



# Monterey County

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

## Board Report

Legistar File Number: 18-1075

October 23, 2018

**Introduced:** 10/19/2018

**Current Status:** Agenda Ready

**Version:** 1

**Matter Type:** General Agenda Item

A. Direct the Auditor-Controller to reimburse County Counsel employees for taxes improperly assessed for reimbursements paid to County Counsel employees for litigation related expenses, including lodging and travel expenses, incurred during trials of *Aquino v. County of Monterey*, CASE NO. 14-CV-03387 EJD, and *Simonelli v. County of Monterey*, Case No.: 5:17-cv-01448-SVK.

B. Authorize County Counsel to contract with Hayashi & Wayland and Nossaman LLP to review a revised Travel & Business Expense Reimbursement Policy, the tax consequences of such reimbursements and tax issues related to other County matters.

### RECOMMENDATION:

A. It is recommended that the Board of Supervisors direct the Auditor-Controller to reimburse County Counsel employees for taxes improperly assessed for reimbursements paid to County Counsel employees for litigation related expenses, including lodging and travel expenses, incurred during trials of *Aquino v. County of Monterey*, CASE NO. 14-CV-03387 EJD, and *Simonelli v. County of Monterey*, Case No.: 5:17-cv-01448-SVK, contingent upon an opinion from Hayashi & Wayland and Nossaman, LLP.

B. Authorize County Counsel to contract with Hayashi & Wayland for an amount not to exceed \$50,000 and Nossaman LLP for an amount not to exceed \$50,000 to review a revised Travel & Business Expense Reimbursement Policy and the tax consequences of such reimbursements and other County matters.

### SUMMARY:

On October 2, 2018, the Monterey County Board of Supervisors, approved reimbursements to County Counsel employees for all litigation expenses related to the *Aquino v. County of Monterey* and *Simonelli v. County of Monterey trials*, upon approval by County Counsel that they were necessary litigation expenses. On October 3, 2018, County Counsel sent a memo to the Auditor-Controller informing him that the submitted reimbursements were necessary litigation expenses. The Auditor-Controller has now approved most of the reimbursements, but taxed the reimbursements. Accordingly, the County Counsel employees have still not been fully reimbursed for their expenditures at trial.

In addition, the Board issued a referral for County Counsel & the Auditor-Controller to revise the Travel & Business Expense Reimbursement Policy. County Counsel revised the policy and the Auditor-Controller's Office has questioned the propriety of the revisions. Also, we frequently have disagreements over the tax consequences of settlements and other agreements. Therefore, we request

authority to engage a local CPA and a tax lawyer to review the policy and the tax consequences of travel reimbursements and other matters.

DISCUSSION:

Several County Counsel employees recently were in trial on two cases in federal court in San Jose. Because of the hectic nature of trial, including often having to be at Court from 8:00 a.m. to 6:00 p.m., or later, and then meeting with witnesses thereafter to prepare for the next day of trial, trial counsel needed a hotel within walking distance of the Courthouse in San Jose. This also served as a meeting place for witnesses and, in general, a location to meet and strategize for trial. Although an attempt was made to find a hotel within walking distance of the Courtroom which fell within the Auditor-Controller's "travel policy", there were no hotel rooms available at the "government rate". The Auditor-Controller has taken the position that reimbursement for these hotel rooms is taxable because it did not fall within the "government rate". Moreover, the Auditor-Controller has taxed the full amount of hotel reimbursement versus the difference between the "government rate" and the actual rate paid. This action is improper.

Full reimbursement conforms with Monterey County Personnel Policies and Practices. Specifically, section A.19.1 states in part: "In addition to the mileage allowance provided for, an employee of the County is entitled to receive reimbursement for **his/her actual and necessary expenses** for other transportation and for meals, lodging, and incidentals incurred as a result of being assigned as part of his/her official duties ... to: a) Work excessively long hours away from regularly established headquarters;". Section A.19.2 states: "The Auditor-Controller is directed to allow the foregoing expenses upon the filing of a proper claim by the employee, approved by the employee's department head or his/her designee." This section is consistent with the California Labor Code, sections 2802 & 2804, which require actual cost reimbursement for work related expenses. Additionally, the lodging expenses qualify under the Auditor-Controller's own travel policy in that the trials were business that required multiple business days. (Monterey County Travel Policy V. D. 1. e.) Finally, the Code of Federal Regulations Title 41-301-11-300, specifically allows actual expense reimbursements without taxes for business expenses that are part of an agencies mission and/or if approved by the local agency.

For these reasons, we request the Board to direct the Auditor-Controller to reimburse County Counsel employees full costs without taxes, plus any interests incurred, for their expenses made in defending the County. We also request authority to contract with Hayashi & Wayland and Nossaman LLP to review the tax consequences of these reimbursements, other matters and a revised travel policy.

OTHER AGENCY INVOLVEMENT:

FINANCING:

Expenses will be funded through County Counsel-Risk Management.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

*Payment of these expenses furthers the proper administration of the County by reimbursing employees for the necessary expenses incurred in their job. The payment also furthers public*

*safety through the proper defense of the Sheriff's Office in litigation arising out of the Sheriff's duties.*

Mark a check to the related Board of Supervisors Strategic Initiatives

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by:

Approved by:

Susan K. Blich,  
Senior Deputy County Counsel x5161

Charles J. McKee,  
County Counsel x5312