



Agenda Date: 2/27/2007  
Agenda Placement: 6W

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Robert Westmeyer - County Counsel  
County Counsel  
**REPORT BY:** Linda Holbrook, Legal Administrative Specialist, 253-4520  
**SUBJECT:** Amendment to the Departmental Allocation List and the Table and Index of Classes for the County Counsel

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### **RECOMMENDATION**

County Counsel and Human Resources Director request adoption of a resolution related to the proposed reorganization of the County Counsel Department, amending the Departmental Allocation List and Policy Manual, effective February 27, 2007 (no net increase in FTE):

1. Amend the Departmental Allocation List to delete:
  - a. One (1) (M) Chief Deputy County Counsel;
  - b. Seven (7) (M) Attorney IV;
  - c. One (.8) (M) Attorney IV; and
  - d. Three (3)(M) Attorney I/II/III;
2. Amend the Departmental Allocation List to add:
  - a. Two (2) (M) Chief Deputy County Counsel\*;
    - i. One attorney subsequent vacancy will be deleted upon promotion.
  - b. Seven (7) (M) Attorney IV\*;
  - c. One (.8) (M) Attorney IV\*; and
  - d. Three (3) (M) Attorney I/II/III\*;  
\*Positions within the flexibly staffed Attorney I/II/III series filled prior to February 27, 2007 will remain Management Classified and vacant positions that are filled on or after February 27, 2007, will be designated as "at-will" Management Non-Classified (Other).
3. Amend the Napa County Policy Manual to:
  - a. Amend reference to the flexibly staffed Attorney I/II/III, the Attorney IV, and the Chief Deputy County Counsel to Attachment 1, Part A, Section 2 of Part I: Section 37-C1, to include the following statement: Positions filled prior to February 27, 2007, will remain Management Classified;
  - b. Add reference to "at-will" flexibly staffed Attorney I/II/III, the "at-will" Attorney IV, and the "at-will" Chief Deputy County Counsel to Attachment 1, Part A, Section 2 of Part I: Section 37-C3, Management Compensation Plan-Management Non-Classified (Other) to include the following statement: Vacant positions that are filled on or after February 27, 2007, will be designated as "at-will" Management Non-Classified (Other).

- c. Amend such other personnel policies as the Human Resources Director determines is appropriate to reflect these amendments.

### **EXECUTIVE SUMMARY**

The County Counsel, after reviewing his department's current business practices and structure, has proposed a major reorganization. The proposed changes are expected to improve the manner in which legal services are provided to the county and its various departments.

The reorganization will add one at-will chief deputy county counsel position to be filled through a departmental promotion. The deputy county counsel position that will be vacated following the promotion will be deleted thus ensuring the reorganization will not result in an increase in the number of attorney positions in the office. In addition, the proposed reorganization will convert all attorney positions in the office to at-will Management Non-Classified (Other) status. Individuals who are currently filling these positions will retain their status as Management Classified. Individuals, whether currently with the office or being offered employment due to an external recruitment, who wish to fill positions that are newly created or vacated on or after February 27, 2007 will be offered employment only as an at-will Management Non-Classified (Other) employee.

The requests result in no FTE increase to the departmental allocation list.

### **FISCAL IMPACT**

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	The total estimated annual cost increase is approximately \$16,000. Assuming the second chief deputy county counsel position is filled in March, the estimated cost for rest of the fiscal year will be \$4,000. This cost will be absorbed by the department's FY 2006/2007 budget due to salary savings resulting from underfilling two high level deputy county counsel positions that were vacated during 2006. The salary savings for this fiscal year due to underfilling these positions is approximately \$85,000.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	<p>The county counsel believes this reorganization will enable his office to improve the manner in which legal services are provided to the county and its departments. The proposal is consistent with the approach of most similar sized county counsel offices. The county counsel offices surveyed have a management structure that results in a high level management attorney supervising between four and five deputy county counsels.</p> <p>As the office has grown from 9 attorneys in 2000 to 13 attorneys presently, the need for two chief deputy county counsels, each handling their own division, has become more pronounced. Expecting a single chief deputy county counsel to review the work of 11 attorneys while at the same time providing requested legal services to her assigned clients has for some time not been a workable situation. As the office inevitably grows in the coming years the problem will only become worse without the reorganization.</p>

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Is the general fund affected?	Yes
Future fiscal impact:	The total estimated annual cost increase is approximately \$16,000. There will be no need to request an increase in the salaries and benefits portion of the county counsel's budget for FY 2007/2008 or FY 2008/2009 due to this reorganization. The two deputy county counsel positions referenced earlier will continue to be underfilled for the next several years and the cost savings relating to these positions will be significantly greater than the cost of this proposed reorganization.
Consequences if not approved:	The current chief deputy county counsel has indicated she is planning on retiring during the summer or early fall of 2008. The current county counsel is expected to retire at some point in 2009. Therefore, if no changes are made relatively soon there will be no succession plan in place.
Additional Information:	None

### **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 county counsel has requested that the Board of Supervisors approve adding a second chief deputy county counsel position to his department. This conversion of a deputy county counsel position into a chief deputy county counsel position will result in the department becoming more productive due to changes in the manner in which it will provide legal services to the county and its departments. The change will also ensure that a functional management structure will be in place following the retirements of the current chief deputy county counsel and the county counsel in 2008 and 2009 respectively. The newly created chief deputy county counsel position will be filled through an internal departmental promotion. The attorney position that is vacated due to the internal promotion will be deleted from the allocation list resulting in the net FTE of the department remaining the same.

### **RATIONALE FOR THE REORGANIZATION**

Currently the county counsel's office is composed of 13 attorneys, 1 legal administrative specialist, 2 paralegals and 4 legal secretaries as well as the county privacy officer (one deputy county counsel is currently on an assignment at HHS as a Quality Management Director/Compliance Officer). In addition to a significant increase in the number of attorneys the work has become increasingly complex. A variety of serious issues in recent years has demonstrated that expecting a single chief deputy to supervise 11 attorneys as well as carry his or her own workload is less than satisfactory. Providing a more suitable management structure is clearly required if the county's liability exposure is to be limited to a reasonable degree. These considerations have for some time called for the reorganization of the office into two divisions with a chief deputy actively managing each division. This needed reorganization has been put off for several years due to the costs involved. However, with the replacement of two high level deputy county counsels with an entry level deputy county counsel and a junior level deputy county counsel, the office presently has the ability to reorganize without negatively impacting the county general fund and thus the reorganization request is being made at this time.

In surveying the counties Napa County uses for comparison purposes, five of them have a much smaller ratio of

chief deputies supervising deputy county counsels than the 11:1 ratio that presently exists in Napa County. The average ratio of these five counties is one chief deputy county counsel for every 4.75 deputy county counsels. A sixth county is in the process of recreating chief deputy county counsel positions (Santa Cruz) which will likely result in a ratio similar to the other five counties. Following the reorganization, the office will have 10 deputy county counsels below the management level resulting in a 5:1 ratio which is well within the management structure ratio utilized by most medium sized counties as well as the counties Napa County uses for comparison purposes.

The proposal envisions two divisions within the office. One division will handle transactional work (provide legal advice to the various county departments and clients) involving the county itself. The other, designated as the litigation division, will have two subsections. One subsection will be responsible for all litigation involving the county. The other subsection will be responsible for representing special districts, joint power authorities and the like in both transactional matters and litigation. The percentage of time spent in each of these two areas is approximately equal at the present time. As the workload increases due to county growth ultimately the litigation division will divorce itself from transactional work entirely and become a pure litigation division. A review of the time records of the office demonstrates that in recent years the time spent handling litigation has increased much more quickly than the time spent handling transactional matters and that trend is expected to continue. Creating a management structure that will be able to effectively deal with this change in the focus of the office is essential.

The second principal reason to propose the reorganization at the present time is to ensure a functional management structure remains following the retirement of the chief deputy county counsel and the county counsel during the next few years. The chief deputy has announced that she expects to retire in the summer of 2008 and the county counsel expects to discuss with the Board in early 2009 the timing of his retirement and the naming of his successor. Therefore, if no changes are made relatively soon, there will be no succession plan in place.

The proposed succession plan will result in two chief deputy county counsel positions. The responsibilities of the one chief deputy county counsel will include managing the office and serving as the county counsel in the absence of the county counsel. The degree to which the person occupying this position would continue to provide legal advice to the various county departments and clients would decrease and in its place significant management duties would be assumed over the next two years in addition to being required to review the work of 5 deputy county counsels. The responsibilities of the second chief deputy county counsel would be distinguished from the first in that the person occupying this position would be more directly concerned with the coordination and review of work performed by deputy county counsels within the litigation and special district sections of his or her division and have limited duties and responsibilities regarding the overall management of the county counsel's office.

Once the new chief deputy county counsel position is created, it will be filled internally through a departmental promotional recruitment. Following the retirement of the existing chief deputy county counsel, this position is also expected to be filled as a result of an internal promotion so that upon the current county counsel retiring, the office will have two attorneys in the office capable of managing the office. There are a number of attorneys currently with the office who are qualified to assume the two chief deputy county counsel positions as they become available and thus it is not expected that external recruitment will be required.

### **THE COST IMPACT OF THE REORGANIZATION**

The total estimated annual cost increase is approximately \$16,000. The estimated cost increase for this fiscal year, assuming the position is filled in March, is approximately \$4,000. This cost will be absorbed by the department's budget due to salary savings resulting from underfilling two high level deputy county counsel positions at a lower level. The salary savings for this fiscal year due to underfilling the two positions is approximately \$85,000. There should be no need to request an increase in the salaries and benefits portion of the County Counsel's budget for FY 2007/2008 or 2008/2009 since those two attorney positions are expected to continue to be underfilled through FY 2009/2010 and those cost savings will more than cover the increased cost of the proposed reorganization. It typically takes several years for a junior deputy county counsel to reach the senior

deputy county counsel level. Thus, by the time the recently hired deputy county counsels reach the senior deputy county counsel level, it is expected that there will be additional attorney and clerical staff retirements. If those positions are in turn under-filled, the expectation is that the salaries and benefit cost savings (\$85,000 more or less) of the reorganization would not be needed to be added back into the budget of the office until 2010 or 2011. This analysis, of course, excludes cost of living increases, equity adjustments and any need that may exist to add additional attorneys and clerical staff to the office due to increased workloads as a result of the County continuing to expand its population.

#### **MAKING THE ATTORNEY POSITIONS "AT-WILL"**

Promoting existing staff to a high level deputy county counsel position (i.e. deputy county counsel IV) or to one of the two chief deputy county counsel positions in the office as an at-will employee is consistent with recent practice with regard to senior or highly sensitive management positions and is part of an effort to provide greater management accountability. Thus, individuals who are appointed to a position after February 27, 2007 will be designated as an at-will, Management Non-Classified (Other) employee. However, employees already appointed to a position prior to February 27, 2007 will retain their Management Classified designation. This "grandfathering" would include promotions from the deputy county counsel I or II levels to the deputy county counsel III level. Promotions to the deputy county counsel IV or chief deputy county counsel levels would result in the employee becoming an at will Management Non-Classified (Other) employee. At-will employees in the county counsel's office will receive the standard fringe benefits available to Management Non-Classified (Other) pursuant to Part A: Section 37-C3, Section 2 of the County of Napa Management Compensation Plan.

Both the Human Resources Department and the County Executive Office has reviewed the requests before the Board today and recommend the approval of the reorganization.

#### **SUPPORTING DOCUMENTS**

A . Resolution

CEO Recommendation: Approve

Reviewed By: Maiko Klieman