

CALIFORNIA ADVOCATES, INC.



CONFIDENTIAL

September 19, 2011

The Honorable Edmund G. Brown, Jr.
Governor, State of California
State Capitol
Sacramento, California 95814

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**SUBJECT: AB 1168 (PAN)—WORKERS' COMPENSATION: VOCATIONAL
COUNSELORS: FEE SCHEDULE - REQUEST FOR SIGNATURE**

Dear Governor Brown:

*Robert G. Walters
of Counsel*

The California Association of Joint Powers Authorities (CAJPA) respectfully requests a **SIGNATURE** upon **AB 1168 (Pan)**, which is currently upon your desk awaiting action. CAJPA is pleased to be the joint sponsor of **AB 1168** to require the Division of Workers' Compensation (DWC) to create a fee schedule for services provided by vocational experts in California's workers' compensation system.

AB 1168 requires the Administrative Director (AD) for the Division of Workers' Compensation (DWC) to establish a fee schedule that sets maximum fees payable to vocational counselors that serve the workers' compensation system. **AB 1168** is not prescriptive (e.g. hourly rates, maximum total fee, etc.) because the workers' compensation system is in a constant state of evolution and the AD needs to have authority to adjust the fee schedule via regulations as circumstances warrant. The AD is the chief regulator at the DWC and is uniquely qualified to determine a reasonable fee for this service. In addition, the bill requires the AD to adopt the fee schedule *after* providing an opportunity for stakeholder input during public hearings.

Most services provided in the workers' compensation system have maximum allowable fees set by statute or regulation. For example, the Official Medical Fee Schedule sets reimbursement rates for medical treatment provided to injured workers and several other services have maximum fees. Fee schedules allow for reasonable reimbursement while protecting employers from unreasonable costs.

The Workers' Compensation Appeals Board issued a decision in *Ogilvie vs. City and County of San Francisco* in February 2009 and issued a revised decision in September 2009. The case is currently on appeal awaiting a ruling from the First District Court of Appeals. **AB 1168** does NOT affect this ongoing litigation in any way.

However, the *Ogilvie* case has created a demand for vocational counselors to be used as expert witnesses in cases where injured workers are contesting their PD rating per *Ogilvie*. These expert witnesses charge on an hourly basis and are paid directly by the employer or the employer's insurer. There is currently no cap on the rate charged by these vocational counselors, which is in direct contrast with most other services provided in the workers' compensation system.

CAJPA asked some of its members to look at recent case files to provide you with an illustration in the wide range of vocational counselor fees being charged to and paid by public employers throughout the state.

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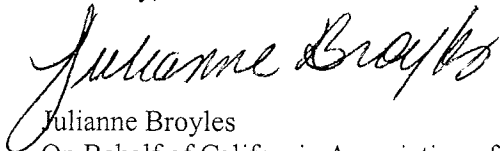
In Southern California, one mid-size city has paid fees ranging \$200 to \$250 per hour. Another public entity received a quote of \$1,500 to \$2,000 per case, but acknowledged there were very few cases that particular public entity had involving that specific firm. The northern California firm of Stockwell, Harris, Woolverton & Muehl routinely charges vocational counselor fees of \$250 to \$500 per hour. Also in northern California, a well-known vocational counselor, Eugene Van de Bittner routinely charges \$225 per hour, requires a \$4,000 retainer advance and his average billings total \$8,000 or more per claim. Another example is a recent case involving the City of Stockton, where the vocational counselor charged \$240 per hour for a total cost of \$18,130 for 75 hours of consultation.

CAJPA believes that **AB 1168** will help stem potential abuse of the vocational counselor process by requiring the AD to establish a reasonable schedule of fees that may be charged for these services.

CAJPA is an organization of joint powers authorities established by a broad range of local government entities, including cities, counties, school districts, and other special districts. Many of these local government employers use the joint powers mechanism to manage their workers compensation, liability, property and other insurance and loss control-related obligations. The benefits to local governments include better local control over their risk exposures, and efficiencies that enable a greater portion of local government dollars to be devoted to important local programs.

For these reasons, CAJPA respectfully requests a **SIGNATURE** upon **AB 1168 (Pan)** when it comes before you for action.

Sincerely,



Julianne Broyles
On Behalf of California Association of Joint Powers Authorities