



Agenda Date: 6/26/2007  
Agenda Placement: 6KK

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** Britt Ferguson for Watt, Nancy - County Executive Officer  
County Executive Office  
**REPORT BY:** Molly Rattigan, Management Analyst, 253-4112  
**SUBJECT:** Conflict Public Defender Agreements

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### **RECOMMENDATION**

County Executive Officer requests approval of and authorization for the chair to sign the following agreements relating to Conflict Public Defender services for the term July 1, 2007 through December 31, 2008:

1. An agreement with Mervin Lernhart for a maximum of \$207,000;
2. An agreement with Diane Bylund for a maximum of \$180,000;
3. An agreement with Michael Keeley for a maximum of \$180,000;
4. An agreement with Jim McEntee for a maximum of \$180,000;
5. An agreement with James Tucker Smith for a maximum of \$180,000; and
6. An agreement with Jeffrey Hammond for a maximum of \$94,600.

### **EXECUTIVE SUMMARY**

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, the case is handled by the Conflict Public Defender. On April 10, 2007, the Board approved the concept of a Conflict Public Defender reorganization. County staff released a Request for Qualifications and are recommending Mervin Lernhart, Diane Bylund, Michael Keeley, Jim McEntee, James Tucker Smith and Jeffrey Hammond as Conflict Public Defender contractors. The cost in Fiscal Year 2007-2008 is estimated to be up to \$802,600 for the contracts and investigative and expert services plus \$54,000 for one capital/life without parole and change of venue case for an estimated total of \$856,600.

### **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 December 31, 2008. Future fiscal impact will be determined annually and based on the number of cases represented by Conflict Public Defenders. County staff will be monitoring caseloads throughout the term of these agreements to determine the number of attorneys needed and the compensation level provided.
Consequences if not approved:	If these agreements are not approved, the County will revert to the process currently in place where one law firm accepts all first level conflicts, a second law firm accepts all second level conflicts and the Court appoints attorneys for third level conflicts. The system currently in place has proved costly as the number of cases and conflicts declared has increased as has the number of hours and services being questionably billed to the County. Under this system, the County will be able to predict future costs more effectively.
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 Public Defender provides legal representation to persons charges 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, the case is handled by the Conflict Public Defender. Under the current Conflict Public Defender system, when the Public Defender's Office cannot legally represent an individual because of a conflict of interest (i.e. two defendants in one case), the Court appoints Napa County's fulltime contracted attorney to provide defense services. If this attorney declares a conflict, the Court will appoint Napa County's part-time contracted attorney to provide defense services. If and when the part-time contracted attorney declares a conflict, the Court then appoints a private attorney to provide defense representation at the expense of the County.

At the April 10, 2007 meeting of the Board of Supervisors, a reorganization of the Conflict Public Defender program was approved in concept and staff prepared a Request for Qualifications seeking five qualified attorneys to provide Conflict Public Defense for adult defendants and one qualified attorney to provide Conflict Public Defense for juvenile defendants. The County received 12 qualifications statements for the adult contracts and three qualifications statements for the juvenile contract. A review panel that included the Public Defender's Office, County Counsel, the County Executive Office and the Napa Superior Court recommend the following attorneys to provide Conflict Public Defense:

1. **Mervin Lernhart (Adult Cases)**- Mr. Lernhart has been providing Conflict Public Defender services for the County of Napa and maintaining a private criminal law practice for the past 20 years. Mr. Lernhart has represented a variety of misdemeanor and felony cases and has been the attorney of record for defendants in at least 22 homicide cases since 1980. He has tried at least 15 felony jury trials to verdict.

2. **Diane Bylund (Adult Cases)**- Ms. Bylund is a retired Solano County Conflict Defender and has maintained a private criminal law practice in Napa County since 2003. Ms. Bylund has been the attorney of record on at least 20 homicide cases including several capital cases. She has tried over 100 jury trials to verdict.
3. **Michael Keeley (Adult Cases)**- Mr. Keeley has been providing Conflict Public Defender services for the County of Napa since 2004. Mr. Keeley has been the attorney of record in well over 15 felony cases in the past five years, including four jury trials.
4. **Jim McEntee (Adult Cases)**- Mr. McEntee has maintained a private criminal defense practice since 1999 and has defended over 200 people accused of felony charges in Solano and Napa counties. Mr. McEntee has tried over 17 felony cases and has served as the attorney of record on four sexually violent predator cases.
5. **James Tucker Smith (Adult Cases)**- Mr. Smith was an employee of Mervin Lernhart and Associates between 1990 and 1996. He has served as the attorney of record in numerous juvenile dependency, adult felony, adult misdemeanor and mental health cases. Mr. Smith will partner with Mark Henderson upon Mr. Henderson's retirement from the County of Napa in September. Mr. Henderson has been with the Public Defender's Office since 1987 and has tried over 125 jury trials including four homicide cases.
6. **Jeffrey Hammond (Juvenile Cases)**- Mr. Hammond has been in private practice since 2005 after working for several years as a family support and criminal law attorney for various District Attorney's Offices. Mr. Hammond has expertise in juvenile dependency cases having been both privately retained and appointed by the court to represent juveniles. Mr. Hammond expressed a particular interest in representing juveniles as a Conflict Public Defender contractor.

The attorneys contracted to provide adult representation will be paid \$7,000 per month. If an attorney receives a capital case where the defendant faces death or life in prison without the possibility of parole, they 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. Mervin Lernhart will be compensated an additional \$1,500 per month to act as the Attorney Coordinator. Mr. Lernhart will 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. Adult attorneys will be assigned no more than 150 cases in a 12 month period.

The attorney contracted to provide juvenile representation will be paid \$5,000 per month for cases beginning July 1, 2007. The juvenile attorney has agreed to assist Mervin Lernhart with juvenile cases currently in progress that can be transferred without disruption to the client. For these services, the juvenile contractor will be paid \$3,100 in July and \$1,500 in August. The juvenile attorney will be assigned no more than 180 cases in a 12 month period.

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.

The cost for the attorney's monthly compensation and investigative and expert services in Fiscal Year 2007-2008 will be up to \$802,600, however staff does not believe the full amount will be spent. Based on past history, staff has budgeted for one capital/life without the possibility of parole case and one change of venue. Should more than one capital/life without parole case need a conflict attorney, the budget may have to be adjusted midyear.

The attorneys recommended for agreements today have been supportive and enthusiastic about the reorganization as proposed. The attorneys have met to discuss the case assignment process, potential conflict issues and are ready to begin providing services on July 1, 2007. They are excited about working with each other and providing high quality services for Napa County residents.

**SUPPORTING DOCUMENTS**

None

CEO Recommendation: Approve

Reviewed By: Molly Rattigan