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April 29, 2008

The Honorable Robert Birnbaum  
Judge of District Court  
Olmsted County Government Center  
151 – 4<sup>th</sup> Street S.E.  
Rochester, Minnesota 55904

The Honorable Joseph F. Wieners  
Judge of District Court  
Olmsted County Government Center  
151 – 4<sup>th</sup> Street S.E.  
Rochester, Minnesota 55904

The Honorable Mark A. Ostrem  
Olmsted County Attorney  
Government Center – 3<sup>rd</sup> Floor  
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Rochester, Minnesota 55904

The Honorable Kenneth Brown  
Commissioner, Olmsted County Board  
2331 Halling Court N.W.  
Rochester, Minnesota 55901

Ms. Gail D. Baker  
Baker Law Offices  
1530 Greenview Drive S.W., Suite 210  
Rochester, Minnesota 55902

Mr. Charles A. Bird  
Bird & Jacobsen  
305 Ironwood Square  
300 Third Avenue S.E.  
Rochester, Minnesota 55904

Mr. William L. French  
P.O. Box 6323  
627 Woodhaven Court N.E.  
Rochester, Minnesota 55903

Dear Members of the Olmsted County Law Library Board of Trustees:

The Office of the State Auditor became aware of concerns regarding the operation of the Olmsted County Law Library (“Law Library”). Specifically, questions have been raised about the use of Law Library funds to provide legal research services and materials to the Olmsted County Attorney’s Office. During our review of this issue, we became concerned about a number of additional issues related to the Law Library.

We understand that, since these matters were first brought to our attention, the Olmsted County Law Library Board of Trustees (“Board of Trustees”) has begun to address some of the issues discussed in this letter. This letter will provide the Board of Trustees with our recommendations to further improve Law Library operations. We invite the Board of Trustees to take this opportunity to create a Law Library that more fully serves Olmsted County (“County”).

### **Board of Trustees Membership**

Under Minnesota law, a county law library is managed by a board of trustees.<sup>1</sup> The board of trustees serves without compensation.<sup>2</sup> According to the Law Library's 1983 Bylaws, the Law Library's Board of Trustees consists of seven members: two judges, a member of the County Board, two attorneys selected by the county attorney, and two attorneys appointed by the executive committee of the County Bar Association.<sup>3</sup> The Bylaws define and limit the terms of the Board of Trustees' members.<sup>4</sup> Minnesota law requires the election of a secretary (who may be another board member or the law librarian) and a board president.<sup>5</sup>

When these concerns were first brought to our attention, it was difficult to identify the Board of Trustees' members. We understand that membership on the Board of Trustees was discussed at recent meetings of the Board of Trustees. We also understand that new appointments will be made to the Board of Trustees since some members have served longer than permitted by the Bylaws.

We recommend that the Board of Trustees' membership comply with the Law Library's Bylaws. We recommend that the election of president and secretary be reflected in the Board of Trustees' meeting minutes.

### **Board of Trustees Meeting Minutes**

Minnesota law requires all public authorities and political entities to "make and preserve all records necessary to a full and accurate knowledge of their official activities."<sup>6</sup> In addition, under Minnesota law and the Law Library's Bylaws, the Board of Trustees is required to file minutes of its meetings, as well as other documents, with the County Court Administrator.<sup>7</sup>

We have been informed that, until its most recent meetings, the Board of Trustees maintained few meeting minutes.<sup>8</sup> Indeed, we were informed that, until recently, the Board of Trustees met

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<sup>1</sup> See Minn. Stat. § 134A.03, subd. 1.

<sup>2</sup> See Minn. Stat. § 134A.03, subd. 1.

<sup>3</sup> See Bylaws of the Olmsted County Law Library Board (April 6, 1983) ("Bylaws") at ¶ 2. We were informed that the 1983 Bylaws were the current bylaws. However, it is our understanding that the Board of Trustees discussed new Bylaws at an April 23, 2008, meeting. We have not reviewed any new Bylaws adopted by the Board of Trustees.

<sup>4</sup> See Bylaws at ¶ 2. For example, the attorney members are to serve two-year terms, serving no more than six consecutive years. The judges and county board member are to serve one year, or until a replacement is duly appointed.

<sup>5</sup> See Minn. Stat. § 134A.04. Under the Law Library's Bylaws, the Board of Trustees must select a chairman and a secretary, with the secretary acting as the Board's staff. Bylaws at ¶ 4.

<sup>6</sup> See Minn. Stat. § 15.17.

<sup>7</sup> See Minn. Stat. § 134A.05; Bylaws at ¶ 5.

<sup>8</sup> We were provided with copies of minutes from meetings on October 6, 2004, and September 18, 2007. We understand that minutes were taken for meetings on March 19, 2008, and April 23, 2008.

infrequently. The Court Administrator informed us that, to his knowledge, the Board of Trustees had not filed meeting minutes with him.

We recommend that the Board of Trustees maintain meeting minutes, and file the minutes with the Court Administrator, as required by Minnesota law. We have enclosed a copy of our Statement of Position on Meeting Minutes for the Board of Trustees' review.

### **Disbursement of Funds**

The Board of Trustees has the authority to make purchasing decisions for the Law Library.<sup>9</sup> Under the Law Library's Bylaws, the disbursement of funds may be authorized by the librarian, with the approval of the Board Chair.<sup>10</sup> However, with the exception of updates or continued services, the Bylaws require prior Board of Trustees approval for expenditures of more than \$200.<sup>11</sup> The Board of Trustees should receive an annual report from the County containing a detailed statement of the receipts and disbursements of the library for the preceding year.<sup>12</sup>

We found no evidence that the Board of Trustees approved all disbursements from the Law Library fund. Rather, it is our understanding that the law librarian has authorized disbursements from the Law Library fund for a number of years.<sup>13</sup> Due to the lack of meeting minutes, we are unable to determine the circumstances under which the law librarian may have been delegated this authority.

We were informed that, at the end of 2007, the County provided the Board of Trustees with a detailed statement listing all disbursements and receipts for the year. However, it is our understanding that the Board of Trustees may not have received a detailed listing of all Law Library receipts and disbursements in prior years.<sup>14</sup>

We recommend that the Board of Trustees approve, and the minutes reflect the Board's decision regarding, all expenditures of Law Library funds.<sup>15</sup> While the Board of Trustees may delegate the authorization of expenditures under \$200 to the law librarian, we recommend that the Board of Trustees implement internal control procedures to ensure the proper disbursement of these public funds. For example, the Board of Trustees could require that a list of all claims under

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<sup>9</sup> See Minn. Stat. § 134A.05; Bylaws at ¶5.

<sup>10</sup> See Bylaws at ¶6.

<sup>11</sup> See Bylaws at ¶6. It is our understanding that the new Bylaws would require Board of Trustees approval for expenditures over \$500.

<sup>12</sup> See Minn. Stat. § 134A.06.

<sup>13</sup> For example, we were provided with a letter dated December 10, 1999, from the County Attorney's Office to attorney members of the Board of Trustees stating that, in June 1999, the County Attorney's Office agreed to take on the responsibility of the Law Library. The letter requested a meeting, noting the need to hire a law librarian.

<sup>14</sup> We were informed that the detailed listing was not provided in the past due to the infrequency of meetings of the Board of Trustees.

<sup>15</sup> As noted in our Statement of Position on Meeting Minutes, we recommend that a list of all approved claims be listed in or attached to the meeting minutes.

\$200 authorized by the librarian be presented to the Board of Trustees at the next regularly scheduled meeting.<sup>16</sup>

We also recommend that, on a regular basis, the Board of Trustees obtain from the County a detailed statement of the receipts and disbursements from the Law Library fund. We recommend that at least one member of the Board of Trustees compare the detailed statement received from the County with authorized claims reflected in the Board's meeting minutes.<sup>17</sup>

### **Inventory of Law Library Property**

The board of trustees may set rules regarding the free use of the law library for judges, state, county and city officials, members of the bar, and inhabitants of the county.<sup>18</sup> Items purchased with law library funds belong to the county establishing the law library.<sup>19</sup> The board of trustees must file an inventory with the county auditor showing the property belonging, loaned or leased to the law library.<sup>20</sup>

We understand that no current Law Library inventory has been filed with the County. We also understand that some items purchased with Law Library funds are maintained in the County Attorney's Office, and questions have been raised about whether the materials belong to the Law Library or to the County Attorney's Office. We also understand that Law Library funds were used for Westlaw research services for both the Law Library and the County Attorney's Office.

Without meeting minutes or the documentation of disbursements authorized by the Board of Trustees, the Office of the State Auditor is unable to determine whether the purchase of items/services for the County Attorney's Office was authorized by the Board of Trustees, or its designee. We recommend that the Board of Trustees determine what items/services it will provide to each category of Law Library patrons. During that process, the Board of Trustees should take appropriate actions to resolve the dispute regarding items/services provided to the County Attorney's Office.<sup>21</sup>

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<sup>16</sup> This suggestion is similar to the steps a city must take when a city administrative official is delegated the authority to pay certain claims. *See* Minn. Stat. § 412.271, subd. 8. A city may only make such a delegation if the city has internal control procedures in place to ensure the proper disbursement of public funds. *Id.* The procedures must include the "regular and frequent review" by the city council of the delegated official's actions. *Id.* In addition, a list of all claims paid under the delegation must be presented to the city council for information purposes at the next regularly scheduled meeting after payment of the claim. *Id.*

<sup>17</sup> It is our understanding that the Law Library has a paid part-time librarian, but no other paid staff. As a result, to provide adequate oversight and segregation of duties, we are recommending that a member of the Board of Trustees conduct this review.

<sup>18</sup> *See* Minn. Stat. § 134A.02. The statute provides: "Under proper regulations of the board of trustees the use of the library shall be free to the judges of the state, state officials, judges of the district, municipal, county, and conciliation courts of the county, city and county officials, members of the bar, and inhabitants of the county." *Id.*

<sup>19</sup> *See* Minn. Stat. § 134A.05.

<sup>20</sup> *See* Minn. Stat. § 134A.06.

<sup>21</sup> It is our understanding that this issue was discussed at the March 19 and April 23, 2008, meetings.

We also recommend that the Board of Trustees conduct an inventory of Law Library property. The Board of Trustees should determine where items purchased with Law Library funds will be maintained. We recommend that the Board of Trustees file a Law Library inventory with the County, as required by law.

### **Additional Resources for the Board of Trustees**

We strongly recommend that the Board of Trustees work with the Minnesota State Law Library's County Law Library Program ("CLLP") to address the issues facing the Law Library. Among other services, CLLP provides consultation services, training, and a manual for Minnesota county law libraries.<sup>22</sup> CLLP's contact information is:

Ms. Susan Larson, CLLP Coordinator  
Minnesota State Law Library  
25 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, Minnesota 55155  
Telephone: 651-297-7657

Website: <http://www.lawlibrary.state.mn.us/cllp.html>

In addition, the Board of Trustees may want to review the Minnesota Public Library Trustee Handbook, available on-line at:

<http://education.state.mn.us/mdeprod/groups/Library/documents/Manual/003584.pdf>. Among other things, the Handbook reviews the duties and liabilities of library trustees and officers.

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<sup>22</sup> The Minnesota State Law Library is required by law to advise and assist in the operation and maintenance of county law libraries. See Minn. Stat. § 134A.16.

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### **Conclusion**

The Board of Trustees has begun to address some of the issues discussed in this letter. However, we understand that the membership of the Board of Trustees will be changing. We hope that our recommendations will assist the next Board of Trustees in resolving these issues. If you have questions about this letter, or if the Office of the State Auditor can provide further assistance, please feel free to contact me.

Sincerely,

*/s/Nancy J. Bode*

Nancy J. Bode  
Assistant Legal Counsel  
651-297-5853

### Enclosure

cc. Chuck Kjos, Court Administrator  
Richard G. Devlin, County Administrator  
Brian Erwin, County Finance Department  
Barbara Golden, State Law Librarian  
Susan Larson, County Law Library Program Coordinator