



# San Bernardino County

## Legislation Text

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**File #: 4761, Agenda Item #: 21**

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

**September 14, 2021**

#### **FROM**

**MICHELLE D. BLAKEMORE, County Counsel**

#### **SUBJECT**

Delegation of Authority to Consent to Joint Representation of County and Current or Former County Employees

#### **RECOMMENDATION(S)**

Delegate to the County Counsel the authority to consent to the joint representation of the County and its current and former employees under the circumstances outlined in California Rules of Professional Conduct 1.7

(Presenter: Michelle D. Blakemore, County Counsel, 387-5455)

#### **COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

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

**Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.**

#### **FINANCIAL IMPACT**

Approval of this delegation will not impact Discretionary General Funding (Net County Cost).

#### **BACKGROUND INFORMATION**

San Bernardino County is frequently named as a defendant in lawsuits simultaneously with its current and former employees. In these lawsuits, the employee is accused of wrongdoing and the County is accused of being responsible for the employees' conduct or of its own separate wrongdoing. Rule 1.7 of the California Rules of Professional Conduct, which governs attorneys' conduct, permits an attorney to represent the County and the employee in a lawsuit if the attorney:

- (1) Obtains informed written consent from both the County and the employee;
- (2) Reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (3) The representation is not prohibited by law; and
- (4) The representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same lawsuit.

Prior practice before the Rule 1.7 change has been to orally discuss dual representation with the employee, but not to obtain written consent absent an actual conflict of interest. The employee's written consent is now being sought. In addition, the Board of Supervisors is currently required to consent in writing to the joint

representation of the County and an employee in a lawsuit. This requirement creates significant delays in obtaining representation. The request is for the Board to delegate the power to County Counsel to consent to joint representation of the County and current and former employees named in the same lawsuit only where the above four elements identified in Rule 1.7 are met.

**PROCUREMENT**

Not applicable.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Laura L. Crane, Supervising Deputy County Counsel, 387-5455) on August 5, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404) on August 9, 2021; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on August 9, 2021.