



County of Monterey

Item No.36

Board Report

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

Legistar File Number: A 23-248

June 13, 2023

Introduced: 6/2/2023

Current Status: Agenda Ready

Version: 1

Matter Type: BoS Agreement

- a. Approve and authorize the Contracts/Purchasing Officer or the Contracts/Purchasing Supervisor to execute a Agreement with the Law Office of William Scott Erdbacher, to provide case management and case supervision for the Alternate Defender Office with a term of July 1, 2023 through June 30, 2024. in the amount of \$132,300; and
- b. Approve non-standard insurance provisions in the Agreement, as recommended by the Public Defender.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve and authorize the Contracts/Purchasing Officer or the Contracts/Purchasing Supervisor to execute a Agreement with the Law Office of William Scott Erdbacher, to provide case management and case supervision for the Alternate Defender Office with a term of July 1, 2023 through June 30, 2024. in the amount of \$132,300; and
- b. Approve non-standard insurance provisions in the Agreement, as recommended by the Public Defender.

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 for the Alternate Defender's Office (ADO). The Chief Alternate Defender maintains operational responsibility for the Alternate Defender's Office (ADO). The Chief Alternate Defender manages the Alternate Defender's Office (ADO) attorney contracts and individual appointment of the Alternate Defender's Office (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 Public Defender 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 Alternate Defender's Office (ADO) when they arise, approves expert witnesses and investigation requests above an agreed-upon amount, and arranges for the appointment

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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 Office of William Scott Erdbacher to provide oversight and supervision of the Alternate Defender’s Office (ADO), i.e., to serve as the Chief Alternate Defender. William Scott Erdbacher was chosen for this agreement based on significant prior managerial, trial and litigation experience within the Public Defender and Alternate Defender Offices.

OTHER AGENCY INVOLVEMENT:

County Counsel and the Auditor-Controller have reviewed and approved this Agreement as to legal form and fiscal provisions respectively

FINANCING:

Funding for this agreement is already included in the FY23-24 recommended 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: Laura Henderson, Management Analyst I, ext.6054

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

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Attachments:

Professional Service Agreement with the Law Office of William Scott Erdbacher