



Legislation Text

File #: 18-0748, **Version:** 1

County Counsel recommending the Board approve and authorize the Chair to sign the Professional Services Agreement between the County of El Dorado (County) and Baron & Budd, P.C.; Greene Ketchum, Farrell, Bailey & Tweed, LLP; Hill Peterson Carper Bee & Deitzler PLLC; Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA; McHugh Fuller Law Group; Powell & Majestro, PLLC for legal services to represent the County in connection with the National Prescription Opiate Litigation.

This Agreement retains Counsel on a contingency fee basis. The attorney's fees and costs will be paid from any settlement or judgement in favor of the County. If there is no recovery, the County will not be liable to Counsel for attorney's fees or costs incurred.

DEPARTMENT RECOMMENDATION

County Counsel recommending the Board approve and authorize the Chair to sign the Professional Services Agreement ("Agreement") between the County of El Dorado ("County") and Baron & Budd, P.C.; Greene Ketchum, Farrell, Bailey & Tweed, LLP; Hill Peterson Carper Bee & Deitzler PLLC; Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, PA; McHugh Fuller Law Group; Powell & Majestro, PLLC for legal services to represent the County in connection with the National Prescription Opiate Litigation.

DISCUSSION / BACKGROUND

Across the nation, states, counties, and cities are filing lawsuits against the manufacturers and distributors of prescription opioid painkillers, such as OxyContin. These manufacturers and distributors engaged in a campaign of misinformation regarding the addictive nature and efficacy of these narcotics. The results can be seen in the increased costs to communities dealing with what has been described as an epidemic.

Several months ago our office began discussions with other small rural counties to determine the level of interest in pursuing litigation against the manufacturers and distributors of opioids. We recognized that individually our counties would be challenged to pursue litigation against the manufacturers and distributors. However, our initial small group has grown to over 20 California counties interested in participating in the National Multi-District Litigation (MDL) now pending in the Northern District of Ohio. Presently, there are over 400 lawsuits consolidated in the MDL. The California counties that have joined our consortium have agreed to work together and retain the same law firm(s) to coordinate our efforts and share the burden of the litigation.

Several of the counties, including El Dorado, participated in interviewing law firms to determine which group of attorneys the counties would recommend to all consortium members. Additionally, I also met with an additional firm. After the interviews were completed, it was unanimous that the Baron & Budd group of attorneys presented the highest level of service, was most familiar with public entity clients, and was best positioned in the lawsuit to provide the counties our best opportunity to be heard in the litigation. John Fiske, our direct contact has been highly responsive to all requests and in fact made himself available to speak to some of our department heads regarding the nature of the

litigation and the expectation for the departments' dedication of resources for the litigation.

The contract is a contingency fee contract. The attorney's fees will be paid out of any recovery at an 18% contingency fee. (Agreement §2.2) This was negotiated by the counties resulting in the reduction from the 25% contingency fee usually charged. If there is no recovery, the County is not responsible for any attorney's fees. (Agreement §2.2) Additionally, the law firm will advance all costs of the litigation to be reimbursed from any recovery. Again, if there is no recovery then the County will not be responsible for those costs. (Agreement §2.4).

ALTERNATIVES

The Board could choose to not approve the Agreement meaning that either the County will not participate in the litigation or the County will seek out a different law firm to represent it, likely on less favorable terms as the County would no longer be part of the consortium of counties.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

Chief Administrative Office

CAO RECOMMENDATION / COMMENTS

Approve and authorize the Chair to sign the Agreement.

FINANCIAL IMPACT

There is no initial cost to the County to enter into the Agreement. In the event there is a recovery in the litigation, the County will reimburse Counsel for the litigation costs advanced by the firm on behalf of the County and pay an 18% contingency fee from any recovery.

CLERK OF THE BOARD FOLLOW UP ACTIONS

Following Board approval, the Board Clerk will forward 3 fully executed originals of the Agreement to County Counsel for distribution and administration.

STRATEGIC PLAN COMPONENT

Good Governance/Healthy Communities/Public Safety

CONTACT

Michael J. Coccozzi