



Agenda Date: 9/11/2007
Agenda Placement: 6L

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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

RECOMMENDATION

County Executive Officer requests approval of and authorization for the Chair to sign an agreement with Mark Henderson for a maximum of \$159,000 for the term September 11, 2007 through December 31, 2008 for the provision of Conflict Public Defender services.

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 James Tucker Smith was one of the attorneys selected as a Conflict Public Defender noting that Mark Henderson would be joining him in practice upon his retirement from the County.

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?	Discretionary
Discretionary Justification:	The County has an agreement with James Tucker Smith to serve as one of the Conflict Public Defenders. Mr. Smith noted that he would partner with Mark Henderson upon Mr. Henderson's retirement from the County. Mr. Henderson worked as a Public Defender for Napa County for 20 years. He has tried over

125 jury trials, including 4 homicides. Mr. Henderson has retired and the decision was made to have Mr. Henderson serve as the primary attorney under the agreement instead of having James Tucker Smith enter in to a subagreement with Mr. Henderson.

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 agreement is not approved, the County will be short one conflict attorney and there could be a need to go outside the pool for attorney services. Going outside the contracted pool may be more costly and it will be more difficult for staff to predict future costs.

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 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. 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 recommended James Tucker Smith as one of the Conflict Public Defenders noting that he would partner with Mark Henderson upon Mr. Henderson's retirement from the County. Mr. Henderson has retired and the decision was made to have Mr. Henderson serve as the primary attorney under the agreement instead of having James Tucker Smith enter in to a subagreement with Mr. Henderson.

Mr. Henderson worked as a Public Defender for Napa County for 20 years. He has tried over 125 jury trials, including 4 homicides. When Mr. Henderson was working in the Public Defender's Office, he was required to declare a conflict if the Public Defender's Office had ever represented any codefendant or witness in a case. Now

that he has retired from the Public Defender's Office and has no access to the Public Defender's Office files, Mr. Henderson will only be required to declare conflicts when he has personally represented a co-defendant or witness in a previous case. Mr. Henderson has never served as the attorney of record in any gang related cases where there are often multiple defendants and a need for conflict Attorneys.

Under this agreement, Mr. Henderson will be paid \$7,000 per month. If he receives a capital case where the defendant faces death or life in prison without the possibility of parole, he will receive an additional \$3,500 per month for up to 12 months. In the event of a change of venue, Mr. Henderson will be provided additional compensation up to \$12,000. Mr. Henderson will be assigned no more than 150 cases in a 12 month period.

Separate from attorney compensation, \$75,000 will be set aside for investigative and expert services. Any single case which is expected to exceed more than \$1,500 in expert and investigative services will require a Court Order.

Mr. Henderson has been working with Mr. Smith since his retirement to become familiar with any cases he may take over. Mr. Henderson has established a professional and working relationship with the other Conflict Public Defenders. Staff anticipate a smooth transition.

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Karen Gratton