



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: County Counsel
Department No.: 013
For Agenda Of: April 2, 2019
Placement: Administrative
Estimated Time: N/A
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Director(s) County Counsel Michael C. Ghizzoni (805) 568-2950
Contact Info: Chief of Litigation Martin G. McKenzie (805) 568-2950
SUBJECT: Delegation of Settlement Authority to County Counsel, Not To Exceed \$50,000

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence: CEO; Human Resources;
Risk Management

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- a) Pursuant to Government Code section 949, delegate to County Counsel the authority to settle pending litigation actions for a net payment of County funds not to exceed \$50,000 per action, provided that:
 - 1) The action is not one where a litigant seeks to compel the County to exercise the County's authority concerning land use, permitting, or code enforcement;
 - 2) The settlement would not require the amendment of any County policy, rule, or regulation;
 - 3) Concurrence with the settlement is provided by: A) the director(s) of the County department(s) affected by the settlement; and Risk Management for matters funded by the County's General Liability Fund or Workers' Compensation Fund; and Human Resources for personnel matters; or B) the County Executive Officer;
 - 4) The Board may rescind the delegation of authority at any time;
 - 5) County Counsel shall not re-delegate the authority; and shall report to the Board periodically on settlements made with the delegated authority.

- b) Determine that the above action is not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15378(b)(4) and 15378(b)(5) because it consists of government administrative or fiscal activities that will not result in direct or indirect physical changes in the environment.

Summary Text:

The County generally may exercise its powers only through the Board of Supervisors, or through persons “acting under authority of the board.” (Gov. Code § 23005.) Accordingly, the Board “directs and controls the conduct of litigation in which the County is a party” (Gov. Code § 25203), but “may delegate its authority to settle such litigation to its attorney or an employee” (Gov. Code § 949).

There is no express statutory limit on the amount of settlement authority the Board may delegate. (Cal. Law Revision Com. Comments, Deering’s Ann. Gov. Code § 949.) However, underlying constitutional principles require the Board to retain “sufficient power” and establish “adequate safeguards” to assure “the proper implementation of its policy decisions.” (*Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1516.) The recommended action would comply with those requirements by expressly limiting the delegation of authority in the various ways stated in subsections (a)(1) through (a)(5) of the recommended action.

Categories of cases that could be settled with the delegated authority include, but are not limited to:

- Tort and civil rights litigation within the coverage criteria of the General Liability 1 Program of the Excess Insurance Authority of the California State Association of Counties (CSAC-EIA). Through this Program, the County is self-insured up to a specified loss retention limit, and insured for losses beyond that limit. Risk Management maintains a General Liability Fund to fund cases covered by CSAC-EIA’s GL Program;
- Workers’ compensation litigation within the coverage criteria of CSAC-EIA’s Excess Workers’ Compensation (EWC) Program. Through this Program, the County is self-insured up to a specified loss retention limit, and insured for losses beyond that limit, for injuries sustained before 7/01/10 (for subsequent injuries, the County has “first dollar” insurance coverage through CSAC-EIA’s Primary Workers’ Compensation Program). Risk Management maintains a Workers’ Compensation Fund to fund cases covered by CSAC-EIA’s EWC Program;
- Breach of contract litigation;
- Litigation seeking judicial review of Civil Service Commission decisions; and
- Litigation of personnel matters through administrative complaints filed with state or federal enforcement agencies, including, but not limited to: the California Public Employment Relations Board (PERB); California Department of Fair Employment & Housing (DFEH); Division of Labor Standards Enforcement (DLSE) of the California Department of Industrial Relations; and United States Equal Employment Opportunity Commission (EEOC).

Currently, no litigation may be settled without bringing it to Closed Session. In Calendar Year 2018, County Counsel brought GL and EWC litigation to Closed Session for settlement authority 19 times. On 12 of those 19 occasions, the settlement authority requested was \$50,000 or less. County Counsel estimates that bringing those 12 cases to Closed Session consumed well over 100 hours of Board and staff time.

Besides saving significant amounts of Board and staff time, delegating \$50,000 settlement authority to County Counsel is expected to: (1) increase the County’s agility in seizing short-lived settlement opportunities, especially at the very outset of litigation, and (2) avoid the need to bring cases to Closed

Session simply to obtain a relatively small amount of settlement authority to attend initial court-ordered settlement conferences.

Before settling a case with this delegated settlement authority, County Counsel will obtain concurrence from:

- The director(s) of the County department(s) affected by the settlement; and
- Risk Management for matters funded by the County’s General Liability Fund or Workers’ Compensation Fund; and
- Human Resources for personnel matters.

If the above process does not provide concurrence with County Counsel’s settlement recommendation, County Counsel would inform the CEO. If CEO then does not provide concurrence, County Counsel would bring the proposed settlement to the Board in Closed Session.

Performance Measure: N/A

Contract Renewals and Performance Outcomes: N/A

Fiscal and Facilities Impacts: Budgeted: Yes

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund			
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

Narrative: If a settlement is within the coverage criteria of CSAC-EIA’s GL or EWC Program, the source of funds will be (respectively) Risk Management’s GL or WC Fund; otherwise, the funds will come from the involved department, including appropriate coordination with CEO’s Office.

Key Contract Risks: N/A

Staffing Impacts:

Legal Positions:
N/A

FTEs:
N/A

Special Instructions: N/A

Attachments: N/A

Authored by: Martin McKenzie, County Counsel Chief of Litigation

cc: