



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 10/21/2014

Agenda Placement: 6N

NAPA COUNTY BOARD OF SUPERVISORS

Board Agenda Letter

TO: Board of Supervisors

FROM: Leanne Link for Nancy Watt - County Executive Officer
County Executive Office

REPORT BY: Liz Habkirk, PRINCIPAL MANAGEMENT ANALYST - 253-4826

SUBJECT: Conflict Public Defender Agreements

RECOMMENDATION

County Executive Officer requests approval of and authorization for the Chairman to sign agreements relating to Conflict Public Defender services for the term November 1, 2014 through June 30, 2016:

1. Amendment No. 1 to Agreement No. 6844-1 with Mervin Lernhart for a maximum of \$10,405 per month plus additional fees for providing legal representation for a homicide defendant;
2. Amendment No. 1 to Agreement No. 6846-1 with Michael Keeley for a maximum of \$8,582 per month plus additional fees for providing legal representation for a homicide defendant;
3. Amendment No. 1 to Agreement No. 6847-1 with Jim McEntee for a maximum of \$8,582 per month plus additional fees for providing legal representation for a homicide defendant or Sexually Violent Predator civil commitment;
4. Amendment No. 1 to Agreement No. 6886-1 with Mark Henderson for a maximum of \$8,582 per month plus additional fees for providing legal representation for a homicide defendant; and
5. A new agreement with Jess Raphael for a maximum of \$8,582 per month per month plus additional fees for providing legal representation for a homicide defendant.

EXECUTIVE SUMMARY

The Public Defender provides legal representation to persons charged with a criminal offense or certain other offenses involving liberty interests who are financially unable to pay for private legal assistance. When the Public Defender is unable to represent a client due to a conflict, the case is handled by the Conflict Public Defender. Since 2007, the County of Napa has provided Conflict Public Defender services through a panel of attorneys individually contracted with the County. One conflict attorney, Diane Bylund, has submitted her cancelation of contract effective October 31, 2014. In order to have a full conflict panel to whom cases can be assigned, County staff released a Request for Qualifications, and Mr. Jess Raphael is recommended to fill the new vacancy on the panel. This action

also renews and approves Amendment No. 1 to the agreements with Mervin Lernhart, Michael Keeley, Jim McEntee, and Mark Henderson as Conflict Public Defender contractors. The cost in Fiscal Year 2014-2015 for the entire Conflict Public Defender program is estimated to be approximately \$1,017,000.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Conflict Public Defender
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	The agreements extend through June 30, 2016, and a Consumer Price Index (CPI) increase between 2.5% and 5% (exclusive of the one-time increase due to the Bylund Contract assignment) is allowed effective July 1, 2015. Future fiscal impact will be budgeted accordingly in future fiscal years, including any subsequent CPI increases in future fiscal years.
Consequences if not approved:	If these agreements are not approved, the County will rely on court appointed Conflict Public Defenders that bill hourly. The County will likely lose the ability to appropriately predict and budget costs in future fiscal years.

Additional Information:

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

The Public Defender provides legal representation to persons charged with an offense who are financially unable to pay for private legal assistance. When the Public Defender is unable to represent a client due to a conflict of interest, the case is handled by the Conflict Public Defender.

One panel member, Ms. Diane Bylund, submitted notice of her cancelation of contract effective October 31, 2014. In order to have a full conflict panel to whom cases could be assigned, County staff released a Request for Qualifications on August 15, 2014, and received four (4) qualification statements for the contract. A review panel that included representatives from County Counsel, the County Executive Office, the Napa Superior Court, the Public Defender's Office and a representative of the current Conflict Public Defender panel recommends Mr. Jess Raphael to fill Ms. Bylund's position on the panel handling one-fifth of the adult cases where the Public Defender has a conflict and one-fourth of the juvenile cases where the contracted Juvenile Conflict Public Defender has a conflict of interest.

Mr. Raphael has been a Public Defender for Napa County for 25 years, including 18 years as the senior felony attorney. Over the past five years, he served as the attorney of record for approximately 500 defendants charged

with felony and serious felony offenses, representing them from arraignment through final disposition. He has tried eight jury trials in the past five years alone. He has extensive experience with representing mentally ill individuals and has handled all types of cases Conflict Public Defenders are required to represent. Mr. Raphael will separate from his employment with the Public Defender's Office effective October 31, 2014 and will only be required to declare conflicts when he has personally represented a co-defendant or witness in a previous case.

Under this agreement, Mr. Raphael will be paid \$8,582 per month (the current rate received by the other Conflict Public Defender panel members). Additional compensation is provided if a Class 1 (Murder case as defined by Penal Code Section 187 where the accused faces death or life in prison without the possibility of parole) or a Class 2 (Non-Capital and Non-Life without the possibility of parole murder cases) is assigned to the attorney. If a Class 1 case is assigned, he will receive an additional \$3,500 per month for up to 18 months. If a Class 2 case is assigned, he will receive an additional \$2,500 per month for up to 18 months. In the event of a change of venue, Mr. Raphael will be provided additional compensation up to \$12,000. Mr. Raphael will be assigned no more than 150 cases in a 12 month period.

As with the other Conflict Public Defender panel contracts, separate from attorney compensation, \$75,000 will be set aside for investigative and expert services. Any single case that is expected to exceed more than \$1,500 in expert and investigative services will require a Court Order.

Additionally, while issuing a Request for Qualifications to fill that vacant panel position, staff from the County Executive Office and County Counsel took the opportunity to review the remaining conflict public defender contracts and to amend the contracts to streamline administrative matters regarding invoice submittals and record-keeping and to clarify the responsibilities of the attorneys and assignment of conflict cases.

The updated agreements are also effective November 1, 2014 through June 30, 2016, with automatic renewal provisions allowed at the end of each fiscal year.

Under these agreements, Mervin Lernhart, Michael Keeley, Mark Henderson and James McEntee will continue to provide adult conflict representation, at the current rate of \$8,582 per month with a Consumer Price Index increase of 2.5% to 5% (exclusive of the increase in Fiscal Year 2014-2015 for the partial assignment of Agreement No. 6845-1) allowed effective each July 1st. Additionally, if an attorney receives a homicide case where the defendant does not face death or life in prison without the possibility of parole, the attorney will receive an additional \$2,500 per month. If an attorney receives a capital case where the defendant faces death or life in prison without the possibility of parole, the attorney will receive an additional \$3,500 per month for up to 12 months. In the event of a change of venue, the attorney will be provided additional compensation up to \$12,000 for expenses. Mervin Lernhart will be compensated an additional \$1,823 per month to act as the Attorney Coordinator. Mr. Lernhart will continue to be responsible for working with the Courts, County Executive Office, County Counsel and Public Defender's Office to receive conflict cases and ensure the equitable distribution of cases to all contracted attorneys. It is estimated that the adult Conflict Public Defenders will continue to handle approximately 150 cases per attorney each calendar year.

Under his agreement, Jim McEntee will continue to also accept civil commitment cases under the Sexually Violent Predator (SVP) law. Mr. McEntee has provided representation for the defendants in these types of cases when the Public Defender's Office has had a conflict or been unable to accept additional cases due to workload concerns. Mr. McEntee will be compensated at the hourly Conflict Public Defender rate set by the court when handling the often complicated and timely SVP civil commitment cases in addition to his assigned criminal conflict caseload.

Additionally, each of the Conflict Public Defenders are allowed a one-time increase in the maximum contract amount for Fiscal Year 2014-2015 of \$4,291 to cover compensation for acceptance of partial assignment of Agreement No. 6845-1 with Attorney Diane Bylund who requested assignment of her contract effective September 1, 2014 through her retirement date of October 31, 2014.

Separate from their compensation, \$75,000 will be set aside for investigative and expert services for each attorney. Any single case which is expected to exceed more than \$1,500 in expert and investigative services will require a Court Order. If an Attorney anticipates needing more than \$75,000 they must notify the County. Unspent funds will not revert to the attorney.

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Helene Franchi