

CAPISTRANO BAY DISTRICT  
AGENDA REPORT  
July 31, 2018

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Old Business

## ITEM 9b

### Termination of Legal Services of Rutan & Tucker LLP

During the process of hiring the Schwerdtfeger Law Group back in May, the status of our relationship with Rutan & Tucker LLP was not fully decided and acted upon. The purpose of the discussion at this Board meeting will be to take action in a Motion to either retain Rutan as a secondary Counsel or terminate the relationship altogether.

- Sean Schwerdtfeger                    \$275/hour
- Robert Owen                            \$170/hour
- other Rutan Specialists – up to: \$400/hour

Rutan & Tucker LLP has been representing the Capistrano Bay District at least as far back as 1989 making this a 29-30 year relationship. During this time, Robert Owen has been assigned to our account as General Counsel with various legal specialists in Rutan's firm stepping in from time to time depending on the nature of the legal issue at hand. Some examples of their legal representation over the years are as follows:

1. disposition of the District Walkways
2. settling the issue with the CCC re: requiring the deeding of public access in trade for CDP's
3. challenges by the Pryke family and other homeowners opposing certain District actions
4. defending the District in employee termination cases
5. bond counsel to the Assessment District Formation for the road reconstruction project
6. regular advice/counsel for correct language in Resolutions, Ordinances, Code interpretations, attorney letters to homeowners, etc.

While Rutan's legal specialists can charge up to \$400/hour, the main 'housekeeping' legal services provided by Robert Owen is charged at \$170/hour. There are, however, some concerns:

Of primary concern noted by the Board is the potential *Conflict of Interest* condition that presented itself when the City of Dana Point engaged with Rutan & Tucker several years ago to be their main legal counsel. Up to now there have been no *conflict* issues and while it is the lawful responsibility of Rutan to disclose such issues if they were to arise, it logically follows that the District should retain good General Counsel outside of Rutan & Tucker now, to begin fostering another long relationship with the District and be prepared in the event the District should ever have to engage in a litigation with the City or the Coastal Commission or some other agency that might in some way be related to the City of Dana Point, where Rutan would have to bow out due to the *conflict* as counsel to the City.

While there is no question that the hiring of Schwerdtfeger Law Group was an excellent strategy by the Board, it's worth considering a continuation of Rutan's services regarding some of the District's lesser legal needs as noted above in items 5 and 6.