



COUNTY OF HUMBOLDT

For the meeting of: 12/8/2020

File #: 20-1575

To: Board of Supervisors

From: County Counsel

Agenda Section: Departmental

SUBJECT:

Request of the Auditor-Controller for Outside Counsel Representation

RECOMMENDATION(S):

That the Board of Supervisors:

1. Deliberate on the request of the Auditor-Controller; and
2. Authorize a designated County Counsel attorney to represent the Auditor-Controller in the investigation with an ethical wall in place.

SOURCE OF FUNDING:

General Fund

DISCUSSION:

Although information about an internal investigation would not typically be discussed in this public manner, the Office of County Counsel has received a request from attorney Cyndy Day-Wilson requesting to be appointed to provide outside counsel representation to the Auditor-Controller (Attachment 1). The letter is in response to an interview notice sent to the Auditor-Controller regarding an investigation concerning delays in payments, transfers, and reconciliations of accounts. The Office of County Counsel has provided a written response to Ms. Day-Wilson (Attachment 2) but the decision regarding the request for outside counsel first rests with the concurrence of the Board of Supervisors and then potentially with the court under the provisions of Government Code §31000.6 (Attachment 3).

There are several determinations before your Board, with many contingent upon each other.

- First, does the Office of County Counsel have a conflict regarding representation of the Auditor-Controller and the noticed investigation? As conveyed in the response letter, the position is that the Office of County Counsel's client is the county as a whole and the office does not provide individual representation to employees or elected officials in an investigation. It does not appear at this point in time that a conflict exists regarding the office, but the recommended approach is discussed in the next point, establishment of an ethical wall.

- Second, would it be appropriate to establish an “ethical wall” and direct an attorney within the Office of County Counsel to be screened off to provide representation to the Auditor-Controller in the investigation? The Auditor-Controller currently has assigned counsel that provides legal advice to that office and could potentially take this role if the Board feels that is appropriate departure from standing practice regarding investigations. The Board is the body authorized to make this determination.
- A separate issue goes beyond the question of a potential conflict and is highlighted in the case of Strong v. Sutter County, does the Board find that the requested representation (during the investigation) is a task within the performance of the duties of the Auditor-Controller? The Office of County Counsel is not aware of dispositive authority regarding this issue and no further authority has been provided in response to the request to Ms. Day-Wilson. This is a separate issue for discussion apart from the conflict/request for counsel process under section 31000.6.
- Lastly, if the Board agrees 1) there is a potential conflict of interest with the Office of County Counsel, 2) the conflict cannot be cured with an ethical wall, 3) and the representation is within the scope of work of the Auditor-Controller, is the Board in concurrence on the appointment of Ms. Day-Wilson or do you wish to make an alternative recommendation for an outside attorney to serve that role?

Finally, regardless of the Board’s decision on these issues, the Auditor-Controller remains free to consult with an outside attorney regarding the notice letter.

FINANCIAL IMPACT:

If outside counsel is appointed, the financial impact would depend on the hourly rate and time billed during the investigation. An internal attorney would not have this impact but will require staff time for the representation

STRATEGIC FRAMEWORK:

This action supports your Board’s Strategic Framework by Choose an item. This action does not relate to any of the Board’s Strategic Framework.

OTHER AGENCY INVOLVEMENT:

Auditor-Controller

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose to:

- Find that no conflict exists, and the requested representation is not within the AC’s scope of duties such that outside representation is not appropriate; or
- Find that a conflict exists, the representation is within the scope of duties, and concur with the appointment of Ms. Day-Wilson as outside counsel; or

- Find that a conflict exists, the representation is within the scope of duties, and recommend alternative outside counsel for the AC; or
- Consider any further communication provided by Ms. Day-Wilson regarding the request.

ATTACHMENTS:

1. Letter from Ms. Cyndy Day-Wilson
2. Response from County Counsel
3. Government Code §31000.6

PREVIOUS ACTION/REFERRAL:

Board Order No.: [Click or tap here to enter text.](#)

Meeting of: [Click or tap here to enter text.](#)

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