



Agenda Date: 7/26/2005
Agenda Placement: 6N

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: Approval of Court Ordered Out of Country Travel

RECOMMENDATION

County Counsel and District Attorney request the Board take the following actions:

1. Approve the expenses relating to the out of country travel that Regina Clark, Child Recovery Assistant, was required to incur during a trip to Paris, France, pursuant to a Napa Superior Court Order, from June 30, 2005 - July 4, 2005 at an estimated cost of \$9,400; and
2. Direct staff to file an appropriate SB90 claim for recovery of the \$9,400 from the State of California.

EXECUTIVE SUMMARY

The Napa County District Attorney is mandated pursuant to Family Code Section 3130 et seq to enforce child custody orders issued by the Napa Superior Court. Today's action culminates two years of international negotiations to reunite a child with her legal custodial parent.

Subsection (a) of section 3134 of the Family Code provides that the County may advance the costs incurred by the District Attorney in enforcing such child custody orders subject to reimbursement by the state. Reimbursement from the state occurs via the SB90 claiming procedure.

The past several state budgets have included funding for these types of claims although payment of the claims have been deferred since July 1, 2002. Prior to the state implementing the deferrals the state has reimbursed the county for these types of expenses. \$128,926 was received in FY 2000/2001 and \$110,237 was received in FY 2001/2002 subject to the state auditing the claims. The state budget signed by the Governor on July 11, 2005 includes over \$9,000,000 in funding for reimbursements pursuant to section 3134 of the Family Code.

The existing county travel policy requires Board of Supervisors approval of out of state travel. The travel policy also provides that in circumstances when Board approval cannot be obtained prior to the travel, approval after the fact is permissible.

Approving advancing these costs by approving the travel claims after the fact is recommended by both the County Counsel and the District Attorney.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Funding is available in the previous fiscal year appropriations of the District Attorney's office. The District Attorney has requested and received \$5,000 from the National Center for Missing and Exploited Children to cover the travel expenses of the child and her father's airfare. An effort to recover the remainder of the expenses will be initiated by the filing of an SB90 claim.
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes
Future fiscal impact:	There is no future fiscal impact. This case is now closed.
Consequences if not approved:	The District Attorney is mandated to perform this activity under Family Code Section 3131. The County is permitted under Family Code Section 3134 to advance payments subject to future reimbursement from the state. If the County chose to not advance the payments, it is unclear who would be responsible for the costs the District Attorney has incurred since the District Attorney cannot refuse to take the actions mandated by Family Code Section 3130 et seq. and the costs he has incurred must be paid. The most likely result would be that the expenses would be considered county charges pursuant to Government Code section 29601.
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 Napa County District Attorney is mandated under Family Code Section 3131 to take the actions he took in this matter. Section 3131 provides in part that "if a custody or visitation order has been entered by a court of competent jurisdiction and the child is taken or detained by another person in violation of the order, the district attorney shall take all actions necessary to locate and return the child." Acting as the law enforcement arm of the court, the district attorney has been negotiating for two years to return the child to her legal custodial parent. That has now been successfully accomplished.

Subsection (a) of section 3134 provides that the County may advance the funds necessary to cover the expenses of the district attorney in these matters subject to reimbursement by the state. Neither Section 3134 nor any other

portion of the Family Code identifies who would advance the funds if the County refused to do so.

The courts have, on rare occasions, directed counties to honor claims for payment of expenses incurred by county officials, or required by judicial order, even when no provision for such expenses have been made in the county budget. See cases cited in County of Butte v. Superior Court 176 Cal.App.3d 693 at page 700. If the county failed to agree to advance the funds to cover these costs pending state reimbursement, it is possible the court might order the county to cover these costs pending reimbursement from the state.

Alternatively, a court might conclude that these types of charges are county charges pursuant to section 29601 of the Government Code. That section provides as follows:

"§ 29601. Enumeration of expenses constituting county charges

The following expenses of the district attorney and the sheriff are county charges:

(a) Traveling and other personal expenses incurred in criminal cases arising in the county and in civil actions and proceedings in which the county is interested.

(b) All other expenses necessarily incurred by either of them:

(1) In the detection of crime. Except as to violations of Section 23152 of the Vehicle Code, this section does not apply to the detection of those crimes declared to be misdemeanors by the Vehicle Code.

(2) In the prosecution of criminal cases, and in civil actions and proceedings and all other matters in which the county is interested, or in which any officer or employee, or former officer or employee, of the county is a defendant in an action for damages instituted for any act performed by him or her in good faith in furtherance of his or her duty while in the employ of the county and in which the district attorney is authorized to represent him or her."

Because these charges would, more likely than not, be considered county charges or ordered to be paid by the court that issued the child custody order, and because there is a SB90 procedure in existence that has been established for the purpose of recovering these types of expenses, it is recommended that the expenses be advanced by the County and then recovered from the state by filing an appropriate SB 90 Claim.

It is also recommended that the Board direct county staff in the District Attorney's office to file the appropriate SB90 claim with the State of California to recover these costs.

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Helene Franchi