

Legal fees spike at UH

Payments to private firms more than doubled in the past year, which officials attribute mostly to a Mauna Kea telescope case

[By Rob Perez](#)

The University of Hawaii's monthly spending on outside attorneys more than doubled over the past year, exceeding the combined amount of what most other state agencies paid for private legal help.

For the 11-month period from May 2010 through March, UH spent \$2.23 million, or about \$203,000 a month, on outside attorneys, according to data obtained by the Star-Advertiser through a public records request.

By contrast, the school spent \$3.8 million, or about \$86,000 per month, in the preceding 44-month period, covering September 2006 through April 2010.

The university's expenditures in the recent 11-month period topped the \$1.7 million that all state agencies represented by the Attorney General's Office collectively spent on outside legal counsel last fiscal year, according to AG data. That office represents most of the major state departments, including Transportation, Human Services and Public Safety.

UH's outside spending — relative to its overall budget of \$1.4 billion — also topped the spending rates of several mainland public university systems for which the Star-Advertiser was able to get comparable numbers.

UH's practice of hiring outside law firms is defended by the school administration and Board of Regents as an integral, effective part of its operation, mirroring what many other universities do. They say the increase doesn't necessarily indicate a trend, but reflects the ebb and flow of legal expenses, which depends on how cases progress.

The surge in spending has raised questions among some faculty, who call it excessive and wasteful.

The increase came despite the addition last year of an eighth attorney to UH's Office of General Counsel, which oversees legal matters for the 10-campus system and is headed by attorney Darolyn Lendio, a former corporation counsel for the city.

Like many universities, UH hires private law firms to pursue cases needing specialized expertise or that involve particularly complex litigation, requiring more attention than

what the eight attorneys can handle, given their other duties. It also uses private firms when a legal conflict of interest exists.

Lendio, the school's vice president of legal affairs, said UH's spending on outside firms would have been relatively flat over the past several years, hovering between \$750,000 to \$800,000 annually, if a special case involving preparations for the planned Thirty Meter Telescope atop Mauna Kea were excluded.

She said the money is well spent — and meticulously monitored — yet doesn't reflect an intangible benefit of what the university saves through the effective management of its legal affairs.

Lendio said her office closely tracks the private firm work, disputing bills when warranted, while handling 650 to 700 new legal matters a year. "That's a huge book of business, even for a small private law firm."

Lendio, who was a partner with McCorrison Miller Mukai MacKinnon before accepting her current position in 2006, lauded the work her staff does despite a shrinking budget, which totaled \$1.1 million this year, 11 percent less than two years ago. "We basically have to do more with less," she said.

Howard Karr, chairman of the regents, likewise praised the job the legal staff does.

"The modest size of the Office of General Counsel's operating budget, in relation to the excellence of the service provided to us, the client, is an outstanding accomplishment in these tough economic times," Karr said in a written statement. "The delivery of such high quality and quantity of legal services provided by this unit on such a small budget is exceptional."

Comparing UH's spending to other public universities can be difficult because of differences in how the institutions handle legal matters. Some, for instance, rely entirely on lawyers from their state's Attorney General's Office — something UH used to do until the late 1990s, when it became more autonomous.

A Star-Advertiser check of several mainland universities with budgets ranging from \$1.5 billion to \$5.8 billion and with at least eight in-house attorneys found that UH's spending, relative to the size of its \$1.4 billion budget, tends to be high.

While UH spent \$1 in outside legal expenses for every \$636 in its overall budget, the universities of Arizona, Michigan and Kentucky spent \$1 for every \$1,154, \$1,450 and \$2,000, respectively, according to the newspaper's survey.

Michigan and Kentucky also had fewer in-house attorneys, relative to their overall budgets, than UH.

From September 2006 through March of this year, UH used about two dozen private law firms to handle a wide variety of cases, from workers' compensation matters to lawsuits filed by former employees.

The most costly case involved management matters for Mauna Kea, the site for the planned \$1.2 billion-plus telescope project. That project is viewed as a major research and economic boon but is opposed by environmentalists and some Native Hawaiian cultural practitioners.

Since being retained in September 2008, the Carlsmith Ball law firm has been paid \$1.1 million to handle Mauna Kea matters, which, among other things, involves efforts to get government approvals before the telescope complex can be constructed. The legal tab is expected to continue climbing as the case proceeds.

UH is reviewing more than \$350,000 in bills submitted by Carlsmith, with Lendio stressing that the review and negotiations over disputed items will determine how much of that is paid.

"While the amount expended on outside services may seem unusually large, it must be kept in mind that this is a 'once-in-several-decades' type of project," said Karr, the regents' chairman. He said the telescope project is a "strategic investment in the university's long-range academic plan and the state of Hawaii's economic future that will yield benefits long after this generation is gone."

The second most costly case was UH's defense of a lawsuit filed by Townsend Hawaii LLC, which was replaced as developer of the Cancer Research Center of Hawaii, now under construction in Kakaako. UH paid nearly \$590,000 to McCorriston Miller Mukai for that case, according to the UH documents. In addition, the university agreed last year to pay Townsend \$2.5 million to settle the breach-of-contract lawsuit. It denied any wrongdoing.

"UH's entire defense strategy was to delay, delay and then delay some more," said Louis Kiang, a former Townsend executive. "That would translate into higher legal fees."

Of the 23 law firms UH hired over the nearly five-year period, Kobayashi Sugita Goda received the largest share of business, according to UH's data. Kobayashi, a firm with close ties to the school's athletic program, has been paid about \$1.6 million, or more than a quarter of the \$6 million the university spent through March, the data show.

When UH decides to hire a private firm, a screening committee of staff attorneys, excluding Lendio, recommends the three highest-ranked lawyers from a pre-qualified list. Lendio said she almost always picks the committee's top choice.

J.N. Musto, executive director of the University of Hawaii Professional Assembly, the faculty union, said he believes UH is wasting money by spending so much on outside

attorneys. He said the system worked better when the school relied on the AG's office for legal help.

"If the UH General Counsel were efficient and effective, there would be no need for outside counsel, except in the most extraordinary circumstances," Musto said.

Attorney Paul Alston, whose firm represented Townsend and another client who received an \$800,000-plus settlement from UH, said the university's hiring of private firms is unavoidable but comes with a potential downside.

"The use of outside counsel is a necessary evil because the small number of lawyers in the general counsel's office cannot hope to have the depth or range of experience to cover the wide array of disputes involving the UH system," Alston said. "However, when cases that could have been resolved early for certain amounts of money are resolved in the same dollar range only after large outside fees have been incurred, it is not unfair to question whether the system could work better."

TOP 10 CASES

From September 2006 through March of this year, the University of Hawaii has spent more than \$6 million to hire private law firms. Here are the 10 cases with the highest tabs:

| LAW FIRM | CASE DESCRIPTION | AMOUNT |
|------------------------------|--|---------------|
| Carlsmith Ball | Mauna Kea management matters | \$1,113,799 |
| McCorriston Miller Mukai | Townsend litigation involving Cancer Research Center of Hawaii | \$589,376 |
| Kobayashi Sugita Goda | Michael D'Andrea labor matters | \$391,128 |
| Goodsill Anderson | Mauna Kea litigation | \$352,863 |
| Kobayashi Sugita Goda | Judith Vergun v. UH | \$327,856 |
| Kobayashi Sugita Goda | Shirley Daniel litigation | \$319,518 |
| Kobayashi Sugita Goda | Michael D'Andrea litigation | \$298,141 |
| Chun Kerr Dodd Beaman & Wong | Cancer Research Center of Hawaii project development | \$292,473 |
| Torkildson Katz Moore | Collective bargaining matters | \$224,945 |
| Robbins & Associates | Jim Bolla litigation | \$217,074 |

Source: University of Hawaii

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