



Monterey County

Item No.21

Board Report

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: A 20-348

August 25, 2020

Introduced: 8/7/2020

Current Status: Criminal Justice - Consent

Version: 1

Matter Type: BoS Agreement

a. Approve and authorize, retroactively, a non-standard Professional Services Agreement (PSA) with the Law Offices of Lawrence & Peck, in the amount of \$120,000 to provide case management and case supervision for the Alternate Defender Office with an effective term of July 1, 2020 through June 30, 2021;

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve and authorize, retroactively, a non-standard Professional Services Agreement (PSA) with the Law Offices of Lawrence & Peck, in the amount of \$120,000 to provide case management and case supervision for the Alternate Defender Office with an effective term of July 1, 2020 through June 30, 2021;

SUMMARY/DISCUSSION:

Monterey County addresses its Constitutional obligation to provide legal representation for indigent persons accused of criminal violations, and in certain civil proceedings (i.e. juvenile, mental health, truancy, sexually violent predator prosecutions), when the Public Defender has a disabling conflict of interest the Alternate Defender's Office (ADO). The Chief Alternate Defender maintains operational responsibility for the ADO. The Chief Alternate Defender manages the ADO attorney contracts and individual appointment of ADO attorneys when the Public Defender has declared a conflict of interest. Examples of conflicts include situations in which multiple persons are accused in the same charging document, or the Public Defender currently represents a victim or witness in a prosecution, or where a Public Defender client provides information which is used by law enforcement to bring charges. In such cases, it would be an ethical violation for the PD to represent or continue to represent such a client.

Some counties establish a second or even a third Public Defenders Office. Others, like Monterey County, have addressed it with the appointment, by contract, of an independent attorney or law firm to fulfill this responsibility, i.e., the Chief Alternate Defender. The Chief Alternate Defender also reviews conflicts of interest for the ADO when they arise, approves expert witnesses and investigation requests above an agreed-upon amount, and arranges for the appointment of private counsel when necessary. This is not an exhaustive list but is representative of the duties that are required of the Chief Alternate Defender. The duties are required to be carried out separately and distinctly from the Public Defender's Office (PDO), as stated in *Castro v. Los Angeles Board of Supervisors* (1991), 232 Cal. App. 1432.

The Public Defender recommends that the Board approve a Professional Services Agreement with the Law Offices of Lawrence & Peck to provide oversight and supervision of the ADO, i.e., to serve as

the Chief Alternate Defender. Lawrence & Peck were chosen for this agreement based on significant prior managerial, trial and litigation experience within the Public Defender and Alternate Defender Offices.

The Public Defender recommends approval of non-standard professional liability insurance and determines that the contractor's coverage meets the county's requirements that are sufficient for the purposes of providing the services agreed upon.

OTHER AGENCY INVOLVEMENT:

County Counsel has reviewed the Professional Service Agreement and cannot approve the following non-standard provisions: mutual termination provisions and non-standard payment provisions in a flat amount, as opposed to itemized invoices.

FINANCING:

Funding for this agreement is already included in the FY20-21 adopted budget. Fund 001- Public Defender PUB001-2270-Budget Unit 8168-Court Assigned Counsel. Approval of the recommended actions will have no additional impact on the County General Fund.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

PUBLIC SAFETY: The Alternate Defender strives to protect the constitutional rights of the indigent by providing them quality representation in a society free and safe from unlawful State interference, by vigorously defending individual rights where the Public Defender has a conflict of interest. Acceptance of the recommendations ensures the continuation of criminal defense services to the indigent.

Public Safety

Prepared by: Latasha Ellis-Bowers, Finance Manager, ext.5082



Approved by: Susan Chapman, Public Defender, ext.5806



Attachments:

Professional Service Agreement with the Law Offices of Lawrence & Peck