



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:** May 12, 2020  
**Placement:** Administrative  
**Estimated Time:** N/A  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors  
**FROM:** Department Director(s) County Counsel Michael C. Ghizzoni (805) 568-2950  
Contact Info: Chief Assistant Rachel Van Mullem (805) 568-2950  
**SUBJECT:** Delegation to County Counsel of Litigation Filing and Settlement Authority For  
"Affirmative" Claims, Not To Exceed \$50,000 Per Case

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**County Counsel Concurrence**

As to form: Yes

**Other Concurrence:** CEO

As to form: Yes

**Auditor-Controller Concurrence**

As to form: Yes

**Risk Concurrence**

As to form: Yes

**Recommended Actions:**

That the Board of Supervisors:

- a) Pursuant to Government Code sections 25203 and 949, for "affirmative" litigation (cases that may bring money to the County), delegate to County Counsel the authority to file and/or settle actions, only where County Counsel determines that neither the County's realistic potential recovery nor the County's expected litigation costs will exceed \$50,000 per case, and provided:
  - 1) The action does not use the County's authority for land use, permitting, or code enforcement;
  - 2) The settlement would not require amendment of any County policy, rule, or regulation;
  - 3) Concurrence for any litigation filing or settlement is provided by: the Director(s) of the involved County department(s); or 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 litigation filings and 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.) 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.4<sup>th</sup> 1501, 1516.) The recommended action would comply with those requirements by expressly limiting the delegation of authority in the ways stated in subsections (a)(1) through (a)(5) of the recommended action.

On April 2, 2020, the Board delegated settlement authority to County Counsel for up to \$50,000 per case for “defensive” claims (cases where the County will pay money). Since that time, the County has saved significant time by using this delegated authority for “defensive” claims. Currently, though, no “affirmative” litigation may be filed or settled without a prior Closed Session. Examples of cases that could be handled more efficiently with this proposed delegation for “affirmative” litigation include:

- “Class Action” financial services litigation, that requires the County to “opt-in” or “opt-out”; and,
- Filing claims by the County in bankruptcy actions by other entities, which often require a very quick timeline.

Besides saving significant amounts of Board and staff time, delegating this limited authority to County Counsel for “affirmative” litigation is expected to: 1) make the County more agile in filing and resolving time-sensitive claims at the early stages of relatively minor cases; and 2) save time by not using Closed Session presentations to obtain authority each time to file and resolve these cases.

Before filing or settling any litigation case with this delegated settlement authority, County Counsel would obtain concurrence from the Director(s) of the County department(s) affected by the settlement. If that does not yield concurrence with County Counsel’s recommendation, County Counsel would inform the CEO, who could concur. If CEO then does not concur, County Counsel would bring the proposed litigation filing or 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	\$ -	\$ -	\$ -

**Key Contract Risks:** N/A

**Staffing Impacts:**

**Legal Positions:**  
N/A

**FTEs:**  
N/A

**Special Instructions:** N/A

**Attachments:** N/A

**Authored by:** Rachel Van Mullem, Chief Assistant County Counsel

**cc:**