



## Board Report

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**File #: 18-699, Version: 1**

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- a. Approve and authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor 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 retroactive to July 1, 2018 through June 30, 2019; and
- b. Authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute a maximum of three (3) amendments to the agreement, subject to County Counsel review, extending the term by one (1) year per amendment, where total of any increases in costs does not exceed ten percent of the original agreement amount (\$9,600 total maximum increase) and where the amendments do not significantly change the scope of work or terms of the agreement.

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Approve and authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor 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 retroactive to July 1, 2018 through June 30, 2019; and
- b. Authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute a maximum of three (3) future amendments to the agreement, subject to County Counsel review, extending the term by one (1) year per amendment, where the total of any increases in costs does not exceed ten percent of the original agreement amount (\$9,600 total maximum increase) and where the amendments do not significantly change the scope of work or terms 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 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 and the Alternate Defender's Office (ADO) when the Public Defender 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 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 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, as stated in *Castro v. Los Angeles Board of Supervisors* (1991), 232 Cal. App. 1432.

**OTHER AGENCY INVOLVEMENT:**

County Counsel has approved Professional Service Agreement as to form.

**FINANCING:**

Funding for this agreement is already included in the FY 18-19 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.

X Public Safety

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

**Attachments:**

Professional Service Agreement for Frank W. Dice