

BUDGET LETTER

NUMBER: 98-22

SUBJECT: PAYMENT OF ATTORNEY FEES UNDER CONTROL SECTION 5.25

DATE ISSUED: AUGUST 26, 1998

REFERENCES: CONTROL SECTION 5.25 OF THE 1998 BUDGET ACT

SUPERSEDES: BL 93-11

TO: Agency Secretaries
Department Directors
Departmental Budget Officers
Departmental Accounting Officers
Department of Finance Budget Staff

FROM: DEPARTMENT OF FINANCE

NOTE: Budget Officers are requested to forward a copy of this Budget Letter to the Departmental Legal Division

There has been no change in the procedures for payment of attorney fees under Control Section 5.25 in recent years. This Budget Letter is re-issued to ensure departments are informed of the procedures since the last issuance was in 1993. We note that this budget letter addresses only the types of attorney fees allowed under Control Section 5.25. Payments of other types of attorney fees (such as those arising from federal proceedings, tort-like or equity-like) follow different procedures.

A. TYPES OF CASES

Control Section 5.25 limits departmental payments for attorney fee awards arising through the state court system. State operations payments are limited to awards pursuant to the following two code sections:

1. Code of Civil Procedure (CCP) Section 1021.5 include:

- The "private attorney general" doctrine (i.e., legal services are needed to vindicate important public rights), or
- The "substantial benefit" doctrine (i.e., significant benefit conferred either on the general public or a large class of persons).

2. Welfare and Institutions (W&I) Code Section 10962:

- Pertain to judicial review of administrative hearing decisions for public assistance programs.

There may be instances where the Legislature has appropriated funds for payment of attorney fees. In these cases, the limitations of Control Section 5.25 do not apply and payment in those instances should be made from the specific appropriations. Finance budget analysts may request necessary additional documentation to substantiate payment.

B. PROCEDURES

In order to pay attorney fees from departmental support appropriations, departments must obtain Department of Finance's (DOF) approval by submitting a complete package as described below to their DOF analyst. The package must include:

1. Judgment or Settlement Agreement

The judgment or settlement agreement or other documentation must include the final court date of the award and whether the award was made pursuant to CCP Section 1021.5 (the "private attorney general" doctrine or the "substantial benefit" doctrine) or for writ of mandate actions filed pursuant to Section 10962 of the W&I Code.

2. Release Statement

Departments also must obtain a signed release from the individual or entities identified in the judgment or settlement agreement as being awarded the attorney fees. The release must state that it is a release in full and final satisfaction of **any and all claims for attorney fees arising out of the action** (see subdivision (d), in Control Section 5.25). In accordance with subdivision (e) of the control section, **no partial payments from an item will be made**. The release must be submitted **with original signature(s)** along with the judgment.

3. Claim Schedule

A claim schedule must be submitted by the principal agency involved in the lawsuit and named in the judgment or settlement agreement. If more than one principal agency is named in the judgment or settlement agreement, individual claim schedules are to be submitted by each of the departments involved. The department must certify on the claim schedule as to the availability of funds **within its existing appropriation(s)**. If the department cannot certify that sufficient funds are available, the department must contact its Finance budget analyst to identify what additional information will be needed to resolve the funding issue.

If there is any question as to which agency is the principal agency, contact the Attorney General's Office or the attorney representing your agency in the matter.

4. Approval of Governor's Legal Affairs Secretary and DOF Chief Counsel (Attorney Fee Settlements in Excess of \$100,000)

The Governor's Legal Affairs Office requires approval of the Governor's Legal Affairs Secretary and the Chief Counsel of the DOF for settlements of claims for attorney fees exceeding \$100,000. Settlement agreements exceeding \$100,000 sent to your Finance

budget analyst, therefore, must include documentation of approvals as aforementioned. (See attached sample format).

In accordance with instructions per the Governor's Legal Affairs Office on February 11, 1993, forward a copy of the package to both the Governor's Legal Affairs Office and the Chief Counsel of DOF simultaneously. Upon receipt of the package, the two offices will coordinate the legal review. This process does not supersede each department's responsibility to work with DOF as early as possible to choose the most appropriate option for payment of the potential settlement.

In order to facilitate the review by both offices, include a brief justification for the amount of the attorney fees requested. This brief justification must include, at a minimum, hours billed, hourly fee, and amount of total judgment or settlement.

If you have any questions regarding these procedures, please contact your Department of Finance budget analyst.



Carl Rogers
Program Budget Manager

Attachment



Upcoming Budget Letters

- Past, Current, and Budget Year Schedule 10s
- 1999-00 Price Letter Standards
- Processing Initial Schedule 10Rs
- Supplemental Language Reports
- Reporting Requirements per Control Section 5.00 of the 1998 Budget Act
- Expenditure Authorization Controls

SETTLEMENT ACTION REQUEST

TO: _____
Legal Affairs Secretary

FROM:

DATE:

SUBJECT:

SUMMARY OF CASE:

PRO:

CON:

POLICY IMPLICATIONS:

ATTORNEY GENERAL RECOMMENDATION:

EFFECT ON EXISTING LAW OR POLICY:

ESTIMATED COST:

TIME FACTOR:

RECOMMENDATION:

APPROVED:

Director/Department

Date

Secretary/Agency

Date

Legal Affairs Secretary

Date

**Chief Counsel
Department of Finance**

Date