



24-5331

**DATE:** April 16, 2024 (Item No. {{item.number}})

**TO:** Board of Supervisors

**FROM:** Tony LoPresti, County Counsel

**SUBJECT:** Budget Augmentation Request for Independent Defense Counsel Office

### **RECOMMENDED ACTION**

Approve Request for Appropriation Modification No. 187 - \$1,200,000 transferring funds from the General Fund Contingency Reserve to the Office of the County Counsel budget relating to Independent Defense Counsel Office expenditures. (4/5 Vote)

### **FISCAL IMPLICATIONS**

Approval of the recommended action would have a \$1,200,000 cost to the County General Fund. The Adopted Budget for the Fiscal Year (FY) 2023-24 General Fund Contingency Reserve was \$218,587,995. Board policy 4.3 states that the contingency reserve should be 5% of general revenues net of pass-through revenue. Since the use of contingency reserve impacts compliance with this policy, the midyear budget analysis included a \$9,411,129 replenishment of this reserve. The balance of this reserve as of March 26, 2024, is \$217,841,887 indicating that a net of \$746,108 has been allocated for other purposes since the mid-year action to replenish reserve. There may be additional pending actions that will impact this balance once they are approved and processed.

As described below, the Office of the County Counsel projects that the Services and Supplies budget relating to IDO expenses for Fiscal Year (FY) 2023-2024 will exceed the currently budgeted amount by approximately \$1,200,000. **REASONS FOR**

### **RECOMMENDATION AND BACKGROUND**

The Independent Defense Counsel Office (IDO) is a separately funded program but is administratively housed within the Office of the County Counsel. Effective July 1, 2008, the Office of the County Counsel, through the newly created IDO, assumed responsibility for providing legally mandated criminal defense services to indigent defendants in adult criminal and juvenile justice cases whenever there is a legally disabling conflict of interest with both the Public Defender's Office (PDO) and Alternate Defender's Office (ADO).

IDO also provides legally mandated representation in all misdemeanor cases, including misdemeanor appeals, which are directly referred from PDO when that office has a conflict of interest; ADO does not accept misdemeanor referrals from PDO. Finally, IDO provides

legally mandated representation in civil contempt cases.

Before FY 2009, all of these services were provided by the PDO or by a contractor, Legal Aid Society. Moving the management of these services in-house resulted in a cultural transformation in the quality of indigent representation in our county. A panel of contract attorneys closely supervised by the IDO Director provide the legal services to clients.

The projected overage is due to several reasons not within IDO's control. IDO cannot control the volume of cases it receives, nor the severity of the charges alleged in those cases. Thus, when there is a need to defend multiple-defendant cases, many of those cases will be assigned to IDO because the PDO and ADO can each represent only one defendant in a particular case. The court will assign the remaining defendants to IDO's panel of attorneys for representation. Expenditures for panel attorneys and related defense costs can be dramatically affected by one complicated case with substantial litigation.

Given the independent and unique nature of IDO's work, it is difficult to predict from a budget perspective. Because of this, the need for flexibility was recognized as a priority when IDO was created in 2008. The delegation of authority allowed for adding panel attorneys as quickly as the need arose to increase capacity to meet the demands of the work. Since 2021, IDO has noticed a steady increase in referrals. The increase is approximately 670 more new cases, or a 53% increase. This increase in new cases, coupled with old cases still pending from the 2020 pandemic era, substantially increased the IDO inventory of active and pending cases. These factors result in cost fluctuations for IDO Services and Supplies expenditures, as is the case in the current year. Other unpredictable factors that impact IDO include an increase in the number and length of criminal trials and preliminary hearings as the court activity increased to address the pandemic backlog. New laws—for example, the Racial Justice Act—have expanded the duties of defense counsel and also resulted in an unusual number of reversals by the Court of Appeal involving serious and complex cases. IDO is also impacted by new multi-defendant filings by the District Attorney's Office and impacts from new initiatives and judicial court practices.

### **CHILD IMPACT**

The recommendation would have a positive impact on children in that IDO actively participates in juvenile justice committees and administers a panel of attorneys that represent and advocate for children in the Juvenile Justice system.

### **SENIOR IMPACT**

The recommended action will have no/neutral impact on seniors.

### **SUSTAINABILITY IMPLICATIONS**

The recommended action will have no/neutral sustainability implications.

### **CONSEQUENCES OF NEGATIVE ACTION**

The Office would not have the funds to pay the IDO expenses as they come due.

### **STEPS FOLLOWING APPROVAL**

The Clerk of the Board shall provide notification to Kim Forrester in the Office of the

County Counsel

**ATTACHMENTS:**

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