



Contra
Costa
County

To: Board of Supervisors
From: Monica Nino, County Administrator
Date: June 21, 2022

Subject: Criminal Conflict Program

RECOMMENDATION(S):

APPROVE and AUTHORIZE the County Administrator, or designee, to execute an agreement with Independent Counsel, Inc., subject to County Counsel review and approval, in an amount not to exceed \$18,000,000 to provide mandated criminal conflict defense and other non-criminal legal services for the period July 1, 2022, through June 30, 2025.

FISCAL IMPACT:

Costs are budgeted for fiscal year 2022/23 in General Fund Budget Unit 0248 – Conflict Defense Services, administered by the County Administrator's Office. The proposed contract will cover a 3-year term from July 1, 2022, through June 30, 2025. FY 2022/23 rates are being increased by approximately 5% from the current FY 21/22 rates; rates will be increased 5% annually for FY 2023/24 and FY 2024/25. The estimated FY 22/23 costs is approximately \$5.6 million. The FY 2022/23 budget includes \$6 million for criminal conflict program services which will provide a small contingency if there are additional mandated criminal legal defense costs. For example, legal defense cost for a single capital case could cost up to \$200,000. The County will continue to be billed for actual expenditures incurred.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **06/21/2022** ☒ 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: June 21, 2022

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

By: Antonia Welty, Deputy

Contact: Paul Reyes,
925-655-2049

cc:

BACKGROUND:

For over 30 years, the County has contracted the administration of a criminal conflict program for the provision of indigent defense services for clients that cannot be represented by the Public Defender's Office or the Alternate Defender's Office. This has involved several tasks: maintaining a list of qualified, independent attorneys willing to take cases that are referred from the County or the Contra Costa County Superior Court, assigning the cases to each attorney, verifying 'billable hours' and seeing that the individual attorneys are paid pursuant to contracted rates. The County, in turn, reimburses the contractor for its services and those of the independent attorneys.

In early 2019, the County had issued a request for proposals for the administration of the County's conflicts program ("Program"). The County received two bids and the selection committee performed a review of the proposals and recommended awarding the contract to Independent Counsel, Inc. On July 1, 2019, the administration of the Program transitioned to Independent Counsel, from the Contra Costa County Bar Association. Independent Counsel continued the work of the existing conflict program without interruption. Independent Counsel's administration of the Program has been consistent and reliable.

BACKGROUND: (CONT'D)

The County Administrator's Office has been in negotiations with Independent Counsel to administer the Program for a new three-year term, July 1, 2022, through June 30, 2025. Independent Counsel will continue to administer a panel of independent attorneys to provide indigent criminal defense for criminal cases (adult and juvenile) where the Public Defender has a legal conflict of interest. Independent Counsel will also continue to administer a panel of independent attorneys for other legal services, such as representation in conservatorship and probate guardianship cases. Under the new agreement, Independent Counsel will be incorporating an attorney support function that will provide panel attorneys access to additional professional support, such as legal research, paralegal services, and attorney mentoring.

The proposed agreement will not include indigent criminal legal defense for new "overload" (or "overflow") cases; cases that cannot be represented by the Public Defender or Alternate Defender due to a lack of attorney case capacity. Overload cases that were previously referred to the Program under the prior agreement will continue to be represented by the assigned panel attorney and will be paid under the new agreement until the case is closed. The Public Defender's Office has not "overloaded" any cases due to lack of capacity since October 2021. The County Administrator's Office is continuing to work with the Public Defender's Office in evaluating staffing needs and anticipates returning to the Board of Supervisors at its July 26, 2022, meeting with an update on Public Defender staffing needs.

CONSEQUENCE OF NEGATIVE ACTION:

Payment of criminal conflict attorney services is a mandated County cost. If the recommended action is not approved, the contract with the Independent Counsel will terminate as of June 30, 2022, and the County will continue to be obligated to pay Independent Counsel for cases previously assigned to the contractor and still in progress. The appointment and payment of private attorneys for new cases in which the Public Defender and Alternate Defender have a legal conflict of interest will revert to the court-appointed method used prior to the criminal conflict program contract -- a less efficient and more costly alternative. All new criminal and delinquency conflict cases would be referred to the courts for appointment of defense counsel.