



Agenda Date: 3/28/2006
Agenda Placement: 6M

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Robert Westmeyer - County Counsel
County Counsel
REPORT BY: Robert Westmeyer, County Counsel, 259-8245
SUBJECT: Amend the Departmental Allocation List for the County Counsel Office to Add 1 (M) Attorney IV Position

RECOMMENDATION

County Counsel, with the approval of the County Executive Office, requests adoption of a resolution amending the Departmental Allocation List for County Counsel with regards to adding one (1) (M) Attorney IV position, effective March 28, 2006.

EXECUTIVE SUMMARY

The County Counsel's Office, with the approval of the County Executive Office, recommends amending the County Counsel's departmental allocation list to add one (1) (M) Attorney IV position. This action will allow the County Counsel's Office to immediately begin the recruitment process to replace one retiring attorney and provide transitional staffing until the current incumbent retires in May of 2006. The combination of having one attorney on pregnancy leave and another retiring, at more or less the same time, both of whom provide legal services to Child Protective Services (hereafter CPS) constitutes the justification for this action.

The County Counsel has assigned one of his staff attorneys to work full time on compliance matters in the Health and Human Services agency (hereafter HHS) for the past two years. During that period of time, the office has logged an average of 1600 hours of overtime annually in an effort to provide a reasonable level of legal services to the remainder of the County. This overtime represents the equivalent of a full time attorney position. Even with that overtime, there has been an increased use of outside counsel to a degree that would not have been necessary had the office not been required to allocate its limited legal resources to HHS compliance issues.

The request is to maintain this permanent position for the FY 2006/2007 County Counsel budget. There will be no increase in the budget for the County Counsel's Office as a result of this recommended action in FY 2006/2007 since HHS intends to reimburse the County Counsel's office for the full cost of the salary and benefits of this new position. Nor will the number of attorneys in the County Counsel's office working on issues not involving compliance matters involving HHS be increased. However, there will be a net increase in the costs to the General Fund since no funds have been set aside to fund a Compliance Officer position for the past several years.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No
What is the revenue source?	<p>The costs incurred during the remainder of FY 2005/2006, will be covered by salary savings resulting in no impact to the Napa County General Fund. The salary savings have been achieved as a result of delaying attorney promotions that were budgeted for the entire FY 2005/2006 but were not implemented until January 2006 anticipating the dual workload problems that would surface due to one attorney going on maternity leave and another attorney retiring at approximately the same time.</p> <p>Continuing the position in FY 2006/2007 will not result in a net increase in the costs of the County Counsel's Office since the full cost of this new position will be reimbursed by HHS while the Deputy County Counsel serves as the HHS Compliance Officer. The estimated cost of this position for the FY 2006/2007 is \$169,364.</p>
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	<p>FY 2005/2006: There will be no net increase in costs. It is crucial that this position be approved in March to enable the County Counsel office to immediately begin recruiting so that CPS may be provided with an adequate level of legal representation despite one of the office's two CPS attorneys being on maternity leave until May of 2006 and the other CPS attorney planning on retiring in May of 2006.</p> <p>FY 2006/2007: There will be no net increase in the costs of operating the County Counsel's Office since the cost of of this additional position will be fully reimbursed by HHS. HHS has included this reimbursement in their FY 2006/2007 budget. There will be a net increase in the costs to the General Fund since no funds have been set aside to fund a Compliance Officer position for the past several years. Note that if the Deputy County Counsel resumed legal rather than compliance duties, and HHS continued to fund a Compliance Officer position within the agency, these costs would be incurred in any event in FY 2006/2007.</p>
Is the general fund affected?	Yes
Future fiscal impact:	In FY 2006/2007 and future years the County Counsel's office will budget the full salary and benefits for this position and also budget the revenues from HHS that will equal the full cost of the position.
Consequences if not approved:	During FY 2005/2006: Failure to hire a transitional replacement for the retiring attorney will result in the inability of the office to provide essential basic legal services to the CPS unit of the HHS agency. Since this cannot occur, if recruiting for the position is delayed until the CPS attorney retires, it is inevitable that other less pressing legal matters of other county departments will be delayed. The length of these delays is unknown at the present time.

During FY 2006/2007: The County Counsel has assigned one of his staff attorneys to work full time on compliance matters in the HHS for approximately the last two years. During that period of time, the office has logged an average of 1600 hours of overtime annually in an effort to provide the remainder of the County with a reasonable level of legal services. This represents approximately one full time attorney position. Even with that amount of overtime, there has been an increased use of outside counsel to a degree that would not have been necessary had the office not been required to allocate its limited legal resources to HHS compliance issues. In light of the projected workload for FY 2006/2007 discussed below (see the "Background and Discussion"), it is unlikely that continuing to allocate 100% of a deputy county counsel's time to compliance will be possible if this recommendation is not approved.

Additional Information: None

ENVIRONMENTAL IMPACT

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

There are two attorneys in the County Counsel's Office that spend the majority of their time representing CPS. The lead CPS attorney has submitted a letter indicating an intent to retire on or about May 19, 2006. The current incumbent is a long term employee who has played a key role in providing legal services to the County with a focus on representing the CPS unit of the HHS. The second CPS attorney has recently left on maternity leave and is not expected back until shortly before the lead CPS attorney's planned retirement.

In light of these factors, and to achieve a successful and orderly transition of the daily and highly complex legal activities involved in representing CPS, the County Counsel's Office, with the approval of the County Executive Office, is requesting the addition of one Attorney IV position. It is not possible to commence a recruitment for the replacement of the retiring attorney prior to the attorney's actual retirement without adding another attorney position to the office. Thus, in the short term, this request is necessary in order to facilitate a successful recruitment of a qualified candidate to join the office prior to the lead CPS attorney's retirement.

The request is also to maintain this permanent position in the FY 2006/2007 County Counsel budget as well as future budgets. The purpose of continuing the requested Attorney IV position in future years is not to increase the number of attorneys on the County Counsel's staff but to continue a Compliance Officer at HHS with reporting responsibilities to the HHS Director and County Counsel.

The County Counsel has assigned one of his staff attorneys to work full time on compliance matters in the HHS agency for the past two years. During that period of time, the office has logged an average of 1600 hours of overtime annually in an effort to maintain a reasonable level of legal services to County departments other than HHS. This represents the equivalent of a full time attorney position. Even with that amount of overtime, there has been an increased use of outside counsel to a degree that would not have been necessary had the office not been required to allocate such a large portion of its limited legal resources to HHS compliance issues.

The bottom line is that the sole and exclusive purpose of the FY 2006/2007 request is to allow the Deputy County Counsel who would like to continue to function as the HHS Compliance Officer to continue to do so while at the same time retaining her position as an attorney in the County Counsel's office.

The position of the Compliance Officer was created in 2000 at HHS to lead the compliance efforts of the department. The responsibilities of the position include ensuring compliance with internal standards and state and federal laws; managing audits and investigations into regulatory and compliance issues; and responding to requests for information from regulatory bodies. At the December 16, 2003 Board of Supervisors' (hereafter BOS) meeting, an action was approved to adopt a resolution amending the Departmental Allocation List for County Counsel with regard to adding one (1) Attorney IV Limited Term position for six months. Due to retirement, the County needed to recruit for a new Compliance Officer at HHS and this limited term position was to fill the position during the recruitment. However, due to difficulty of recruiting, at the March 2, 2004 BOS meeting, an action was approved to delete the limited term position and instead have an Attorney III at the County Counsel continue to serve as the Compliance Officer while at the same time providing additional compensation as recognition of the complexities of the duties of the HHS Compliance Officer.

There will be no increase in the budget for the County Counsel's Office as a result of this recommended action in FY 2006/2007 since HHS intends to reimburse the County Counsel's office for the full cost of the salary and benefits of this new position. However, there will be a net increase in the costs to the General Fund (estimated cost for FY 2006/2007 is \$169,364) since no funds have been set aside to fund a Compliance Officer position for the past several years.

The County Counsel currently has 12 Attorneys working in the office. After reviewing the projected workload of the County Counsel's office for FY 2006/2007, the County Counsel has concluded that it is not possible to continue to assign one Deputy County Counsel to focus exclusively on HHS compliance issues. Therefore, if today's action to add the 13th Attorney position is not approved, the assignment of the Deputy County Counsel presently assigned exclusively to HHS compliance matters will be changed from 100% compliance to approximately 25% HHS compliance with an emphasis on CPS compliance issues.

Due in large part to one Deputy County Counsel acting as the Compliance Officer at the HHS, the County Counsel's office has been required to do all of the following:

1. Work an average of 1600+ hours annually in overtime which represents a 1.0 FTE attorney;
2. Reduce the legal services provided to the County Privacy Officer to the absolute minimum;
3. Delay further development of the county's zoning enforcement program;
4. Cease updating of various county ordinances and guidelines to conform to changes in state law where possible; and
5. Prioritizing workload which has resulted in an ever increasing backlog of Department requested projects that are not completed in a timely manner.

Litigation must be handled, whether internally or externally. The average cost of utilizing an attorney in the County Counsel's office averages \$ 100 per hour. The cost of outside counsel averages \$279 per hour. Thus, maximizing the use of "in-house" counsel, except in highly specialized areas such as tax, water law, worker's compensation and personal injury/property damage, continues to be the most cost effective manner of dealing with legal matters. The average cost for the outside legal services for the past five years is \$239,000. The Board can expect a significant reduction in the use of outside counsel by adding this position which in practical effect will free up a Deputy County Counsel to handle matters other than HHS compliance.

The principal reasons why the County Counsel believes he can no longer afford to dedicate a member of his staff to compliance in FY 2006/2007 may be summarized as follows:

1. A significant amount of time will have to be devoted to the comprehensive General Plan update and the Lake Berryessa Recreation Management Plan and related environmental impact statement documentation;
2. The CPS caseload continues to increase due to the inevitable population increases in the cities of Napa County. This includes an increase in the number of contested hearings, appeals and writs;
3. A major rewrite of the personnel policies and procedures to avoid unnecessary increases in grievances, arbitrations and civil rights litigation is needed;
4. A major rewrite of the Zoning Ordinance is needed;
5. Labor negotiations for all bargaining units will commence during the coming fiscal year;
6. Legal issues relating to bringing reclaimed water to MST and Carneros will need to be addressed; and
7. It is expected the funding for the Flood Control Project will resume resulting in increased demands for legal services in that area.

The demand for legal services continues to increase in most areas. Some of the larger increases in time spent by the office on departmental projects, compared with the previous fiscal year, are:

- | Elections: +48%
- | CPS: +28%
- | Animal Control: + 93%
- | B/S Appeals: +41%
- | NCTPA: +59%
- | Corrections: +25%
- | Clerk Recorder: +73%
- | Public Works: +47%

It is crucial that this position be approved to enable a smooth recruitment process and to provide the additional staff needed for the County Counsel's Office to continue to provide the current level of legal services to the County. Therefore, the County Counsel's Office, with the approval of the County Executive Office, recommends amending the departmental allocation list for the County Counsel's Office to add one (1) (M) Attorney IV position. This recommendation has been reviewed by the Human Resources Department.

SUPPORTING DOCUMENTS

A . Resolution

CEO Recommendation: Approve

Reviewed By: Maiko Klieman