

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

338




**FROM:** County Counsel

**SUBMITTAL DATE:**  
October 3, 2012

**SUBJECT:** Waiver of Conflict of Interest

**RECOMMENDED MOTION:** That the Board of Supervisors consent to the waiver of conflict of interest and authorize County Counsel to sign the letter of consent of waiver for the law firm of Nixon Peabody LLP to represent the County of Riverside in the extension of a letter of credit with Bank of America in regards to certain of the County's Certificates of Participation.

**BACKGROUND:** The County retains the law firm of Nixon Peabody LLP ("NP") to represent the County as Special Counsel and Bond Counsel in a number of financing transactions. Specifically, NP negotiated a letter of credit with Bank of America regarding the County's Certificates of Participation (2009 Public Safety Communication and Woodcrest Library Projects Refunding). That letter of credit needs to be extended to avoid its scheduled expiration. NP also represents Bank of America on certain matters that are wholly unrelated to the letter of credit.

  
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 Dale A. Gardner, Deputy County Counsel for  
 Pamela J. Walls, County Counsel

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$	In Current Year Budget:
	Current F.Y. Net County Cost:	\$	Budget Adjustment:
	Annual Net County Cost:	\$	For Fiscal Year:

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

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

  
 BY: \_\_\_\_\_  
 Denise C. Hardien

**County Executive Office Signature**

- Consent
- Policy
- Consent
- Policy

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

3.16

BACKGROUND (continued):

The attorneys at NP who represent Bank of America are different attorneys than those NP attorneys who represent the County regarding the letter of credit extension. Consequently it is assured that NP will be zealous in representing the County when negotiating against Bank of America. Furthermore, there is no material risk that the County's or Bank of America's confidential client information would be disclosed to the other party.

The request for a conflict of interest waiver by NP is prompted by Rule 3-310 of the California Rules of Professional Conduct, which provides, in pertinent part:

“(C) A member [of the Bar] shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.”

County Counsel and the Executive Office have reviewed the attached waiver of conflict of interest letter and are of the opinion that a conflict of interest would not arise in connection with NP's concurrent representation of the County and Bank of America. Furthermore, County Counsel and the Executive Office do not believe that the County's interests would be adversely affected by NP's concurrent representation of the County and Bank of America.

Attachment:  
Conflict of Interest Waiver Request Letter

**NIXON PEABODY**LLP  
ATTORNEYS AT LAW

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September 19, 2012

Christopher Hans  
Deputy Executive Officer  
County of Riverside  
4080 Lemon Street, 4<sup>th</sup> Floor  
Riverside, California 92501

Dear Christopher:

As you know, you have asked us to represent you with respect to an extension of your letter of credit with Bank of America ("BOA") supporting the County's Certificates of Participation (2009 Public Safety Communication and Woodcrest Library Projects Refunding). BOA has authorized us to disclose to you that this firm represents BOA with respect to various unrelated matters. Insofar as I can presently determine, the factual and legal issues likely to arise in the work that you have asked us to do appear to be unrelated to the work we are presently doing or appear likely to do for BOA.

Under the ethics rules that apply to all lawyers, this firm and I may not oppose a current client, even on an unrelated matter, without informed consent. This means that I must explain to both BOA and you the risks and reasonably available alternatives of consenting and that I cannot proceed unless both BOA and you consent. The most likely alternative to your consent to our representation of you in the proposed new matter is that you will need to seek and engage new lawyers for that matter.

In deciding whether to consent, you should consider how our representation of BOA as described above could or might affect you. For example, clients that are asked to waive or consent to conflicts typically should consider whether there is any material risk that "their" attorney will be less zealous or eager on their behalf due to the conflict. Similarly, clients should consider whether there is any material risk that their confidential information will be used adversely to them due to the conflict. The proposed new matter and the existing matters in which we represent BOA are wholly unrelated and will be handled by different lawyers within the firm. For these reasons, we do not believe that there is any material risk that our commitment and dedication to your interests will be adversely affected, and we believe that we will be able to

provide competent and diligent representation to you in the new matter. Nevertheless, these are issues that you should consider for yourself.

In connection with this firm's duty of loyalty to its clients, it has an obligation to share any information it may have that is relevant to the representation. In this case, however, that duty conflicts with this firm's obligation to maintain the confidentiality of information of its other client, BOA. Therefore, by granting your consent, you will be agreeing that you understand that we will not provide confidential information of BOA to you even though it may be material to your interests.

We agree that any privileged, sensitive, proprietary, or other confidential information of a nonpublic nature acquired by us as a result of our representation of you will not be transmitted to our lawyers who may be involved in the representation of BOA.

You agree that this firm may continue to represent BOA in other matters not involving you and may represent you in other matters not involving BOA. If any litigation, arbitration or other adversary proceeding or claim arises between BOA and you with respect to the above described matter, Nixon Peabody will not act as counsel to either BOA or you with regard to such litigation.

This is an important decision, and we suggest that you consider consulting independent counsel to assist you in deciding whether to consent. There is no requirement that you do so, and whether you consult such counsel is your decision.

Please review this matter carefully. If you have any questions that you would like me to answer prior to reaching a decision on this issue, please let me know. If you are willing to consent after such review as you believe appropriate, please sign the enclosed extra copy of this letter in the space provided and return it to me.

Very truly yours,

  
Charles C. Wolf

For County of Riverside

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title: