



**Contra
Costa
County**

To: Board of Supervisors
From: Sharon L. Anderson, County Counsel
Date: March 23, 2021

Subject: APPROVAL OF REQUESTS FOR ATTORNEY CONFLICT WAIVERS UNDER CERTAIN CIRCUMSTANCES

RECOMMENDATION(S):

AUTHORIZE the County Counsel, or her designee, to consent to potential conflicts of interest that arise from the County being represented by Freeman Mathis & Gray in connection with the County's defense of *National Railroad Passenger Corporation vs. Contra Costa County*, et al.

AUTHORIZE the County Counsel, or her designee, to consent to potential conflicts of interest that arise from the County being represented by a law firm when the firm represents another party to the action in a separate, unrelated, matter provided that County Counsel has first determined that the representation is permitted by Rule 1.7 of the Rules of Professional Conduct promulgated by the State Bar of California.

FISCAL IMPACT:

There is no financial impact.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **03/23/2021** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: March 23, 2021

Monica Nino, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Kate Andrus,
925-655-2245

cc:

BACKGROUND:

Attorneys who practice in California are subject to rules of professional conduct that are promulgated by the State Bar of California. Rule 1.7 relates to conflicts of interest among current clients. The rule is attached as Attachment 1.

Potential Conflict of Interest

The County has tendered to Zurich American Insurance Company (Zurich) the County's defense in the case of *National Railroad Passenger Corporation vs. Contra Costa County, et al.* In the case, Amtrak has sued the County for allegedly failing to defend and indemnify Amtrak in two underlying personal injury lawsuits. The litigation arises out of a December 20, 2015, accident in which a truck was struck by an Amtrak train, resulting in injury to two people. Both of the injured people were trespassing on land owned by another railroad over which the County had a license to construct a detour road. Zurich accepted the County's tender and asked an attorney in the San Francisco office of Freeman Mathis & Gary (Freeman) to defend the County.

Freeman, through an attorney in the firm's Boston office, is representing Amtrak in an unrelated matter. The firm requests that the County consent to the firm's representation of the County in *National Railroad Passenger Corporation vs. Contra Costa County, et al.* A copy of the letter from the firm is attached as Attachment 2.

When evaluating a request from outside counsel that the County waive potential conflicts of interest, a number of factors are considered. Of primary importance is the nature of the representation and the potential risk associated with the law firm's relationship with the other party. Because the issues presented in *National Railroad Passenger Corporation vs. Contra Costa County, et al.* are unique and unrelated to the case being handled for Amtrak through Freeman's Boston office, waiver of a potential conflict does not create risk for the County. In addition, based on Freeman's communications with this office, County Counsel has determined that the representation proposed by Freeman is permitted under Rule 1.7 of the rules of professional conduct issued by the California State Bar.

Delegation of Authority to County Counsel

This board order authorizes County Counsel, or her designee, to consent to potential conflicts of interests when (i) the potential conflict arises as a result of a firm representing the County while representing another party to the action in a separate matter that is unrelated to the County, and (ii) County Counsel has determined that the representation is permitted by Rule 1.7 of the rules of professional conduct promulgated by the California State Bar.

Rule 1.7 establishes criteria for determining whether a lawyer's duties to one client are likely to have a negative impact on the lawyer's duties to another client. County Counsel

has the expertise necessary to determine whether the criteria established by Rule 1.7 have been met. The Board of Supervisors has a history of accepting County Counsel's recommendation as to whether to waive a potential conflict. By delegating authority to County Counsel to consent to conflict waiver requests that rely on the attorney's adherence to Rule 1.7, the Board of Supervisors will not be burdened with this technical action.

A copy of any consent that is granted by County Counsel pursuant to this board order will be provided to the Clerk of the Board and made available to the public.

CONSEQUENCE OF NEGATIVE ACTION:

If the County does not consent to the potential conflicts that arise as a result of Freeman representing Amtrak in litigation that is unrelated to the County, the County's insurer will have to identify a different firm to defend the County in *National Railroad Passenger Corporation vs. Contra Costa County, et al.* Having to identify new counsel could result in a delay in the resolution of the case.

If the authority to consent to potential conflicts of interest that arise as the result of a matter that is unrelated to the County is not delegated to County Counsel or her designee, requests for such conflict waivers will continue to be presented to the Board of Supervisors for approval, potentially delaying the start of the necessary legal services.

ATTACHMENTS

Rule 1.7 Conflict of Interest

Request for a Conflict Waiver