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State Bar & Bar Associations

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State must scrap contracts with outside firms, board says

But in a series of recent cases, the union representing 4,500 attorneys employed by the state has claimed some agencies are routinely hiring expensive outside counsel without using the required procedures.

The State Personnel Board has ordered the California Department of Corrections and Rehabilitation to scrap nine ongoing contracts with outside law firms. The decision marks a long-sought win for a union representing attorneys employed by the state.

State agencies may hire outside counsel under certain circumstances, often when attorneys employed by the state would have a conflict or if the agency needs certain expertise. But in a series of recent cases, the union representing 4,500 attorneys employed by the state has claimed some agencies are routinely hiring expensive outside counsel without using the required procedures.

“CDCR failed to argue any specific facts relating to any one of the contracts and simply made broad general statements about its legal office,” wrote Suzanne M. Ambrose, executive officer of the State Personnel Board, in her Monday ruling. In re: Request for Review of Personal Services Contracts by California Department of Corrections and Rehabilitation, SPB Case No.: 23-00028(b).

Ambrose’s ruling invalidates nine contracts totaling under \$1.2 million, mainly

employment cases filed in the last year. But R. Timothy O'Connor, president of the California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment, said the ruling establishes that the California Department of Justice has been improperly "rubber-stamping" these requests — including for "run of the mill" employment cases.

"This definitely fits into our long-term plan," O'Connor said. "This is a practice the state engages in that prevents the growth of our membership and prevents them from hiring the attorneys they should be hiring."

He also repeated a demand made by unions representing state workers in other highly educated, well-paid fields, such as engineers and forensic accountants: Better pay would improve recruitment and save money in the long run.

"Clearly they need to be hiring more, and they should pay more," O'Connor said. "They pay these outside law firms exorbitant rates."

"CDCR is reviewing the ruling and has no additional comment at this time," said Terri Hardy, a spokesperson for the agency, in an email.

Ambrose wrote these agencies did not properly justify the hiring of outside attorneys. She acknowledged that Attorney General Rob Bonta's Employment and Administrative Mandate section has 28 vacant positions — about 20% of its authorized total — and has been "experiencing a significant staffing shortage" for over a year. But she wrote that the agencies failed to explore other options before Chief Assistant Attorney General John Wolfe approved eight requests from CDCR to hire outside counsel in employment cases.

"CDCR made no effort to represent itself or seek the assistance of other state employees or agencies before seeking representation in these nine cases," Ambrose wrote.

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