Actuals To Date	Anticipated Projected Expenses
Case Assessment, Development and Administration			
Facts Investigation/Development			
Analysis/Strategy			
Experts/Consultants			
Document/File Management			
Budgeting			
Settlement			
Other Case Activity			
Total Hours and Expenses	0	\$0.00	\$0.00
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 Hours and Expenses	0	\$0.00	\$0.00
Discovery			
Written Discovery			
Document Production			
Depositions			
Expert Discovery			
Discovery Motions			
Other Discovery			
Total Hours and Expenses	0	\$0.00	\$0.00
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 Hours and Expenses	0	\$0.00	\$0.00
Appeal			
Appellate Motions and Submissions			
Appellate Briefs			
Oral Argument			
Total Hours and Expenses	0	\$0.00	\$0.00

Expenses (Itemize)			
Copying, Printing, Facsimile			
Messenger, Postage			
Travel, Meals, Telephone			
Subpoena Fees, Witness Fees			
Online Research			
Total Hours and Expenses	0	\$0.00	\$0.00
Grand Total	0	\$0.00	\$0.00