



# County of San Mateo

## Inter-Departmental Correspondence

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**Department:** COUNTY MANAGER

**File #:** 16-176

Board Meeting Date: 6/6/2017

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**Special Notice / Hearing:** None  
**Vote Required:** Majority

**To:** Honorable Board of Supervisors  
**From:** Reyna Farrales, Deputy County Manager  
John L. Maltbie, County Manager  
**Subject:** Agreement for Indigent Legal Representation Services

**RECOMMENDATION:**

Adopt a resolution authorizing an agreement with the San Mateo County Bar Association (SMCBA) for indigent legal defense and other services provided by the Private Defender Program (PDP) for the period of June 1, 2017 through June 30, 2019, in an amount not to exceed \$4,718,205 for services provided during July 1, 2017 through September 30, 2017 and, for services provided after September 30, 2017, use of unspent funds from advance payments made under the previous agreement, until the County Controller has completed a follow-up audit and signed off on all financial reporting obligations as specified in the agreement, and an amendment to the agreement has been authorized by the Board with compensation terms for services provided through June 30, 2019.

**BACKGROUND AND DISCUSSION:**

Since 1968, the County's mandated indigent legal representation services has been provided by the Private Defender Program (PDP) through a contract with the San Mateo County Bar Association (SMCBA). The current two-year agreement with the SMCBA expires on June 30, 2017. The contract amount for Fiscal Year 2016-17 is \$18,872,822. This does not include the contract amendment for \$5 million for the Sunny Day cases. To date \$3.5 million has been paid to the PDP for these cases, and with the disposition of the cases nearly complete, the PDP has recently notified the County that the remaining \$1.5 million will not be needed, as funds are available in the existing two-year agreement.

On September 20, 2016 your Board approved recommendations from the County Manager and County Controller after reviews were conducted of the PDP. These recommendations included improvements to financial and management practices, including increased accuracy and reliability of reporting on cases, costs, and performance, more transparency on selection criteria and process for recruiting attorneys on the PDP panel, and improvements to the processing of complaints about PDP attorneys, among other recommendations. The Board also approved a 24-month notice to terminate the agreement, and completion of a follow-up audit by the County Controller after six months.

Since September 2016, PDP staff have made progress on several recommendations, but are still working on the financial and performance reports approved by your Board. These reports are necessary for the County to conduct the follow-up audit, and negotiate the financial terms of the agreement that are aligned with actual costs to perform the work.

The PDP has undergone staffing changes over the last several months. Chief Defender John Digiacinto announced he would be retiring in June of this year. His last day in the office was in late March. On March 15th the SMCBA Board of Directors appointed Myra Weiher, who has served as Assistant Chief Defender since 2006, as the new Chief Defender. In addition, the PDP has suffered some turnover in their controller position, when their controller resigned in March of this year as well. An interim controller has been appointed and a recruitment is underway. In light of these circumstances, the County Controller has communicated that his staff cannot perform a follow-up audit until a new Controller is selected and the financial reports are available for review.

This agreement will supersede the current agreement expiring on June 30, 2017. The SMCBA Board of Directors is scheduled to approve the agreement before the June 6 Board meeting. The agreement includes the following actions approved by your Board back in September:

- Two-year notice of termination, with required transition services
- Financial and performance reporting on cases and costs
- Complaint resolution process for client requests to change assigned attorneys
- Quarterly payments after delivery and review of financial reports
- Transparency with attorney recruitment and selection process
- Change of outside auditors at least once every five years

The agreement also includes new juvenile dependency services provided by a social worker and/or educational consultant to assist PDP attorneys assigned to these cases; these services will be paid for by the State through the Court.

At this time, staff recommends payment for PDP services through September 30, 2017, in an amount not to exceed \$4,718,205, and use of any unspent balances from advance payments made under the previous agreement for services after September 30, until the County Controller has completed a follow-up audit and signed off on all financial reporting obligations as specified in this agreement. It is anticipated that the Controller's follow-up audit will be completed by December 31, 2017 and that a subsequent amendment to the agreement with compensation terms covering services through June 30, 2019, will be brought to your Board for consideration.

County Counsel has reviewed and approved the agreement and resolution as to form.

Approval of this agreement contributes to the Shared Vision 2025 outcome of a healthy, safe and prosperous community by ensuring that all residents of San Mateo County, regardless of their socio-economic standing, receive competent legal representation in the court of law as provided for by the United States Constitution.

**PERFORMANCE MEASURE:**

All financial reporting obligations as described in this Agreement will be met by December 31, 2017.

**FISCAL IMPACT:**

This new two-year agreement includes payment for services provided during the period of July 1, 2017 through September 30, 2017, for an amount not to exceed \$4,718,205. This amount has been included in the Recommended Budget and is based on the case rates from the prior contract. An amendment to this Agreement will be brought back to your Board with new financial terms covering the remainder of the term of the Agreement.