



San Bernardino County

Legislation Text

File #: 2896, Agenda Item #: 37

REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF THE COUNTY OF SAN BERNARDINO AND RECORD OF ACTION

September 15, 2020

FROM

MICHELLE D. BLAKEMORE, County Counsel

SUBJECT

Waiver of Conflict of Interest with Silver & Wright LLP Law Firm

RECOMMENDATION(S)

1. Approve Waiver and Consent that approves the waiver of actual or potential conflict of interest arising out of the representation of the County of San Bernardino by the Silver & Wright LLP law firm associated with *Pickett v. County of San Bernardino, et al.*, case number CIVDS 2012607.
2. Authorize the County Counsel or Chief Assistant County Counsel to execute the Waiver and Consent of the actual or potential conflict of interest.
(Presenter: Michelle D. Blakemore, County Counsel, 387-5455)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

FINANCIAL IMPACT

This item will not result in the use of additional Discretionary General Funding (Net County Cost). The costs for the legal services provided by Silver & Wright LLP (S&W) are included in the Risk Management 2020-21 budget.

BACKGROUND INFORMATION

Two lawsuits against the County arose from a 2015 death, a federal action titled *Dominic Archibald, et. al. v. County of San Bernardino, et. al.* (Case No. 5:16-cv-01128-AB-SPx) ("*Archibald*") and a related state case entitled *Nathanael Pickett v. County of San Bernardino, et. al.* (Case No. CIVDS1618482) ("*Pickett 1*"). The County was represented by Silver & Wright LLP ("S&W"), in *Pickett 1*, and another law firm represented the County in *Archibald*. *Archibald* was settled with a Release of All Claims ("Release") being executed by plaintiff. That Release allegedly contained confidential information that was improperly disclosed in court filings in *Pickett 1*.

Based on the asserted disclosure, the plaintiff in *Pickett 1* filed *Pickett v. County of San Bernardino, et al.*, case number CIVDS 2012607 ("*Pickett 2*"). The County, S&W and one of its attorneys are named as defendants. S&W represents the named defendants in *Pickett 2*.

S&W has advised the County that its joint representation of itself and the County could give rise to a conflict of interest in the course of defending *Pickett 2*. Although no actual conflict currently exists, nor is a conflict

reasonably anticipated to arise, the Rules of Professional Conduct require that S&W obtain the County's informed written consent in light of the possibility of a conflict arising.

County Counsel has reviewed the request and believes there would be minimal risk associated with the Waiver and Consent and believes it would be appropriate for the Board of Supervisors to approve the Waiver and Consent.

PROCUREMENT

Not applicable

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Bart Brizzee, Principal Assistant County Counsel, 387-5455) on September 3, 2020, Finance (Carl Lofton, Administrative Analyst, 387-5404) on September 9, 2020; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on September 9, 2020.