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Attorney woes, costs soaring in English-learner legal quagmire legal tangle

By Howard Fischer

CAPITOL MEDIA SERVICES

PHOENIX — Arizona taxpayers have spent nearly \$1.3 million on attorneys fighting court orders to do more to help students learn English.

And in some cases the lawyers getting state funds are not even on the same side of the legal arguments.

Figures provided by the state Department of Administration show the Attorney General's Office, which is officially representing the interests of the state in the legal battle, has paid \$491,103 to the firm of Lewis & Roca since September 2001, the year after a federal judge ruled the state was not spending enough money to teach students classified as "English language learners."

But that's only part of the cost.

State schools superintendent Tom Horne decided to intervene in August 2005, hiring Eric Bistrow, his former legal partner.

And Republican legislative leaders hired their own law firm in January 2006.

Horne said hiring Bistrow was necessary because Lewis & Roca, as directed by Attorney General Terry Goddard, is not fighting efforts by attorney Tim Hogan to force the state to spend more money to teach English to students who come to school speaking other languages.

In fact the state sometimes finds itself on the same side of the legal arguments as Hogan.

For example, Jose Cárdenas, managing partner of Lewis & Roca, noted the legislative plan includes a provision that requires schools seeking extra state funds to teach English to first use federal money they are getting from other programs. He, like Hogan, said that violates federal law.

And Cárdenas agreed with Hogan that there is "no justification" for another provision limiting extra aid for students to two years.

"My job is to defend the state law," Goddard said. But he said that exists only "to the degree it comports with federal law and the Constitution."

Goddard said he cannot direct Cárdenas to defend what he believes is an illegal provision in the law.

Horne said Goddard is wrong, which is why it up to Bistrow, whose firm of Burch & Cracchiolo, has been paid

Fees at \$1.3M, and meter's running

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- Retained: August 2005

- Paid so far: \$415,870

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- Represents: speaker of House and president of Senate
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Sources: Arizona Department of Administration, Arizona Attorney General's Office

more than \$415,000 in legal fees since August 2005, to defend the law.

Bistrow's arguments failed to sway U.S. District Judge Raner Collins earlier this year. The case is now before the 9th U.S. Circuit Court of Appeals.

Senate President Tim Bee said legislative leaders hired their own lawyer last year because their interests are not necessarily aligned with Horne's.

House Speaker Jim Weiers said he and Bee also need their own counsel because Hogan is asking Collins to impose new fines. And Weiers said these might be levied personally against the pair.

The legal fees paid so far to Cantelme & Brown since it was hired total more than \$382,000. But actual costs to date are higher as the last payment was in May.

Legal fees continue to accumulate as the lawsuit, first filed in 1992, remains unresolved.

Federal law requires states to provide an opportunity for all students to learn English. The 2000 court ruling concluded an extra \$155 per student in annual state aid was both insufficient and "arbitrary and capricious."

Lawmakers have since raised that to \$365, a figure that computes to nearly \$50 million for the approximately 135,000 students classified as English learners.

Last year they approved a measure to bump that higher, at least temporarily, but then require schools to follow certain methods of teaching and charge the state only what those cost. Collins ruled earlier this year that still doesn't comply with the original 2000 order.

He also concluded the requirement to force districts to first use federal funds is illegal, as is the provision limiting the additional aid to just two years per student.

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