

**COUNTY OF SONOMA
AGENDA ITEM
SUMMARY REPORT**

Clerk of the Board Use Only

Meeting Date

Held Until

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Agenda Item No:

Agenda Item No:

Department: County Counsel/County Administrator

(X) **4/5 Vote Required**

Contact:

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Board Date:

5/12/09

Deadline for Board Action:

AGENDA SHORT TITLE: Appropriations Transfer and Conflict Counsel Amendment

REQUESTED BOARD ACTION:

1) Resolution authorizing budgetary adjustment to FY 08-09 final budget for Court Support Services Alternate Public Defense and appropriation for contingencies in the amount of \$150,000 (4/5 vote required).

2) Approve Second Contract Amendment with Harry Allen to continue staffing the Early Case Resolution (ECR) Courtroom for April-June 2009 in the amount of \$10,247 per month. Authorize County Counsel to extend contract for FY 09-10 not to exceed 3.5% increase.

CURRENT FISCAL YEAR FINANCIAL IMPACT

EXPENDITURES

Estimated Cost \$ 414,030

Amount Budgeted \$ 264,030

Other Avail Approp. \$
(Explain below)

Additional Requested: \$ 150,000

Explanation (if required):

ADD'L FUNDS REQUIRING BOARD

Contingencies \$ 150,000
(Fund Name:)

Unanticipated Revenue \$
(Source:)

Other Transfer(s) \$
(Source:)

Add'l Funds Requested: \$ 150,000

Prior Board Action(s):

The Board approved a three-year contract with Harry Allen covering July 1, 2007 to June 30, 2010. A three month amendment for the ECR Courtroom was approved December 16, 2008.

Alternatives - Results of Non-Approval:

If the contract lapses, the Court will have to utilize other counsel for the ECR court at hourly rates, which could result in higher costs.

Background:

When the Public Defender cannot provide mandated representation of an indigent defendant for reasons of a conflict of interest, or for any other reason, outside counsel must be appointed. One method of providing fair, adequate and efficient representation in these cases is to retain defense attorneys under contract to insure availability and cost containment. If there is no contract, the Court would appoint attorneys at an hourly rate (\$75-\$120/hour depending on the type of case), which would be more expensive. The County is obligated to pay for the costs associated with the representation of indigent defendants.

Prior to fiscal year 2004-05, the Courts managed the alternate defense function and had at least two (never more than three) contracts for these services. This resulted in many appointments outside the contracts where attorneys had to be paid the more expensive hourly rate model. Since 2004, County Counsel has assumed the oversight and management of conflict counsel services and related costs. As part of the transfer of responsibility, County Counsel explored options for controlling costs and the exposure to costly multi-defendant cases. County Counsel reviewed various programs throughout the State, including having an alternate Public Defender's office, met with the local Bar to see if it could propose a viable alternative to the existing structure services, and ultimately determined that the best model was to enter into a master contract that provided for a sufficient level of conflict counsel representation.

The Current Three-Year Agreement

In 2007, County Counsel with assistance of County Administrator's staff, negotiated and reached agreement with attorney Harry Allen on a three-year contract at a cost of \$2,053,943 for the first year and 3 1/2 % increases for years two and three. The Agreement includes a requirement that Mr. Allen have subcontracts so that this helps insure that only in the most unusual circumstances will there be a conflict under this contract that would require the appointment of an attorney outside the contract at the hourly rate. The contract also provides retentions for investigative service and expert witness costs which, if not utilized, will be returned to the County or conversely if more is required, the County will pay.

Enhanced benefits of this three-year Agreement include: 1) cost containment in years two and three, 2) increased levels of coverage for conflicts, 3) enhanced coverage of civil contempt cases, 4) coverage for new juvenile court, 5) increased number of cases accepted, 6) improved case tracking and statistical reporting, 7) coverage for misdemeanor appeals, and 8) assistance from conflict attorneys for cost recovery. The Agreement also provides for a 1% increase or decrease in specific court related activity costs (felony, misdemeanor and juvenile attorney) if the cases assigned under the contract increase or decrease 5% or more.

(continued)

Attachments: Resolution

On File With Clerk: Contract and Addendum #2

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Board Action (If other than "Requested")

Vote:

Background: (Continued)

Finally, it provides for a “reopener” if caseload increases/decreases more than 10%, but does not require any monetary changes. The Agreement also required negotiations to begin in June 2009 for a potential successor contract, and provides an extension of 60 days at the county’s option if necessary to finalize negotiations of future agreements.

Need for Additional Funds for This Fiscal Year

Due to unusual circumstances, additional funds of \$150,000 are needed for this fiscal year. These circumstances include:

1. A pending six-defendant capital murder case, which by law requires the appointment of a second (“Keenan”) counsel. Keenan counsel for each of the defendants is estimated to cost an additional \$50,000.
2. A five-defendant murder case, which because of the extensive amount of witnesses already involved in the criminal justice system, resulted in the disqualification of several of Mr. Allen’s attorneys and the necessary appointment of two attorneys outside the contract. Additional cost of outside attorneys is estimated at \$45,000.
3. Estimated funds needed for expert witnesses (\$22,000) and investigators (\$18,000) that have been appointed by the Court.
4. Finally, several cases are expected, to (or have) gone to lengthy trials, which entitle counsel to \$280 per diem fees for each day beginning on day six. This is estimated to cost an additional \$15,000.

These estimates are assumed through the end of the 08-09 fiscal year. The FY 09-10 budget assumes that some of these costs will continue in the new year.

Harry Allen Contract Amendment for Early Case Resolution (ECR) Program

The ECR program was initiated in January 2009. On December 16, 2008, the Board authorized staffing changes for the effected departments and also approved an Addendum to the contract with Mr. Allen, to staff the ECR Court from January through March 2009 based on the Court’s initial plan to evaluate the Court after 90 days. The Court has extended the pilot through the end of the fiscal year and as such the agreement for ECR Conflict Attorney staffing will need to be extended through the end of the year. If the Court determines that the ECR court will continue after the end of the fiscal year, the contract will need to be extended. County Counsel is requesting authority to extend the amendment through the end of FY 09-10 or to the extent needed based on the Court’s determination to extend or terminate the specialty court. Funding for the ECR conflict attorney was included through June. The FY 09-10 budget assumes the continuation of the Court.