

**SAN DIEGO UNIFIED SCHOOL DISTRICT
LEGAL SERVICES OFFICE**

**GUIDELINES GOVERNING RELATIONSHIP
WITH DEFENSE COUNSEL**

These guidelines reflect the practices and procedures governing the relationship between the SAN DIEGO UNIFIED SCHOOL DISTRICT (“District”) and the various attorneys and law firms (“Defense Counsel”) retained from time to time to represent the District for litigation or other legal services.

I. CASE ASSIGNMENT, DEFENSE STRATEGY, AND INITIAL ACTION

A. Confidentiality

In the course of performing services for the District, you may have access to confidential, commercial, or personal information concerning the practices of the District and its employees. We ask that you respect the confidentiality of such information, regardless of whether such information is subject to the attorney-client privilege, and ask that you do not disclose any such information unless you receive prior approval from the District, or unless required by subpoena or other legal process. Please notify the District’s General Counsel (“General Counsel”) as soon as possible upon receipt of any such subpoena or other legal process.

B. Professional Liability Insurance

Defense Counsel agrees to maintain appropriate levels of professional liability insurance throughout representation of the District, as outlined in the Agreement.

C. Professional Conduct

General Counsel has selected Defense Counsel based on Defense Counsel’s qualifications and expertise to effectively represent the District’s interests, and the demeanor to represent the District before the courts, administrative bodies, and other legal professionals and/or professional organizations. Defense Counsel shall conduct themselves in a civil and professional manner in all dealings, so as not to detract from the District’s image and reputation. If you believe opposing counsel is acting unreasonably with respect to such matters as discovery and scheduling, please discuss directly with General Counsel to avoid time-consuming, expensive, acrimonious, or unproductive exchanges of correspondence and motions.

D. Employee Contact

Please do not contact District employees, other than General Counsel staff, without prior notification and approval. It can be disruptive, and often the employees are unsure who you represent or how to respond. If you wish to communicate with a District employee, contact the attorney assigned by General Counsel to monitor the case (“Case Monitor”) to discuss the purpose, and the Case Monitor will coordinate any necessary meetings.

E. Media Inquiries

Defense Counsel may work on District-related matters that are of interest to the media, legal profession, or general public. The District employs a communications department, which has responsibility for responding to such inquiries. Defense Counsel is not authorized to respond to the media or public on District’s behalf without prior specific authorization from General Counsel, or his/her assigned designee.

Additionally, General Counsel expects to be advised, in advance, of any developments or actions in District matters, in which you are involved, that may be newsworthy or create public interest or publicity. We recognize that, from time-to-time, your work for the District may be of interest to the legal profession, or the subject of an article, presentation, or speech by outside counsel to a professional audience. General Counsel asks that all such opportunities be discussed with General Counsel before writing about or discussing any District-related matters.

F. Use of In-House Support Staff

While General Counsel encourages Defense Counsel to utilize the most cost-efficient personnel within the firm, General Counsel expects Defense Counsel to be personally involved and fully informed as to status for the duration of the matter.

In addition, General Counsel expects Defense Counsel to identify, at the outset of the engagement and on an on-going basis, who will be handling the various aspects of the matter or case, including, but not limited to, research, negotiations, drafting minor and major motions, depositions, and trials. There shall be no changes in such personnel assignments or duration of assignments without further discussions and agreements. As quality of service can be affected by a lack of continuity, it is best to concentrate knowledge, thus General Counsel prefers that a “team” of not more than three (3) individuals, including partners, associates, and paralegals, work on any one matter. On complex matters that require additional personnel or specialists, please obtain prior approval from General Counsel before adding any additional personnel.

As indicated on the Receipt and Acknowledgment section of these Guidelines, Defense Counsel agrees to provide a current list of attorneys who will be working on the matter(s), along with their current billing rates, at the time the executed copy is returned. Billing rates may not increase without written consent from General Counsel.

G. Initial Strategy

It is necessary to develop plans at the outset of any matter, rather than simply reacting to events as they occur. Alternative strategies should be considered and adopted that are best suited to the District’s needs. Defense Counsel is responsible for gathering available records and other pertinent information, including all available records and internal reviews, and formulating an appropriate discovery plan. Defense Counsel should promptly contact and interview District employees and others with relevant information.

H. Alternative Dispute Resolution/Settlement

At inception, as well as at all later stages of litigation, Defense Counsel shall take into account the economics of settlement versus the most probable litigated outcome, and determine if mediation and arbitration might be a more cost-effective approach.

II. REPRESENTATION ISSUES

Issues regarding defense and indemnification of District employees are resolved by General Counsel, pursuant to applicable law. In defending the District and its employees, Defense Counsel must often represent multiple employees on a variety of claims and theories. Defense Counsel must advise General Counsel at the outset of the case if the complaint contains allegations of intentional conduct or conduct outside the course and scope of employment.

If at any time during the defense of the case, a conflict of interest develops between or among any of the District’s employees, please notify General Counsel immediately.

III. DEFENSE REPORTING REQUIREMENTS

Defense Counsel must report on all significant developments as they occur, including emerging facts, shifting claims or strategies, and other changes in a case or matter. Report letters should be directed to the assigned Case Monitor from the General Counsel’s office, and copied to Risk Management, the Third Party Claims Administrator (“TPA”) and the excess carrier, when appropriate, unless instructed otherwise. Copy recipients will be identified in the initial assignment letter.

A. Specific Reports and Formats

Defense Counsel are required to provide the following reports:

- A letter of acknowledgment as soon as a new file is received;
- An Initial Case Evaluation Plan within the first 60 days, including a description of the case, an estimated timeline for discovery and disposition, and discussion of early disposition potential;
- An Initial Budget, due within the first 60 days;
- A written Status Report every 60 days, or sooner as developments warrant;
- A Defense Counsel Evaluation, due at least 72 hours before any conference call or meeting where settlement authority will be requested, and, in any case at least 72 hours before the first scheduled MSC, and 30 days prior to the first trial date, whichever occurs first.

B. Initial Case Evaluation Plan and Budget

For all matters in excess of \$50,000.00 in controversy, or in which you anticipate over \$50,000.00 in fees and expenditures - regardless of the amount in controversy - please prepare an initial case evaluation plan that describes your understanding of the key legal and factual issues in the case, and how you intend to address them. The initial case evaluation plan and budget should be completed within 60 days of case assignment.

1. Budget Format

The budget should address each of the following:

- Anticipated motions (e.g., motions to dismiss, summary judgment, etc.);
- Number of expected witness depositions and anticipated costs (including preparation and travel costs for witnesses not in the jurisdiction);
- Number and type of expert witnesses and anticipated costs;
- Additional discovery costs if an extraordinary number of documents are involved;
- Witness interviews and other informal discovery;
- Extraordinary research costs if the matter or the issue involves matters of first impression, or our theory is unique or contrary to existing case law; and
- Trial costs including staffing at trial, jury selection, trial time, and trial briefs.

2. Format for Initial Case Evaluation Plan

In addition to the caption and a brief overview of the case, the case evaluation should include the following:

- Pleadings – Identify the court and filing date, all parties and their attorneys, and all causes of action/theories of liability.
- Summary of Facts – Briefly describe, based on review of records, discussions with Risk Management, and witness interviews:
 - Any relevant history, including the status of any internal investigations;
 - Age, education, employment, and marital and family status of plaintiff(s);
 - Identity and background of all named defendants and/or potential District witnesses. If interviews have been conducted, summarize them here;
 - The incident that forms the subject of the lawsuit;
 - Information about the actual or potential co-defendants, including the identity of their counsel;
 - For personal injury matters, the current status of plaintiff(s) injury, information on prognosis and further treatment.
- Liability – Provide an opinion on the potential liability, including causation.
- Damages – Provide any known information on potential general and special damages.

- Legal Issues – Describe affirmative defenses, immunities, cross-actions, etc., and procedural approach thereto.
- Early Disposition Potential.
- Settlement History (if any).
- Plan and Timeline – Describe anticipated discovery and trial preparation, including an estimated timeline. If any out of the ordinary expenses such as motion practice, sub rosa, expensive expert witness fees, travel outside of the local jurisdiction, etc., are anticipated, Defense Counsel should include an estimate of such fees and/or costs in the budget. To the extent possible, you should also include an estimate of the number of interviews and depositions to be conducted.
- Experts and Consultants – Identify consultant and potential experts by name, expertise, or specialty/sub-specialty.
- Motion Practice – Describe any motion practice you anticipate.

If plans change, please provide a written update.

C. Status Reports

Every 60 days, Defense Counsel should submit a written status report to General Counsel for each pending matter currently being handled by Defense Counsel. Between status reports, Defense Counsel should immediately report any significant event in the case to the Case Monitor, Risk Manager, and TPA.

D. Format for Defense Counsel Evaluation

The Defense Counsel Evaluation is designed to give the reader the best and most up-to-date information on a litigated claim prior to any voluntary or mandatory settlement conference, mediation, or arbitration. This report must be distributed 72 hours in advance of any meeting where settlement authority will be requested. In cases where there is no scheduled event providing an opportunity for a Defense Counsel Evaluation, the report must be delivered to the District no later than 30 days before the scheduled trial date, or in any event, promptly upon request by the General Counsel or Case Monitor.

The Evaluation should include information on each of the following:

- Summary of Facts – Provide a summary of facts pertinent to your evaluation.
- Plaintiffs – Identify each plaintiff and list the causes of action asserted by each plaintiff. Describe the witness potential of each plaintiff, including your opinion and the results of any jury research as to how the witness will be viewed by the jury.
- District Defendants – Identify all District defendants and list the causes of action against each. Briefly describe the substance of his/her anticipated testimony and offer

your opinion and the results of any jury research as to how the witness will be viewed by the jury.

- Actual or potential co-defendants and cross-defendants – Identify each named non-District co-defendant and list the causes of action asserted by each plaintiff against each co-defendant.
- Liability – Provide a thorough discussion of the plaintiff’s theories and the District’s defenses. The analysis should also discuss affirmative defenses, statutes of limitations, mitigation, or governmental immunities to be raised through summary judgment and/or trial. Indicate if an opinion should be solicited from appellate counsel and articulate a reasonable prediction of which party(ies) are likely to prevail at trial.
- Damages – Provide a full discussion of the amount and type of damages claimed and an analysis of whether these damages are appropriate. Include all information you have regarding the total amount of damages. Where there is a claim for lost earnings or lost earning capacity, or where damages are tied to the lifespan of one or more plaintiffs, please include appropriate dates of birth, life and work-life expectancies, and the source of this information. Where appropriate, include an analysis of mitigation and offset issues.
- Attorneys’ fees – In cases involving claims authorizing attorneys’ fees, provide an estimated calculation of plaintiff’s attorneys fees and costs to date.
- Percipient Witnesses – Identify each percipient witness to be called by each party, and identify whether the witness is currently or has been previously affiliated with the District. Please provide your opinion as to how each witness will be viewed by the jury.
- Expert Witnesses – Describe the opinions of the experts for all parties. If the plaintiff’s experts have not been disclosed and/or deposed, describe their anticipated opinions.
- Settlement Discussions/Demand – Report on any settlement discussions with opposing parties. Please include any demands or statements by plaintiff’s attorney with reference to case value.
- Trial/Settlement Conference/Mediation Information – State the date for the settlement conference, mediation, or trial and their times and location. The estimated length of trial and projected defense fees and costs should also be included.
- Case Evaluation – In this section, summarize overall position and make recommendations for settlement and/or defense of the case. A range for settlement should be recommended with a maximum recommended settlement figure. Explain the rationale for the recommendation. Also discuss the anticipated jury verdict range, the likelihood that the plaintiff will prevail, or the chances for a successful defense. Provide information on similar cases, verdicts, or settlements.

- Anticipated fees/costs through trial.

IV. PLEADINGS

All recommendations for dispositive motions must be approved in advance by the Case Monitor. All briefing should be sent to the Case Monitor for review at least 48 hours prior to filing. No project with a cost of more than \$2,000 should be undertaken without the prior consent of General Counsel or the Case Monitor.

Defense Counsel must provide final copies of all responsive pleadings, dispositive motions, and court orders when filed or received by counsel.

V. LEGAL RESEARCH

Defense Counsel are selected for their expertise in the areas of general, professional, and employment practices liability and the District does not, therefore, expect to be billed for basic research in the practice area.

A copy of each memorandum of legal research should be forwarded to the Case Monitor upon completion.

VI. DISCOVERY AND DEPOSITIONS

Defense Counsel shall conduct a thorough investigation to ensure that all persons with relevant knowledge are identified and contacted, and shall conduct a thorough search for all relevant documents. In responding to discovery, draft responses must be provided to the Case Monitor sufficiently in advance of the due date to allow time for review.

Any potential discovery problems should be raised by Defense Counsel with the Case Monitor. Defense Counsel must immediately notify the Case Monitor of any motion to compel, request for, or assessment of sanctions by the court against the District or its counsel, and provide a copy of any such motion, request, or order.

In general, the approved trial attorney is strongly encouraged to take and defend the depositions of the plaintiff, District defendants, critical witnesses, and experts. The Case Monitor should be given advance notice of depositions and deposition preparation of key witnesses so that he/she may attend.

VII. EXPERT REVIEWS AND WITNESSES

Consultation with or retention of outside experts and for Independent Medical/Psychological Examinations requires advance authorization from General Counsel and/or the Case Monitor.

VIII. TRIAL

Unless previously approved by General Counsel, only one attorney may try a case on behalf of the District. All trial attorneys must be approved by General Counsel. The presence of District

trial representatives is critical to successful defense of cases. It is important to identify and propose to General Counsel, well in advance of trial, an appropriate trial representative. In addition, advance notice of trial dates to all defendants and key witnesses is critical.

During the course of trial, Defense Counsel is expected to provide daily updates, including an assessment of the jury, the Court, and the testimony of witnesses and experts. Updates should be directed to the Case Monitor and Risk Management.

IX. LEGAL BILLING

Billing requirements are strictly enforced due to the nature of funding received from state and federal sources and subsequent auditing. Invoices that do not follow the District’s format, as detailed below, are subject to non-payment and will be returned for revision without notice:

1. Frequency: Each case or project should be billed separately, clearly indicating the court case number or matter number. All billings should be submitted to General Counsel on a monthly basis in accordance with these Guidelines;
2. Stale charges: All charges must be submitted for payment within sixty (60) days of completion of the billed services.
3. Detailed Entries: Billed hours shall be divided into segments no greater than .1 hour. Time entries must accurately describe the work done. Generic or vague descriptions such as the following, without further detail, are not acceptable:
 - a. “Attention to matter”
 - b. “Review case and issues”
 - c. “Conference”
 - d. “Review correspondence/documents”
 - e. “Telephone call”
 - f. “Meeting”
 - g. “Trial Preparation”
 - h. “Motion work”
 - i. “Work on project or case”
 - j. “Work on file”
 - k. “Prepare for meeting”
 - l. “Work on discovery”
 - m. “Research”
 - n. Any other nondescript activity

All billing entries should be organized chronologically in descending order by total of fees/costs billed for the period, and should be accompanied by a detailed description of work done (including name of individual contacted and subject discussed), time spent by each partner, associate, and paralegal, the hourly charge for each, and a brief itemization of out-of-pocket disbursements.

ADDENDUM “A”

4. Task Billing: Each task performed must have its own time entry separated by a semicolon (;). The District will not pay for multiple tasks under one entry (block billing).
5. Conferences: Only one (1) attorney may bill for conferences between members of Defense Counsel’s firm, unless otherwise agreed. The District will not pay for “tag team” billing methods.
6. Multiple Attorneys: Unless authorized in writing in advance by General Counsel, there will be no more than 2 attorneys and 1 paralegal doing the work and billing time to a case.
7. Training: If new or inexperienced attorneys are going to be working on a case in any capacity, the District will not pay for “training” time, i.e., time spent on research or other matters which would likely be within the knowledge of more experienced attorneys.
8. Clerical Work: Clerical, secretarial, and administrative work is part of law office overhead and non-billable, regardless of who performs it.
9. Photocopying: The District will only pay for the actual cost of photocopying provided by, or incurred by outside counsel, not to exceed fourteen cents (\$.14) per page for an 8½ x 11 impression. All invoices must include the number of copies made and charge per copy.
10. Facsimiles: The District will pay for the actual cost of charges as charged to you by your telecommunications provider. This charge is typically the same fee as a telephone call.
11. Telephone Charges: The District will pay for long distance or toll calls, but not for local charges.
12. Delivery Services: General Counsel expects the use of messenger and expedited mail services (e.g. Federal Express, Airborne Express, UPS, etc.) only be used in exceptional circumstances. Outside messenger services may be used for personal service or court filings; the District agrees to pay only the actual charges incurred.
13. Court Costs: The District is a public entity and therefore is not required to pay filing fees. Additionally, the District will not be responsible for sanctions or penalties imposed by a court due to the conduct of Defense Counsel.
14. Disallowed Charges: In addition to information contained in this section, the District will not reimburse for the following items:
 - a. Routine postage, such as U.S. Postal Service rates for letters. Any necessary extraordinary postage charges (such as certified mail, overnight service, or oversized packages) must be delineated on the bill with an explanation of the nature and purpose of the charge;

ADDENDUM “A”

- b. File opening, file organization, or other administrative charges;
- c. Intraoffice conferences between members of the firm, including assigning files or tasks to members of the firm. Note: The District will pay for one attorney charging for intraoffice conferencing regarding strategy of the case. Intraoffice conferences of an administrative, supervisory, or educational purpose are not compensable;
- d. Case administration (e.g. reviewing status of assignments given to associates and paralegals or secretaries, preparing or reviewing bills);
- e. Clerical tasks (e.g. transcription, pulling files, photocopying documents, arranging for copying, preparing proofs of service, indexing pleadings, faxing);
- f. More than one attorney or other timekeeper at motions, interviews, depositions, hearings, trial, court appearance, arbitration, mediation, third party meetings, or any similar event, without prior approval from the Case Monitor;
- g. Meals, except in conjunction with General Counsel-approved travel;
- h. Staff overtime charges;
- i. Routine or elementary legal research, including issues to be common knowledge among reasonably experienced counsel in the local jurisdiction (e.g. research on local rules, special verdict forms, standards for summary judgment);
- j. Routine file review and learning time for getting up to speed;
- k. Staffing inefficiencies caused by the unavailability of the firm’s personnel;
- l. Routine scheduling or rescheduling of depositions, hearings, and the like;
- m. All work customarily performed by secretaries and other administrative personnel;
- n. Expenses/disbursements without supporting invoices; and
- o. Responding to requests from the District relating to case file management and/or billing issues.

ACKNOWLEDGMENT

**To: Andra Donovan, General Counsel
San Diego Unified School District**

From: Defense Counsel (as named below)

Re: Receipt and Acknowledgment of Guidelines Governing Relationship with Defense Counsel

I acknowledge, on behalf of the undersigned law firm, that I have received and reviewed the "Guidelines Governing Relationship with Defense Counsel." I know of no reason why my firm cannot comply with the Guidelines, and I accept these terms as a condition of the District's agreement to engage us as Defense Counsel.

A list of all attorneys and paralegals (and their respective billing rates) designated to work on District matters is attached. We agree to submit, in writing, any proposed changes in attorney teams or applicable billing rates to General Counsel for prior approval.

If we become aware of any conflict, or of any reason why we cannot comply with the Guidelines, we agree to bring it to your immediate attention.

Dated:

By: _____
NAME