

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

645



FROM: Executive Office

SUBMITTAL DATE:
May 4, 2009

SUBJECT: Amendment to Indigent Defense Contract

RECOMMENDED MOTION: That the Board of Supervisors approve the attached amendment to the existing contract with Criminal Defense Lawyers, and authorize the chairman to sign the amendment on behalf of the Board.

BACKGROUND: The existing contract with the general partnership Criminal Defense Lawyers (CDL) provides for legal services to indigents as directed by the Court when the Public Defender has a conflict preventing representation. This firm handles criminal cases in Riverside and the mid-county region. The current contract provides up to \$60,000 per month for investigative expenses, discovery costs and expert witnesses. The attached amendment increases that amount to \$90,000, which covers expenses for cases in both the Riverside and Southwest courts. These funds are audited regularly to ensure that they are used appropriately and effectively. County Counsel prepared and approved the attached amendment. Although the amendment is effective April 1, 2009, the April allocation of \$60,000 has already been sent, and the augmented payments would not actually begin until May 2009. (continued)

Departmental Concurrence

Kathryn Field, Deputy County Executive Officer

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 60,000	In Current Year Budget:	yes
	Current F.Y. Net County Cost:	\$ 60,000	Budget Adjustment:	no
	Annual Net County Cost:	\$0	For Fiscal Year:	2008-09

SOURCE OF FUNDS: Indigent Defense budget	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Gary M. Christmas

County Executive Office Signature

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

Prev. Agn. Ref.: 3.13 of 7-15-08 | District: all | Agenda Number:

3.7

Amendment to Indigent Defense Contract, continued

As outlined in Penal Code 987.2, the cost of investigating criminal cases for indigent defendants is a county responsibility. Section A states "In any case in which a person... desires but is unable to employ counsel, and in which counsel is assigned in the superior court to represent the person in a criminal trial, proceeding, or appeal, the following **assigned counsel shall receive a reasonable sum for compensation and for necessary expenses**, the amount of which shall be determined by the court, to be paid out of the general fund of the county." PC 987 further describes those necessary services as "supportive services including, but not limited to, medical and psychiatric examinations, investigative services, expert testimony, or any other form of services provided to assist the defendant in the preparation and presentation of the defendant's case." Case law indicates that such services are to be comparable to those provided by the office of the Public Defender.

Criminal Defense Lawyers has had the contract for adult alternate defense in the entire Western County since July 1, 2006. Each month, the panel is issued two checks for anticipated costs of necessary investigative expenses: one to an account for the Mid-county Courts, and one for Riverside. A provision in the contract allows the county to suspend the monthly payments if balances in these accounts build up, although in the past year balances have not accrued. Another provision allows the county to demand that the balance be returned upon request. The contract is up for renewal on July 1, 2009.

CDL's reports show that the balances in the trust accounts are near zero. In the past month, CDL has forwarded to the Executive Office letters from five investigative firms voicing complaints about payment delays. The letters state that their invoices to CDL are being paid more than 60 days late.

Below is a chart showing how the average monthly cost of investigations has changed over the last few years:

Average Monthly Investigative Expenses			
Court:	FY 2006-07	FY 2007-08	FY 2008-09
Riverside	\$29,242	\$34,846	\$37,026
Mid-county	\$22,364	\$24,941	\$29,886
Total	\$51,606	\$59,787	\$66,912

Investigative costs are highly variable. In busy months, invoices total over \$50,000 for each region. By amending the contract to these higher monthly allotments, a cash flow problem can be avoided, and payments to those providing these necessary services can be made in a timely manner.

Factors contributing to the increased cost include the full-year impact of the October 2007 change in the court-approved hourly rate for investigators in indigent cases (now \$32, instead of the \$25 that was in effect for 14 years); an increase in the number of cases sent to trial (and needing expert witnesses) instead of being settled at an earlier stage; and the availability and greater complexity of forensic evidence.

Conflict Defense Lawyers has a formal process for reviewing each attorney's request for investigator time (which is paid at the court-approved rate). Each attorney must submit an Investigation Request Form to CDL's executive director and include a detailed justification for the request. The attorney must certify under penalty of perjury that the services are necessary to the case.

CDL submits reports monthly showing the activity in each account, although attorney-client privilege prevents the Executive Office from examining the actual invoices. The last audit of these accounts, performed by a retired Superior Court judge, was completed in July 2007 and found adequate controls over CDL's processes. The accounts are due to be audited again this summer.

1 **FIRST AMENDMENT TO CONTRACT TO PROVIDE LEGAL SERVICES**

2 (COUNTY and Criminal Defense Lawyers)

3 That the Agreement between the COUNTY OF RIVERSIDE ("COUNTY") and Criminal
4 Defense Lawyers ("ATTORNEYS") entered into on July 15, 2008 Agenda Item No.3.13, for Indigent
5 Defense Legal Services in Riverside Superior Court, Western and Mid-County Divisions (including
6 Southwest Justice Center), is hereby amended, effective April 1, 2009, as follows:

7 1. To amend Section 8. EXPENSES by modifying numbered lines 9-11 to read as follows:

8 "For these services during the contract term, the additional sum of \$50,000 per month for
9 Riverside Cases, and another \$40,000 per month for Mid-County cases, shall be paid to ATTORNEYS
10 and set aside monthly and maintained in a separate interest bearing trust account for this purpose."
11

12 All other terms and conditions of the Agreement remain in full force and effect.

13 IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to
14 execute this First Amendment.

15 COUNTY OF RIVERSIDE

16 CRIMINAL DEFENSE LAWYERS

17 By _____
18 Chairperson, Board of Supervisors

17 By Steve J. Harmon
18 Steve Harmon

19 Date _____

20 By Paul Grech
21 Paul Grech

21 ATTEST: Nancy Romero, Clerk

22 By _____
23 Deputy