

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

| | | | |
|---|---|--|---------------------|
| (1) DEPARTMENT County Administrative Office | (2) MEETING DATE 8/12/2014 | (3) CONTACT/PHONE Geoff O'Quest 781-5011 | |
| (4) SUBJECT Request to approve an amendment to the contract with Maguire and Ashbaugh for primary public defender services and approve a corresponding budget adjustment in the amount of \$153,340 from General Fund contingencies in Fund Center 135 - Public Defender. All Districts. | | | |
| (5) RECOMMENDED ACTION It is recommended that the Board: 1) Approve an amendment (Amendment #3) to the contract with Maguire and Ashbaugh for primary public defender services and 2) Approve a corresponding budget adjustment in the amount of \$184,008 from General Fund contingencies in Fund Center 135 - Public Defender. | | | |
| (6) FUNDING SOURCE(S) General Fund Contingencies | (7) CURRENT YEAR FINANCIAL IMPACT \$153,340 | (8) ANNUAL FINANCIAL IMPACT \$184,008 | (9) BUDGETED? No |
| (10) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Presentation <input type="checkbox"/> Hearing (Time Est. ___) <input type="checkbox"/> Board Business (Time Est. ___) | | | |
| (11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input checked="" type="checkbox"/> Contracts <input type="checkbox"/> Ordinances <input type="checkbox"/> N/A | | | |
| (12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A | | (13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input checked="" type="checkbox"/> 4/5 Vote Required <input type="checkbox"/> N/A | |
| (14) LOCATION MAP N/A | (15) BUSINESS IMPACT STATEMENT? No | (16) AGENDA ITEM HISTORY <input checked="" type="checkbox"/> N/A Date: _____ | |
| (17) ADMINISTRATIVE OFFICE REVIEW This item was prepared by the Administrative Office. | | | |
| (18) SUPERVISOR DISTRICT(S) All Districts | | | |

County of San Luis Obispo



TO: Board of Supervisors

FROM: Geoff O'Quest
781-5011

DATE: 8/12/2014

SUBJECT: Request to approve an amendment to the contract with Maguire and Ashbaugh for primary public defender services and approve a corresponding budget adjustment in the amount of \$153,340 from General Fund contingencies in Fund Center 135 - Public Defender. All Districts.

RECOMMENDATION

It is recommended that the Board:

- 1) Approve an amendment (Amendment #3) to the contract with Maguire and Ashbaugh for primary public defender services, and
- 2) Approve a corresponding budget adjustment in the amount of \$153,340 from General Fund contingencies in Fund Center 135 - Public Defender.

DISCUSSION

Executive Summary

The County's primary public defender firm, Maguire and Ashbaugh, is seeking additional resources to be added to their contract, based on growth in their caseload and hours. After negotiation with the firm, the Administrative Office supports an increase of \$153,340 in FY 2014-15.

Background

The Constitution of the State of California requires that counties provide for the legal defense of indigents accused of crimes. San Luis Obispo County contracts with private attorneys to provide these public defender services. The County contracts with the law firm Maguire and Ashbaugh to serve as the County's primary public defender.

The County's contract with Maguire and Ashbaugh provides for 20 attorneys, three paralegals, four investigators and one social worker. Total compensation for these resources is currently set at \$3.5 million, and is adjusted each year based on the annual Consumer Price Index (CPI). Under section 9 of the current contract for services, Maguire and Ashbaugh may request a modification of the amount of compensation payable pursuant to the Agreement when new cases or statutes result in extraordinary expenses or an unforeseen increase in legal responsibilities.

Maguire and Ashbaugh have requested additional resources to keep pace with the workload driven in large part by the increasing number of felony cases requiring representation. They cite significant growth in the number of new felony cases (up 37%) and felony attorney hours (up 28%) between FY 2010-11—the first year of the current contract—and FY 2012-13. Maguire and Ashbaugh's data is self-reported, but a comparison to data provided by the Courts and the District Attorney's Office (DA) shows similar percent increases in felony cases (Courts +29% and DA +30%). Note that unlike the public defender, Court and DA numbers include all felony cases filed in the county, not just those referred to the Public Defender.

Maguire and Ashbaugh also cite an increase in felony attorney hours to support their request. There is no outside comparison data with which to compare the numbers provided, but an analysis of monthly data provided by Maguire and Ashbaugh over the last four years, from 2010 through 2013, shows an increase in felony hours of 4,155 hours. During that same period, Maguire and Ashbaugh's misdemeanor attorney hours declined 2,687 or -15%. The overall result is a net increase in case hours totaling 1,468. Assuming 1,740 productive hours to be a standard work year, this is 0.84 FTE, or roughly one position.

Based on the increase in felony caseload and the increase in case hours, the request to add an attorney appears reasonable; assuming the growth driving the request is sustained. Looking at the data, the growth most growth occurred in 2012 and held fairly steady through the midpoint of 2014, so it does appear to be a sustained increase.

Maguire and Ashbaugh also cite the increase in felony hours to support the need for an additional full-time investigator position. It is reasonable to assume that with an increase in felony caseload there would be some amount of increase in investigator time. But, according to self-report data from Maguire and Ashbaugh, investigator hours since FY 2010-11 have only increased 6% overall, or 429 hours. Again assuming 1470 productive hours as a full work year, this is about 0.26 FTE. Maguire and Ashbaugh state that they believe their felony hours are under-reported and will work on data collection in the future (note that, while the County contract requires reporting of attorney hours, the firm is not required to track investigator hours). In recognition that some increase in investigator time is indicated, at least on the basis of the increase in hours, and recognizing that the firm may have great difficulty filling a quarter time position, the Administrative Office is recommending the addition of a half-time investigator position.

Lastly, Maguire and Ashbaugh have requested funding for IT support. The existing contract doesn't explicitly provide for IT support. This work has historically been done on an ad hoc basis by the firm's paralegal staff. Based on the size and complexity of the operation the Public Defender function a modest increase to help avoid any future IT problems and avoid potential impacts to the effectiveness of the County's mandated Public Defender services.

OTHER AGENCY INVOLVEMENT/IMPACT

County Counsel has reviewed the proposed amendment as to form and legal effect.

FINANCIAL CONSIDERATIONS

The Administrative Office recommends \$153,340 be added to Fund Center 135 – Public Defender from General Fund contingencies, to provide for additional resources to support the provision of an effective mandated legal defense to defendants unable to afford a private defense.

TABLE: Additional Public Defender Resources

| Item | Amount |
|--|------------------|
| Add: 1 Felony Attorney position (contract) | \$120,000 |
| Add: 1/2 Felony Investigator position (contract) | 40,000 |
| Add: IT resource (sub-contract) | 24,008 |
| TOTAL: | \$184,008 |

The amounts shown in the table are annualized amounts. If the Board approves the recommended increase in resources, monthly payments of \$15,334 would begin in September, for a total of \$154,340 in the current fiscal year. The amount would then be adjusted according to the annual change in the Consumer Price Index, beginning in FY 2015-16, according to the method described in Section 9 of the existing contract with Maguire and Ashbaugh.

The positions recommended to be added are contract positions and will have no impact on the PAL or county employee bargaining units. The dollar figures shown in the table are full cost for 12 months, including salary, fixed and variable costs borne by Maguire and Ashbaugh. The additional IT resources will be used by Maguire and Ashbaugh to provide outside IT support through an independent contract or other independent service arrangement.

RESULTS

The recommended action will amend the current scope of services for the County's primary public defender firm, Maguire and Ashbaugh. If approved, the amendment will add a full time attorney and a half-time investigator, as well as some additional IT resources, to help ensure the County's primary public defender can manage the increase in the felony case workload, which has grown over 30% in the last three years. Overall, these addition resources will further support the Public Defender's responsibility to provide an adequate legal defense for the indigent and help mitigate the possibility of complaints leading to substitution of counsel, or the reversal of a defendant's conviction on appeal.

ATTACHMENTS

1. Amendment #3 to Public Defender contract with Maguire and Ashbaugh