

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

771



**FROM:** Executive Office

**SUBMITTAL DATE:**  
July 24, 2007

**SUBJECT:** Indigent Defense Contracts for Extraordinary Death Penalty Cases

**RECOMMENDED MOTION:** That the Board of Supervisors

- 1) approve the rate structure outlined in Attachment A, for extraordinary death penalty cases;
- 2) approve the attached two contracts, with lead attorneys David Macher and John Aquilina, for legal services in connection with two special circumstances homicide cases in the Indio courts.
- 3) Authorize the County Executive Officer to execute similar contracts, at the Board-approved rates, if necessary.

**BACKGROUND:** The County of Riverside contracts with panels of attorneys to provide criminal defense services for indigent defendants when the Public Defender has a conflict that precludes representation. The 2006-07 contract for the desert region required the contractor to handle up to three special circumstances cases in which the District Attorney sought the death penalty. Such cases are extremely labor-intensive for both the prosecution and the defense.

During the last contract year, the District Attorney announced the intent to seek death for five Indio defendants represented by the Desert conflict panel. This unprecedented action forced (continued)

Kathryn Field, Principal Management Analyst

**FINANCIAL DATA**

Current F.Y. Total Cost:	\$54,000-180,000	In Current Budget:	no
Current F.Y. Net County Cost:	\$54,000-180,000	Budget Adjustment:	no
Annual Net County Cost:	\$0	For Fiscal Year:	FY 2007-08

**SOURCE OF FUNDS:** Indigent Defense Budget – General Fund

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

APPROVE

BY:   
Bill Luna

County Executive Office Signature

Dep't Recomm.:  Consent  Policy  
Per Exec. Ofc.:  Consent  Policy

Prev. Agn. Ref.: 3.4 of 7/17/07 | District: ALL | Agenda Number:

ATTACHMENTS FILED  
WITH THE CLERK OF THE BOARD

3.14

the County Executive Office to identify additional qualified attorneys to handle the two unanticipated cases. Standard court practice is to assign two attorneys to each death penalty case, one serving as lead counsel, and one as second chair. The court has appointed Mr. Macher and Mr. Aquilina to represent the defendants as lead counsel. Compensation of counsel is a county charge, subject to court approval.

These two contracts total \$180,000 in legal fees; investigative expenses in connection with the cases are a state responsibility. No offsetting revenue is available. As death penalty cases tend to be protracted, it is difficult to estimate how many of the payments will impact this fiscal year. Therefore, any additional funds needed will be requested during a quarterly budget report.

The 2007-08 adult indigent defense contracts were restructured so that additional death penalty cases, exceeding the contract amount, are to be administered by the contractors. In the event that the contractors are unable to provide counsel for the additional cases, the CEO will locate competent counsel at the rates set out in Attachment A. This rate structure, in which second counsel is to be paid half as much as lead, was developed after consultation with surrounding counties.

County Counsel prepared the attached contracts, in conformance with county standards.

## ATTACHMENT A

### Rate Structure for Legal Defense in Death Penalty Cases

The following rates apply to felony cases in which The People are seeking the death penalty, and where second counsel may be assigned. Capital cases for which legal representation cannot be provided within existing indigent defense contracts shall be compensated at the rates below. For each extraordinary case, the County Executive Office, in consultation with County Counsel, shall determine whether the case falls within Category A, B, C or D below.

Category A. 1 defendant & 1 victim = \$70,000 for lead counsel/ \$35,000 for second chair. The special circumstance is usually limited to Penal Code section 190.2 (a) (17).

Category B. 1+ defendant & 1+ victim & 1 killing incident = \$90,000 for lead counsel/ \$45,000 for second chair. Involves a more difficult or complicated special circumstance of more than one victim killed in the same incident; or complex factual or legal issues in the trial or penalty phase; or more than one defendant which would be considered a Category 1 case if there were only one defendant.

Category C. 1+ defendant & 1+ victim & more than 1 killing incident = \$110,000 for lead counsel/ \$55,000 for second chair. Involves one defendant and more than one victim killed in more than one incident or at different times; may also involve more than one defendant that would be a Category 2 case if there were only one defendant; or may involve a case that is significantly complicated by unusual publicity or notoriety or complex factual or legal issues in the trial or penalty phase.

Category D. Complex and high-profile, with 1+ defendant & 1+ victim & more than 1 killing incident = \$130,000 for lead counsel/ \$65,000 for second chair. These are unique cases that occur infrequently, that receive a great amount of publicity or notoriety, or that involve many victims or incidents. In this category only, a higher amount may be approved with justification for a fee reasonable under the particular circumstances of the case.

Billings are to be submitted to the attention of County Executive Office in writing upon the following schedule: 30% at appointment of counsel or execution of contract; 30% at start of trial; 30% at conclusion of trial; 10% at completion of after-trial duties (including final sentencing, completion of all steps within the power of the attorney to obtain settlement of the record on appeal as required under Penal Code § 1240.1, and the Court's acceptance and approval of the final accounting required by Penal Code § 987.9 for any sums provided pursuant to that section).