

Board of County Commissioners

Agenda Request

Date of Meeting: March 17, 2009

Date Submitted: March 11, 2009

To: Honorable Chairman and Members of the Board

From: Benjamin H. Pingree, County Administrator
Timothy Barden, Assistant County Administrator
Deborah DuBose, HR and Purchasing Coordinator

Subject: Request for Board Consideration of Staff Analysis Regarding In-House
Versus Contracted County Attorney Functions

Statement of Issue:

This agenda item requests Board consideration of staff analysis regarding a comparison of in-house versus contracted legal services for the County Attorney position.

Background:

At the May 19, 2008 Board Meeting, staff presented an Agenda Request analyzing the costs and benefits of obtaining in-house legal counsel versus contracted legal services with an outside law firm. At that time, the agenda item failed for lack of motion.

The Board of County Commissioners, Code Enforcement Board and the Wakulla County Planning Commission currently obtains legal counsel through Ronald A. Mowrey, Esq., who has served as County Attorney since May 21, 1981. Over the years, Wakulla County has received professional legal representation from Mr. Mowrey and his firm. Mr. Mowrey and Mowrey & Mitchell, P.A. are currently under contract with the County. (Attachment 1) The Agreement for Professional Services between the County and Mr. Mowrey is set to expire in September 2009. Mr. Mowrey has indicated that he will not seek a renewal of his contract, but will assist the County in transitioning its legal services in a seamless manner so that the County will not experience a lapse in legal representation.

In light of the upcoming September expiration date of the County's existing Agreement for Professional Services with Mr. Mowrey, County staff has been directed to bring forth this issue for Board consideration and action.

Analysis:

Existing Conditions

The existing Agreement for Professional Services with Mr. Mowrey includes attendance at all regular and special Board of County Commissioners, Code Enforcement Board and Planning

Commission meetings. Additionally, the County Attorney attends some staff meetings related to specific legal or potential legal issues. The County Attorney is also available to meet with Department Heads, Commissioners and Administration on an as-needed basis. The County Attorney also communicates through e-mail and telephone with Department Heads, staff, Commissioners and Administration, on a variety of legal issues raised by all County Departments. The existing Agreement for Professional Services also includes all secretarial assistance necessary to accomplish the above-referenced tasks. Additionally, the Agreement for Professional Services also covers all costs associated with the maintenance of the County Attorney's office space, supplies and equipment, including a computer system, with legal research capability, and a law library. These general legal services are provided to the County at a current rate of \$12,133.33 per month, or \$145,599.96 per year.

The existing Agreement for Professional Services with Mr. Mowrey does not include the costs of litigation, which is billed separately at a rate of \$150.00 per hour. The Agreement for Professional Services defines "litigation" as proceedings in state or federal courts, mediations, arbitrations, administrative proceedings, appellate proceedings or local enforcement proceedings. "Litigation" within the existing Agreement for Professional Services excludes defenses to foreclosures, quiet title actions, small claims cases, and actions where Mr. Mowrey provides assistance to FACT-appointed counsel, which is covered under the base contract as general legal services.

During fiscal year 2006/2007 the County spent a total of \$297,421.66 on legal expenses. This figure includes expenditures to the law firms of Nabors, Giblin & Nickerson as well as Mowrey & Mitchell, P.A. Table 1, below contains a breakdown of expenditures relating to legal expenses for fiscal years 2007/2008 as well as year to date expenditures for 2008-2009. These services are broken down, as follows:

Table 1:

<i>Firm Name</i>	<i>Paid 2007-2008</i>	<i>Paid '08-Present</i>
Nabors, Giblin & Nickerson, P.A.	\$6,068.00	\$7,374.55
Mowrey & Mitchell, P.A.	\$168,604.76	\$168,518.18
Total:	\$174,672.76	\$175,892.73

The legal service payments are further broken out below in Tables 2, 3 and 4 by expenditures, for each law firm:

Table 2: Detail for Nabors, Giblin & Nickerson for FY 2007-08 and FY 2008-09

<i>Firm Name</i>	<i>Project</i>	<i>Paid 2007-2008</i>	<i>Paid '08-Present</i>
Nabors, Giblin &	Impact Fee Study	\$6,068.00	\$7,374.55

Nickerson, P.A.			
Total:		\$6,068.00	\$7,374.55

Table 3: Detail for Mowrey & Mitchell FY 2007-2008

<i>Firm Name</i>	<i>Project</i>	<i>Paid 2007-2008</i>
Mowrey & Mitchell, P.A.	Monthly Contract (10/2007- 09/2008)	\$144,199.92
	MSBU Spec. Ass't	(-3,634.76)
	Sprayfield	\$11,720.50
	Dangerous Dog	\$3,502.98
	WC/DCA V WC	(-\$393.79)
	Writ of Pro	\$1,920.17
	Writ of Certiorari	\$2,455.24
	SOE – Canvassing Board	\$8,765.75
	SOE-Felon Match List	\$68.75
Total:		\$168,604.76

Table 4: Detail for Mowrey & Mitchell FY 2008-2009

<i>Firm Name</i>	<i>Project</i>	<i>Paid 2008-09</i>
Mowrey & Mitchell, P.A.	Monthly Contract (10/2008-01/2009)	\$60,666.65
	MSBU Spec. Ass't	\$37,742.64
	WC/DCA V WC	\$1,110.00
	McCorvey Litigation	\$485.00
	Snyder V WC	\$25,889.19
	Interpleader Litigation	\$893.16
	Litigation Defense	\$4,760.00
	Code Violations-Animal Control	\$794.67
	Litigation Defense-Harvey	\$1,940.34
	Litigation Defense-Madeline Carr	\$13,867.36
	Writ of Certiorari	\$2,141.99
	SOE-Canvassing Bd	\$18,222.00
	SOE-Felon Match	\$5.18
Total:		\$168,518.18

Comparables

In late 2007, the Florida Association of County Attorneys (FACA) performed an analysis of how legal services are provided to counties within Florida. Of the sixty-seven (67) Florida counties, thirty-four (34) responded to the survey sent out by FACA. Of the thirty-four (34) responding counties, nine (9) counties contract with outside firms to obtain legal counsel. The majority of these nine (9) counties have populations of less than 60,000 residents, similar to Wakulla County.

The remaining twenty-five (25) responding counties have an in-house attorney. Most of the in-house County Attorneys have a formal contract with their employer. The FACA survey gathered the following information from the responding counties regarding their in-house counsel:

- Whether the attorney has an employment contract with the County
- Terms of the In-house contract
- Date hired
- Current Salary of Attorney
- Number of attorneys
- Number of total employees for the legal department
- Total legal department
- Budget

The smallest county responding to the FACA survey with an in-house attorney is Putnam County, with a County population of 74,416.

FACA staff opined that should Wakulla County desire to hire an in-house attorney, the County would most likely need to hire an additional employee as a legal assistant to have a viable legal department (Attachments 2 and 3). Other counties with a one attorney/one legal assistant legal department are Desoto, Hendry, Levy and Putnam counties. In 2007, Desoto, Hendry, Levy and Putnam counties budgeted in a range from \$226,000 to \$371,747 for their in-house legal departments. In 2007, FACA also opined that Wakulla County could achieve in-house legal services for an estimated \$250,000, as set forth below:

Position/Item	Salary (w/o benefits)	Budget
County Attorney	\$90,000	\$112,500 *benefits estimated at 25% of salary
Legal Assistant	\$40,000	\$ 50,000 *benefits assumed at 25% of salary
Legal Library/ Research Databases		\$ 7,500

Outside Counsel		\$ 80,000*
Total:		\$250,000

*Estimated amount for outside contracted counsel to handle litigation and specialized legal services on an as-needed basis.

The above estimate does not include office space in which to house the legal department if space cannot be identified within existing County buildings. This estimate also assumes that a receptionist will be shared with County Administration, or some other County Department/Division. Additional expenses to be considered include job advertisement costs and initial start-up expenses (purchase of new computers, printers, legal software, desks, filing cabinets, supplies, etc.) Some of the start-up expenses, such as desks, could possibly avoided by utilizing surplus property.

In-House Legal Services versus Outsourced Legal Services

There are a number of issues that the Board may want to consider as it decides the future direction of County legal services. Cost is obviously an important factor for consideration, particularly in the current economic climate. It is possible, though not guaranteed, that outsourcing general legal services will be less costly than an in-house legal department. Other factors related to the basic salary costs of an in-house versus outsourced legal department include start-up costs and citing/office space. However, there are other factors for consideration, including level of service, responsiveness, accessibility, etc. The following is an analysis of factors for the Board to consider:

Pros of In-House Legal Services

- Legal advice and direction on-site and on demand.
- Legal assistance with daily issues related to Personnel, Purchasing, Contracting, etc.
- Assistance/direction with the processing and drafting of legal notices and public records requests.
- In-house point person and representation with some litigation matters.

Cons of In-House Legal Services

- Location and potential cost for office space
- Administrative support cost, depending on location of office space
- Start-up expenses, including computers, furniture and establishment of law library/legal research resources.*
- No back-up should the County Attorney be sick/unable to attend a meeting.
- Some legal work will likely require outside counsel.
- Recurring annual expenses, including supplies, travel and Bar membership costs.*

*See Attachment 2 for an estimate of start-up and recurring in-house legal department expenses.

Pros of Outsourcing Legal Services

- Capacity of entire firm available to the County.
- A full menu of services and legal expertise available to the County.
- County will not have to front start-up and other overhead expenses.

Cons of Outsourcing Legal Services

- Legal staff not on-site.
- Possible increase in current general legal services costs, depending on how the market responds to the RFP
- County not the sole client, concern of insuring that the County's needs are a priority.

The Board would need to weigh the convenience of having a "staff" attorney (with no other clients) against the cost of creating a minimum of two new positions with little or no cost savings, at best. Should the County wish to pursue an in-house attorney, staff recommends advertising the County Attorney position in the Florida Bar News, FACT and Govjobs.net during the months of April 2009 – June 2009. In addition, regular advertisements should be placed within the Wakulla News, the Tallahassee Democrat, posted on the County's website and any other major newspaper deemed appropriate. A draft of the in-house County Attorney position description and advertisement is attached for the Board's consideration. (Attachment 3) This would allow the County time to review applications during the late spring/early summer months of 2009 and begin the interview process in early July.

Should the Board decide to continue the outsourcing of the County Attorney function, staff recommends beginning the formal bid process in late April or early May of 2009. A draft of the RFP is attached for the Board's consideration. (Attachment 4)

Staff is prepared to assist the Board in addressing the above issues should the Board decide to pursue an in-house attorney in the future. Likewise, staff stands ready to assist the Board in the continuation of the outsourcing of the County Attorney function if that is the will of the Board. Staff notes that time is of the essence in addressing this issue, to ensure a smooth transition of County legal services.

Options

1. Direct staff to advertise for an in-house County Attorney.
2. Approve the attached RFQ and direct staff to advertise and formally bid the outsourcing of legal services for the fiscal year 2009/2010.
3. Board Direction.

Recommendation

Option 3

Attachments:

1. Agreement for Professional Services with Ronald A. Mowrey, Esq.
2. Estimate of start-up legal department expenses
3. Position Description for in-house County Attorney
4. Request for Proposal – County Attorney