



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
District Attorney



Date: March 27, 2013
Board Meeting Date: April 23, 2013
Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Stephen M. Wagstaffe, District Attorney
Subject: Certifying the critical need for retiree appointment

RECOMMENDATION:

Adopt a Resolution authorizing the hiring of retired Deputy District Attorney Alfred Giannini to an extra help position in order to assist in the prosecution of the case of People v. William Hamilton Ayres, and certifying, pursuant to Government Code §7522.56(f) (1), that the nature of employment and appointment is necessary to fill a critically-needed position before the post-retirement 180 day separation period expires.

BACKGROUND:

On September 12, 2012, the California Public Employees' Pension Reform Act, which is known as "PEPRA" (Assembly Bill 340), was signed into law effective January 1, 2013. Additionally, Assembly Bill 197, which amends a portion of the 1937 Act, was signed into law the same date to be effective January 1, 2013. The PEPRA legislation includes provisions in Government Code §7522.56 requiring a 180 day separation ("sit-out") period following the date of retirement for non-safety retirees who are re-employed by a public agency within the same retirement system as an employee or through a contract unless:

- The employer certifies the nature of the employment and that appointment is necessary to fill a critically-needed position before the 180 days has passed.

For the exception to apply, legislation requires that your Board, as the employer's governing body, must approve by resolution the appointment in a public meeting and not on the consent calendar.

DISCUSSION:

A District Attorney is vested with the authority to prosecute criminal offenses. In fulfilling this role, the San Mateo County District Attorney's Office seeks to take all reasonable measures to prosecute criminal actions to the best of its ability and to the full extent of the law. Alfred Giannini recently retired after serving thirty-four years as a prosecutor,

first in the County of San Francisco, and for the last ten years as a Deputy District Attorney in the Homicide Unit, for San Mateo County. Mr. Giannini conducted over one hundred jury trials in his career, approximately fifty of those being homicides.

The prosecution of case number SC064366A, People v. William Hamilton Ayres, is a complex and high profile matter which necessitates Mr. Giannini's expertise. Dr. Ayres is charged with numerous counts of child molestation involving child patients that he saw in the course of his profession as a psychiatrist. The case has a long and complicated history. Charges were initially filed in 2007 and the case first proceeded to jury trial in June of 2009, which resulted in a hung jury. As the prosecution sought to bring the case to trial again, the defense declared a doubt regarding the defendant's mental competence to stand trial, alleging that Dr. Ayres was suffering from a form of dementia. In June of 2011, the case proceeded to trial on the issue of his mental competence, and that jury reached an impasse as well. The prosecution, at that point, conceded incompetence, as it was not believed that a different conclusion could be reached by a unanimous jury upon retrial on the competency issue. Dr. Ayres was sent to Napa State Hospital until such point as he regained competence. In July of 2012 this county was notified by Napa State Hospital that Dr. Ayres had regained competency and referred his case back to San Mateo County for a hearing on restoration of competence. Following a hearing in October of 2012, Dr. Ayres was found competent to stand trial. Jury trial on the child molestation charges is set to begin on May 13, 2013. Mr. Giannini will assist the Deputy District Attorney trying this matter by providing advice drawn from his decades of experience in trying complicated and high profile felony criminal actions. Given the current staffing of the District Attorney's Office, it is not possible to lend this level of experience to this matter from the pool of current employees without creating a void in other areas.

Mr. Giannini retired on March 29, 2013. The trial is scheduled to commence on May 13, 2013. Mr. Giannini's assistance is needed immediately for the preparation of the matter for trial. Mr. Giannini will be paid \$86.71 per hour for his assistance on this matter for a period not to exceed 960 hours in 12 months. This rate is equivalent to the hourly rate of pay for a Deputy District Attorney IV, Mr. Giannini's former position.

County Counsel has reviewed and approved the Resolution as to form.

Approval of the Resolution contributes to the Shared Vision 2025 outcome of Safe Neighborhoods by assisting in the prosecution of a felony criminal matter.

FISCAL IMPACT:

There is no increase in Net County cost associated with the recommended action. The funds that will be used to pay the Extra-Help employee will come from the already approved budget of the District Attorney's Office.