



County of Monterey

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

Board Report

File #: 14-939, **Version:** 1

- a. Approve and authorize the Public Defender or designee to sign a Professional Services Agreement (PSA) with Frank W. Dice, Attorney-At-Law, in the amount of \$96,000 to provide case management and case supervision for the Alternate Defender Office (ADO) with an effective terms of July 1, 2014 through June 30th 2015; and
- b. Authorize the Contracts/Purchasing Officer, or his designee, to sign up to three (3) future Amendments to this agreement in which there is no significant change to the scope of work or increase in cost that exceeds five percent (5%) of the original amount of the Agreement.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve and authorize the Public Defender or designee to sign a Professional Services Agreement (PSA) with Frank W. Dice, Attorney-At-Law, in the amount of \$96,000 to provide case management and case supervision for the Alternate Defender Office (ADO) with an effective term of July 1, 2014 through June 30th 2015; and
- b. Authorize the Contracts/Purchasing Officer, or his designee, to sign up to three (3) future Amendments to this agreement in which there is no significant change to the scope of work or increase in cost that exceeds five percent (5%) of the original amount of the Agreement.

SUMMARY:

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 or is otherwise unavailable through a contract with a Chief Attorney of the Alternate Defender's Office (ADO). The Chief Alternate Defender maintains operational responsibility for the attorney contracts and individual appointment of qualified attorneys when the Public Defender (PD) has declared a conflict of interest.

For several years, the County has contracted with attorney Frank Dice to perform this legally mandated function. In so doing, the County has met its legal, ethical and professional obligations to indigent parties constitutionally entitled to legal representation.

DISCUSSION:

Monterey County provides legal services to indigent accused persons and others legally entitled to appointed counsel through the Public Defender's Office (PDO) and the Alternate Defender's Office (ADO) when the PD has a conflict of interest or is otherwise unable to accept court appointment of representation. Examples of conflicts include situations in which multiple persons are accused in the same charging document, or the PD currently represents a victim or witness in a prosecution, or where a PD 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 have addressed this problem by establishing a second or even a third Public Defenders Office. Others, like Monterey, have addressed it with the appointment via contract of an independent attorney to fulfill this responsibility. The ADO Chief 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 ADO Chief Attorney. 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.

OTHER AGENCY INVOLVEMENT:

The Public Defender has consulted with the CAO, County Counsel, and the Superior Court.

FINANCING:

Financing to cover this expense is already included in the FY 14-15 adopted budget.

Prepared by: Latasha Ellis, Management Analyst I, EXT. 5082

Approved by: James S. Egar, Public Defender, EXT. 5806

Attachments:

Professional Service Agreement for Frank W. Dice

Exhibit A - Scope of Services/Payment Provisions

Exhibit B - Justification for Insurance Modification