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Executive Summary In Response to Questions on Legal Fees January 2008

On October 9, 2007, the Board of Education considered a motion for an investigation of legal fees charged to the District. This motion came up during the Board's consideration of a request to renew the legal services agreement for the Miller Brown & Dannis law firm. The agreement had last been approved by the Mt. Diablo Unified School District (MDUSD) Board of Education on June 22, 1999, shortly before Superintendent Paul Allen retired. Gary McHenry came to the District as superintendent two months later, on August 17, 1999.

The motion directing Superintendent McHenry to conduct an investigation of legal fees was never voted on. The superintendent volunteered to respond to questions from Board members on legal services agreements and fees and to provide that information to the Board. This document is that response.

Background

Miller Brown & Dannis began serving as legal counsel to the Mt. Diablo Unified School District beginning in 1977-78, the first year of collective bargaining. At that time the firm was named Breon, Galgani, Godino & O'Donnell. One of the firm's attorneys, Greg Dannis, began serving as MDUSD's chief negotiator in 1980. He continues in that role today.

When Superintendent McHenry joined MDUSD in August 1999 the law firm, now known as Miller Brown & Dannis, had been providing legal services to the District for more than 20 years. He was under the impression that the agreement for those services rolled over from year to year, staying in effect until it was cancelled by one side or the other. Based on this assumption, he did not bring a formal agreement to the Board for approval.

In addition to providing negotiations and other legal services Miller Brown & Dannis was the attorney of record for the Spieler v MDUSD lawsuit, which resulted in the Special Education Consent Decree signed in 2000. The law firm remained in this role until June 30, 2003. At a meeting on June 24, 2003, the Board of Education approved a new agreement with the law firm of Lozano Smith as attorney for the Consent Decree, replacing Miller Brown & Dannis in that capacity.

Miller Brown & Dannis continues to advise MDUSD on other legal issues. Greg Dannis continues to serve as the District's chief negotiator.

Critical Questions

1. When did the MDUSD Board last approve a legal services agreement with Miller Brown & Dannis?
June 22, 1999

2. Did the District receive a new agreement from Miller Brown & Dannis each year? The firm submitted agreements to the MDUSD Superintendent's Office, usually in June of each year, from 2000 to 2005. In March 2005 Greg Rolen was appointed as the District's General Counsel. The firm then began submitting the annual agreement to the General Counsel's Office. A chronology of events is outlined below.

**Legal Service Agreement with Miller Brown & Dannis
Chronology of Events**

- 6/22/99 The last agreement for legal services with Miller Brown & Dannis was signed by MDUSD Superintendent Paul Allen. It was approved by the Board of Education on June 22, 1999. (Soon afterwards, Mr. Allen retired from the District and Mr. McHenry was appointed as his successor.)
- 6/5/00 Received a new agreement for legal services from Kathryn Luhe of Miller Brown & Dannis for the period 7/1/00 to 6/30/01. Agreement was not formally approved by the Board of Education. A copy of it was mailed to the Board of Education in the Superintendent's Friday Memo on or about June 9, 2000. *See notes from Sue Berg and Memo from the superintendent.*
- 6/13/01 Received legal service agreement from Miller Brown & Dannis signed by Gregory Dannis for the period 7/1/01 to 6/30/02. The agreement was never submitted to the Board of Education for approval. On August 13, 2001, Superintendent McHenry forwarded a signed agreement to Gregory Dannis.
- 6/25/02 Received legal service agreement from Gregory Dannis of Miller Brown & Dannis for the period of 7/1/02 to 6/30/03. The agreement was never submitted to the Board of Education for approval. The agreement was filed unsigned.
- 6/5/03 Received legal service agreement from Gregory Dannis of Miller Brown & Dannis for the period of 7/1/03 to 6/30/04. The agreement was never submitted to the Board of Education for approval. The agreement was filed unsigned.
- 6/24/03 Agreement with Lozano Smith for legal services related to the Special Education Consent Decree was approved by the Board of Education.
- 5/27/04 Received legal service agreement from Gregory Dannis of Miller Brown & Dannis for the period of 7/1/04 to 6/30/05. The agreement was never submitted to the Board of Education for approval. The agreement was filed unsigned.
- March '05 Board approved appointment of Gregory Rolen as MDUSD General Counsel.
- 6/13/05 Received legal service agreement from Gregory Dannis of Miller Brown & Dannis for the period 7/1/05 to 6/30/06. The agreement was never submitted to the Board of Education for approval. The agreement was filed unsigned.

11/2/05 Greg Rolen sent a memorandum to all legal service providers indicating the development of legal standards for billing. At the time of this memorandum Superintendent McHenry was under the impression that MDUSD had existing agreements with both Lozano Smith and Miller Brown & Dannis. After sending out the initial memorandum Greg Rolen sent out one to both Lozano Smith and Miller Brown & Dannis.

Gregory Dannis called. Superintendent McHenry met with him in December 2005 and informed him he would have to work with Greg Rolen on a new agreement.

6/30/06 As General Counsel, Greg Rolen received an agreement for legal services from Miller Brown & Dannis Counsel. Superintendent McHenry did not see this agreement. It was never submitted to the Board of Education for approval.

6/21/07 As General Counsel, Greg Rolen received legal service agreement from Mark Kelly of Miller Brown & Dannis for the period 7/1/07 to 6/30/08. It was not presented to the Board of Education for approval.

10/3/07 Superintendent McHenry received a new legal service agreement from Mark Kelly of Miller Brown & Dannis for the period 7/1/07 to 6/30/08. The first agreement had not incorporated the change in rates for telephone calls to one-tenth of an hour. *Both copies are included.*

10/9/07 MDUSD Board approved the legal service agreement with Miller Brown & Dannis, dated October 3, 2007.

3. Did we receive information from Miller Brown & Dannis on changes in rates?
Yes, the rate schedule was included in each agreement. The current rate schedule and an analysis are outlined below:

Miller Brown & Dannis Fee Schedule

YEAR	SHARE HOLDERS	SPECIAL COUNSEL/ OFFICE COUNSEL	ASSOCIATES	PARALEGAL LAW CLERK	PHONE ADVICE	TRAVEL TIME	OTHER
1999-2000	\$225/175	\$225/175	\$165/150	\$85	.3/hour	Regular hourly rate for atty	
2000-2001	\$225/175	\$225/175	\$175/165	\$100	.3/hour	Regular hourly rate for atty	Associate incr. \$15/hr Paralegal incr. \$15/hr
2001-2002	\$225/200	\$200	\$175/165	\$100	.3/hour	Regular hourly rate for atty	Shareholder incr. \$25/hr
2002-2003	\$225/185	\$225/185	\$185/175	\$100	.3/hour	Regular hourly rate for atty	

YEAR	SHARE HOLDERS	SPECIAL COUNSEL/ OFFICE COUNSEL	ASSOCIATES	PARALEGAL LAW CLERK	PHONE ADVICE	TRAVEL TIME	OTHER
2003-2004	\$225/185	\$225/185	\$185/175	\$100	.3 hour	No travel time for E. Estes	No travel time for E. Estes
2004-2005	\$250/210	\$235/210	\$205/195	\$120/110	.3 hour	No travel time for E. Estes	Shareholder incr. \$25-\$35 Off. counsel incr. \$10-\$25 Assoc. incr. \$20; Paralegal incr. \$10-\$25
2005-2006	\$250/210	\$250/210	\$205/195	\$125/110	.3 hour	No travel for E. Estes	Off. counsel incr. \$15/hr; Para-legal incr. \$5/hr
2006-2007	\$275/215	\$210	\$195	\$125/110	.1 hour	No travel time	Shareholder incr. \$15-\$25 Special counsel locked @ \$210 Associates locked @ \$191 No travel time
2007-2008	\$275/215	\$215	\$200/185	\$125/110	.1 hour	No travel time	Special counsel increase by \$15; Decrease phone hour rate .3 to .1

Analysis of Miller Brown & Dannis Fee Schedule

Shareholders

- Rate remained the same from July 1, 1999, to June 30, 2004.
- Rate increased by \$25, to \$250 an hour, beginning 7/1/04. This rate remained in effect until 6/30/05.
- Rate increased by \$25, to \$275 an hour, beginning 7/1/06. This rate remains in effect at the present time.

Special Counsel/Office Counsel

- Maximum rate was \$225 in 1999 and 2000. It was lowered to \$200 in 2001 and increased back to \$225 in 2002-03 and 2003-04.
- Rate increased by \$10, to \$235 an hour, in 2004-05.
- Rate increased by \$15, to \$250 an hour, in 2005.
- Rate decreased by \$40, to \$210 an hour, in 2006.
- Rate increased by \$5, to \$215 an hour, in 2007.

Associates

- Maximum rate was \$165 an hour in 1999-2000.
- Rate increased by \$10, to \$175 an hour, in 2000-2001. This rate remained in effect until June 30, 2001.

- Rate increased by \$10, to \$185 an hour, in July 2002. This rate remained in effect until June 30, 2004.
- Rate increased by \$20, to \$205 an hour, in July 2004. This rate remained in place until June 30, 2006.
- Rate decreased \$10, to \$195 an hour, in July 2006.
- Rate increased \$5, to \$200 an hour, in July 2007.

Paralegal

- Rate for paralegal was \$85 an hour in 1999.
- Rate increased \$15, to \$100 an hour, in July 2000. This rate remained in effect until June 30, 2004.
- Rate increased \$20, to \$120 an hour, in July 2004.
- Rate increased \$5, to \$125 an hour, in July 2005. This rate remains in effect today.

Telephone Advice

- Telephone advice was billed at 0.3/hour from July 1, 1999, until June 30, 2006.
- After negotiations by Greg Rolen the telephone advice billing rate was lowered to 0.1/hour, which remains in effect today.

Travel Time

- From July 1999 to June 30, 2003, all attorneys billed the hourly rate for travel time.
- Beginning July 1, 2003, the District did not pay any travel time for attorney Elizabeth Estes, who began working two days a week in the District on July 1, 2001. All other attorneys continued to charge travel time at the regular hourly rate.
- Beginning July 1, 2006, there was no charge for travel time for any attorneys. In July of 2007 we paid only mandated travel time.

4. How much did the District pay Miller Brown & Dannis over the years? The total amount paid each year since 1999 is outlined below:

Year	Annual Amount	
1999-2000	\$765,639.	Agreement approved by the Board
2000-2001	\$848,268.	Agreement not approved by the Board
2001-2002	\$1,136,186.	“
2002-2003	\$967,171.	“
2003-2004	\$857,430.	“
2004-2005	\$1,203,766.	“
2005-2006	\$979,225.	“
2006-2007	\$659,691.	“
Total	\$7,417,376.	

A more detailed summary is shown on the following page.

Mount Diablo Unified School District
Hourly Rate History

Fee Agreement Rates	<u>1998-99</u>	<u>1999-2000</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>	<u>2005-06*</u>	<u>2006-07**</u>	<u>2007-08***</u>
Shareholder	\$165-\$175	\$175-\$225	\$185-\$225	\$185-\$225	\$185-\$225	\$185-\$225	\$210-\$250	\$210-\$250	\$215-\$275	\$215-\$275
Special Counsel	\$165-\$175	\$175-\$225	\$185-\$225	\$185-\$225	\$185-\$225	\$185-\$225	\$210-\$250	\$210-\$250	\$210	\$215
Associates	\$140-\$150	\$150-\$165	\$165-\$175	\$165-\$185	\$175-\$185	\$175-\$185	\$195-\$205	\$195-\$205	\$185	\$185-200
Paralegals	\$75	\$85	\$100	\$100	\$100	\$100	\$110-\$125	\$110-\$125	\$110-\$125	\$110-\$125
Travel Time	\$125									\$0.00

* Estes travel time no charge

** all travel time no charge

*** non-mandated travel time no charge

Fees Billed by Personnel Type

Fees Billed	**	<u>1999-2000</u>	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>	<u>2005-06*</u>	<u>2006-07**</u>
Shareholder		\$474,169	\$552,270	\$789,238	\$593,724	\$484,873	\$567,912	\$326,416	\$258,645
Special Counsel		\$100,095	\$76,962	\$26,012	\$71,747	\$163,069	\$414,281	\$395,810	\$313,993
Associates		\$191,375	\$210,376	\$290,928	\$281,406	\$192,213	\$198,222	\$238,932	\$78,292
Paralegals		\$0	\$8,660	\$30,008	\$20,295	\$17,275	\$23,351	\$18,067	\$8,762
Totals		\$765,639	\$848,268	\$1,136,186	\$967,171	\$857,430	\$1,203,766	\$979,225	\$659,691

** previous computer program - not available - if needed we can get this from storage

5. Provide minutes of the Board meetings in which legal services agreements were approved by the Board.

The following meeting minutes are provided as Addendum A:

June 22, 1999	Miller Brown & Dannis agreement signed.
June 24, 2003	Lozano Smith agreement approved.
October 9, 2007	Miller Brown & Dannis agreement approved.
November 13, 2007	Lozano Smith agreement approved.

6. What is the difference between the amount the District should have paid because of an approved legal services agreement and the amount that was actually paid during the years that the rates changed and there were no Board-approved legal services agreements?
The amount is difficult to calculate without examining each invoice received and reviewed by District staff. Copies of those invoices, which are available in the Superintendent's Office, fill two large cardboard boxes. Summary records show actual fees paid, but in several instances the fees were raised for one group of legal advisors and lowered for another. In addition, summary records show the fees paid for a group (e.g. shareholders, associates, paralegals), but not their actual hours.

We are essentially talking about seven years, 2000-01 to 2006-07. Miller Brown & Dannis was the attorney of record for the case of Spieler vs. MDUSD from 1998 to June 30, 2003. As shown in the summary presented under #4 above, the rates did change for certain attorneys and paralegals in the firm. At the same time, the District affected reductions in the rates for mileage reimbursement and the amount charged for advice via telephone.

It is important to note that the District received or has submitted claims for reimbursement of mandated costs for negotiations by Miller Brown & Dannis attorneys at the rate of \$125.00 an hour. In 2006-07 the District received more than \$1.4 million in mandated cost reimbursements, some of which was for negotiations.

7. Does the District have billing and rate standards?

No and yes. In 2005 General Counsel Greg Rolen developed billing standards for the District. The Superintendent's Council reviewed these standards, which were then sent to firms that wanted to provide legal services to MDUSD. These billing standards were developed and implemented as an internal strategy by the General Counsel as a way to reduce costs. They were brought to the Board for formal approval on November 13, 2007.

Greg Rolen also established and tried to enforce a rate of \$175 per hour. This rate was \$50 per hour less than the rate the Board had approved for shareholders under the Miller Brown & Dannis legal services agreement of 1999-2000. Greg Rolen communicated the \$175 per hour rate limit to both Miller Brown & Dannis and to Lozano Smith in November 2005. Both rejected it, but did agree to change the rate for advice via telephone from 0.3 to 0.1 part of an hour. Miller Brown & Dannis also agreed not to charge travel time for attorney Elizabeth Estes as of July 1, 2004, nor for any attorneys, except for mandated travel, as of July 1, 2006.

As part of the cost-saving strategy Greg Rolan contracted with a legal billing auditing service, LexTech. Under this agreement, legal firms send their bills to the General Counsel's Office, which then forwards them to LexTech for review and payment. In some cases, the review can lead to reducing the bills. Initially, if there was a dispute between the legal service provider and the auditing service, the District did not have a mechanism to enforce the lower payment. The billing standards now provide that mechanism. Firms that sign the standards agree to abide by the rates listed.

Lex Tech Agreement and Billing Standards

- September 9, 2005: General Counsel Greg Rolan signs agreement with LexTech to review bills submitted by legal firms to the Mt. Diablo Unified School District.
 - September-October 2005: Greg Rolan develops case management and billing standards for legal service providers.
 - November 13, 2007: Board approves Legal Audit Service Agreement with LexTech.
8. Was there a dispute with Miller Brown & Dannis over invoices submitted and the amount paid?
Yes. In June 2007 Mark Kelly, managing partner of Miller Brown & Dannis, submitted information indicating that the law firm was owed \$132,497.46 for services to the District in 2005, 2006, and 2007. LexTech rejected the bill. Superintendent McHenry forwarded the information to General Counsel Greg Rolan and directed him to meet with Mark Kelly and reach a compromise on the amount to be paid. They met once in July, without resolution, and later cancelled a meeting scheduled in August.

In September Mark Kelly asked the superintendent to become involved. Greg Rolan maintained that the District did not owe Miller Brown & Dannis any money and pointed out that the District did not have a Board-approved legal services agreement with the law firm. Superintendent McHenry explained that the District and Miller Brown & Dannis had been working together for many years as if an agreement were in place. The billing dispute was over services that the firm had provided to the District, so some payment was clearly due.

It should be noted that Miller Brown & Dannis has been doing business with the Mt. Diablo Unified School District for more than 30 years. When disputes over billings arose, they were always able to be resolved with a conversation. In Superintendent McHenry's eight years in MDUSD this was the first time the law firm had appealed the question of an invoice.

After meeting with Mark Kelly, Superintendent McHenry reviewed the client account summary he provided, checked each attorney and case number to make sure they matched, and conferred with the Council or Cabinet member who had requested the legal service. He determined that the dispute was over the way the invoices were labeled and that Miller Brown & Dannis deserved to be paid most of the money being billed. He authorized payment to Miller Brown & Dannis in the amount of \$109,655.53 for 2006 and 2007.