



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 9/21/2010

Agenda Placement: 7N

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Mason, Suzanne R. - Director
Human Resources
REPORT BY: Karla Jensen, Human Resources Analyst II - (707) 253-4489
SUBJECT: Amend Departmental Allocation List for County Counsel

RECOMMENDATION

Director of Human Resources and County Counsel request adoption of a resolution amending the Departmental Allocation List for County Counsel as follows, effective October 2, 2010:

1. Amend the Departmental Allocation by:
 - a. Deleting:
 - i. One .5 FTE (C) Legal Secretary I.
 - b. Adding:
 - i. One (1 FTE) (NCO) Deputy County Counsel IV* and
 - ii. One (.6 FTE) (C) Legal Secretary I.

(*) Designated as an "at-will" position.

EXECUTIVE SUMMARY

As the Board is aware, the Health & Human Services Agency (HHS) has experienced a significant increase in the number of Child Welfare Services (CWS) cases over the last 18 months. County Counsel provides two CWS-related services to HHS: (1) legal representation; and (2) identifying and noticing the parents of dependency subjects. Due in part to the increase in HHS's CWS cases, County Counsel has also experienced a 56% increase in its overall CWS caseload and a 140% increase in new cases compared to the caseload and new cases in FY2007/08. This caseload increase has been accompanied by a more aggressive approach by opposing counsel, resulting in more contested cases. Overall, the amount of time spent by Deputy County Counsels on CWS matters increased by 15% from FY2008-09 to FY2009-10 - from approximately 1.33 FTE to 1.52 FTE. Perhaps more significantly, the increase in attorney time spent representing CWS during the first six weeks

of this fiscal year has been significant, in part due to the fact that of the 108 new cases filed last fiscal year, 45 (or 41%) were filed in the final quarter of the just concluded fiscal year. If this rate of filing and hours spent on CWS cases continue, it will be necessary to devote over 2 FTE Deputy County Counsel to CWS matters. If current trends continue, County Counsel believes that, without additional attorney resources, his Office cannot continue to meet the demand for legal services from other County programs or departments since CWS legal services will have priority over most other requests for legal services.

The increase in CWS cases, along with related complex noticing requirements for the Native American and foreign nationals portion of the increased caseload, has also resulted in increased time spent identifying and noticing persons who might be the fathers of dependency subjects as required by law. Often multiple putative fathers must be noticed. County Counsel does not believe that the current .5 FTE Legal Clerk that handles noticing matters will be able to continue to meet this increased workload demand without a minor increase in the position to .6 FTE or shifting the workload to another support position which is problematic for a number of reasons.

Recently, the Napa County Transportation & Planning Agency (NCTPA) has requested that the County consider contracting with the NCTPA to provide a minimum guaranteed .5 FTE Deputy County Counsel that would be exclusively dedicated to NCTPA legal matters with the fully loaded costs of that .5 FTE position (plus support staff) being funded by the NCTPA. The term of the commitment is for three years with an option for a fourth year. Such an approach is expected to save the NCTPA more than \$100,000 annually when compared with utilizing outside counsel. The NCTPA has budgeted \$120,000 to cover the potential costs of its needed legal services this fiscal year. County Counsel strongly believes that he cannot meet this request and the demand for legal services from County departments or programs without additional attorney resources.

In light of these factors, County Counsel recommends that one (1.00 FTE) Deputy County Counsel IV be added to the office that will be underfilled at the Deputy County Counsel III level. One half of that position will be devoted to providing the NCTPA with legal counsel. The remainder will be devoted to dealing with the increased CWS caseload or other low priority legal matters that have arisen in the past or may arise in the future.

County Counsel also recommends the current (.50 FTE) (C) Legal Secretary I position responsible for preparing the CWS notices be increased by 4 hours a week to .6 FTE due to the increased caseload and related complex noticing requirements when foreign nationals and native Americans are involved in the CWS process.

On an annual basis, the fees paid by the NCTPA will fund approximately 67% of the cost of the new Deputy County Counsel position. Approximately 60% of the fully loaded cost of the legal secretary and the portion of the new attorney dealing with CWS matters are recoverable starting in FY2012-13 from the same state and federal sources that are currently reimbursing the county for its existing CWS costs (there is a two-year delay in reimbursements). However, reimbursements for attorney time will only be a net increase in revenue to the County to the extent work performed on CWS issues by this position is in addition to the approximately 1.52 FTE devoted to CWS issues in FY2009-10, and at this point it is not certain what amount, if any, of additional Deputy County Counsel time will be devoted to CWS issues. Based on historical trends, County Counsel believes that an increase of at least .33 FTE, and possibly as much as .5 FTE, will be necessary. If that is correct, then federal and State revenue would cover between 24% and 40% of the cost of the full position, on an annualized basis, once full cost recovery begins. Thus, NCTPA fees and CWS-related federal and state funds together could cover in excess of 90% of the new deputy county counsel position's cost.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	No

What is the revenue source?	The cost of these positions for the rest of FY2010-11 will be approximately \$117,000 (Deputy County Counsel: \$112,500; Legal Secretary: \$4,705). NCTPA will reimburse the County for approximately 67% of the cost of the Deputy County Counsel (\$75,092), and potentially more if more than .5 FTE of services is utilized. The remaining \$42,000 will be a General Fund cost. For this fiscal year, County Counsel will be able to cover the General Fund cost of the .1 FTE Legal Secretary out of the Office's existing budget.
Is it Mandatory or Discretionary?	Discretionary
Discretionary Justification:	<p>The County is required to respond to litigation as a priority item. If the request for one (1.00 FTE) Deputy County Counsel position is not approved, less essential non litigation projects/assignments will be prioritized and finished over what will likely be a multiple year schedule. If the Legal Secretary I position is not increased by four hours per week other less essential support staff duties within the office will be delayed, reduced, or eliminated.</p> <p>NCTPA will not be provided legal services and will be forced to retain outside counsel at approximately twice the cost of utilizing county counsel.</p>
Is the general fund affected?	Yes
Future fiscal impact:	<p>.1 FTE Legal Secretary I: If the position is approved for the remainder of Fiscal Year 2010/2011, salary and benefits will increase by \$4,705, and will be a General Fund cost. In future years the projected annual increase would be approximately \$5,646, Starting in FY2012-13, the County will recover 60% of the fully loaded cost of this position from State and federal revenue sources, which would essentially cover the full cost of the position (reimbursement routinely occurs but there is a two-year delay).</p> <p>1 FTE Deputy County Counsel IV: For the remainder of Fiscal Year 2010/2011, salary and benefits will increase by approximately \$112,500 with offsetting revenue of approximately \$75,000 from NCTPA, resulting in a Net County Cost increase of \$37,000. In FY2011-12, the projected cost of this position will be approximately \$150,000, with offsetting revenue of \$100,000, resulting in a Net County Cost of \$50,000. If NCTPA utilizes more than a .5 FTE, the cost to the General Fund would be further reduced. Starting in FY2012/13 the County will receive retroactive state and federal reimbursement for approximately 60% of the fully-loaded cost of the portion of the position working on CWS issues. This will represent net additional revenue if the work performed on CWS issues is in addition to the 1.52 FTE in attorney time already devoted to CWS issues. There is no certainty as to how many additional Deputy County Counsel hours, if any, will be devoted to CWS issues. However, County Counsel is projecting at least an increase of 500 attorney hours (approximately .33 FTE). If the additional work on CWS cases amounts to a .33 FTE Deputy County Counsel, the County would be reimbursed roughly \$25,000 in FY2012/2013 and \$35,000 in each succeeding year (in current dollars). Thus by FY2012/13 the new position would cost to the County General Fund approximately \$15,000 annually. If the additional work on CWS cases amounts to a .5 FTE Deputy County Counsel, then the County would be reimbursed roughly \$40,000 in FY2012/2013 and \$60,000 a year thereafter, in which case, by FY2013/14 there would be no annual increase in Net County Cost. Due in part to the delay in CWS reimbursements, the five-year</p>

net cost to the General Fund of adding this position could be between \$75,000 and \$140,000.

Consequences if not approved: Other projects/tasks will be given a lower priority and completed over what will likely be a multi year schedule.

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

County Counsel is requesting that the Board authorize the addition of a new Deputy County Counsel position and the increase of a part-time Legal Secretary position from .5 FTE to .6 FTE. These position increases are being requested to address two issues:

- | A significant increase in Child Welfare Services (CWS) cases; and
- | A request by the Napa County Transportation & Planning Agency (NCTPA) to contract with the County to provide it with a .5 FTE Deputy County Counsel.

Child Welfare Services

As the Board is aware, the Health & Human Services Agency (HSSA) has experienced a significant increase in the number CWS cases over the last 18 months. As a result of that increase, on August 24th, your Board authorized the addition of Child Protective Services Worker I/II in HHSA, funded by State and federal funds. County Counsel is directly affected by the CWS caseload since it provides two CWS-related services to HHSA: (1) legal representation; and (2) identifying and noticing the parents of dependents of dependency subjects. Due, in part, to the increase in HHSA's CWS cases, County Counsel has experienced an increase in its CWS workload, with a 56% increase in overall CWS caseload and a 140% increase in new cases compared with the overall caseload and new cases in FY 2007/2008.

The 56% increase in County Counsel's overall CWS caseload has been accompanied by a more aggressive approach by opposing counsel resulting in more contested cases and a significant increase in the amount of evidence being presented by opposing counsel in many of the cases. This in turn has resulted in significantly more preparation by County Counsel and hearings that last much longer than in the past. The following statistics, comparing Fiscal Year 2008/2009 with Fiscal Year 2009/2010, demonstrate the effect the conjunction of these two factors has had on the Office during the past two years insofar as contested cases are concerned:

Number of Contested Cases: 59% Increase
Number of Contested Cases Involving Court Hearings: 77% Increase
Number of Hours in Court on Contested cases: 167% Increase
Number of Hours Spent Preparing For Contested cases: 201% Increase

These factors have significantly increased the amount of time spent in preparing for and defending CWS positions in Juvenile Court and also increased the total number of hours devoted to CWS cases, at least compared to the

last two fiscal years. The following table shows the amount of hours and FTE spent by Deputy County Counsels on CWS cases in recent years:

<u>Fiscal Year</u>	<u>Attorney Hours</u>	<u>FTE Positions</u>
2006-07	3052	2.01
2007-08	2230	1.47
2008-09	2019	1.33
2009-10	2320	1.52

In FY2009-10 the overall number of hours Deputy County Counsels spent on CWS cases increased by approximately 15% compared to FY2008-09 levels. Perhaps more significantly, County Counsel is seeing a continuing increase in Deputy County Counsel hours spent on CWS cases for the first six weeks of FY2010-11, due in part to the fact that of the 108 new cases filed last fiscal year, 45 or (41%) were filed in the final quarter of the just concluded fiscal year. Six weeks is a relatively small sample, but if those numbers are annualized, the result would be a projected need for approximately 3,100 hours of County Counsel time this fiscal year, or 2.04 FTE at the Juvenile Court level. Additional attorney time would need to be added to this amount if more than the normal 2-3 cases are appealed which seems likely since two appeals have already been filed this fiscal year. If current trends continue, County Counsel believes that, without additional attorney resources, his Office cannot continue to provide the required level of service to CWS and meet the demands for legal service from other programs or departments. To address this issue, County Counsel believes that at least an additional .33 FTE Deputy County Counsel position will be required.

The increase in CWS cases, along with related complex noticing requirements when Native Americans and foreign nationals are involved, has also resulted in increased time spent identifying and noticing persons who might be the parents (usually putative fathers) of dependency subjects, as required by law. Currently, a .5 FTE Legal Secretary handles CWS noticing requirements. County Counsel believes that the increased noticing workload can be met with an additional 4 hours a week of Legal Secretary time, or approximately 0.1 FTE.

NCTPA

County Counsel has historically provided legal services to the NCTPA and its predecessor agency (CMA). In FY2009-10, County Counsel provided approximately 420 hours of Deputy County Counsel time to NCTPA, or about a .28 FTE. Most of these services were provided by an extra help employee. During FY2009-10, NCTPA notified the County that they intended to retain their own outside counsel and thus would no longer be utilizing County Counsel's services. Consequently, most appropriations and revenue for these services were deleted from the County Counsel's FY2010-11 budget.

Recently, after reviewing its projected workload during the next several years and the probable cost of outside counsel, NCTPA's Executive Director met with County Counsel and requested that the County consider contracting with NCTPA to provide a guaranteed minimum 0.50 FTE Deputy County Counsel who would be exclusively dedicated to NCTPA legal matters with the fully loaded costs of that 0.50 FTE Deputy County Counsel position (currently estimated at \$132 - \$138/hour) being funded by the NCTPA for a three year period with an option for a fourth year. Such an approach is expected to save NCTPA more than \$100,000 annually when compared with utilizing outside counsel. County Counsel does not believe that he can meet this request and the demand for legal services from County departments or programs without additional attorney resources.

Recommendations

In light of the above, County Counsel recommends that a 1.00 FTE Deputy County Counsel IV be added to the office that will be underfilled at the Deputy County Counsel III level. One half of that position will be devoted to providing NCTPA with legal counsel. The remainder will be devoted to dealing with the increase in the CWS

caseload, or other low priority legal issues that have arisen in the past or may arise in the future.

County Counsel further recommends that the current .50 FTE(C) Legal Secretary I position responsible for preparing the CWS notices be eliminated and replaced with a .6 FTE (C) Legal Secretary I, resulting in an increase of four hours per week, due to the increased CWS caseload.

The Director of Human Resources, in conjunction with the County Counsel, recommends the adoption of the accompanying Resolution regarding the change to the Departmental Allocation List for County Counsel, effective October 2, 2010.

County Executive Officer's Analysis

The County Executive Office (CEO) has reviewed this request and confirmed the CWS caseload, workload and fiscal impact data discussed above. The CEO has also reviewed data and arguments provided by County Counsel concerning the present lack of capacity of his office to meet the potential increased demand for CWS legal services and provide legal services to NCTPA without additional staff resources. However, the CEO has not conducted an independent assessment of the County Counsel's Office's practices and procedures to determine if there are changes that could be made that would allow the Office to absorb some or all of this potential additional workload. The CEO is recommending the addition of the positions because of a concern about increasing CWS caseload issues and the opportunity presented by the contract NCTPA to fund a significant part of the cost of a full-time attorney that could devote part of its time to CWS issues or relieve attorney's currently dealing with CWS issues of non-CWS responsibilities and free up their time to deal with an increase in the CWS workload.

Because of the uncertainty concerning the magnitude of future CWS caseloads, the CEO recommends that CWS caseloads and Deputy County Counsel staffing levels and County Counsel policies and practices be reviewed within the next two to three years.

SUPPORTING DOCUMENTS

A . Resolution

CEO Recommendation: Approve

Reviewed By: Britt Ferguson