



# San Bernardino County

## Legislation Text

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**File #: 7343, Agenda Item #: 63**

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

**January 10, 2023**

#### **FROM**

**JASON ANDERSON, District Attorney**

#### **SUBJECT**

Employment Contract for Deputy District Attorney IV

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

Approve Employment Contract with Grover Merritt as a Deputy District Attorney IV effective January 16, 2023 through June 28, 2024, for an estimated cost not to exceed \$169,486 (\$164,486 Salary, \$5,000 Benefits). (Presenter: Michael Fermin, Chief Assistant District Attorney, 382-3662)

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

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

#### **FINANCIAL IMPACT**

Approval of this item will not result in the need for additional Discretionary General Funding (Net County Cost). The total cost of the employment contract is estimated at \$169,486 from January 16, 2023 through June 28, 2024. This cost is based on a maximum of 960 hours of work per fiscal year per California Public Employees' Pension Reform Act of 2013 (PEPRA), at the hourly rate of \$85.67, an amount comparable to a Deputy District Attorney IV performing similar duties. Current year costs will be funded through salary savings from staffing vacancies within the District Attorney's (Department) 2022-23 budget and will be included in the Department's 2023-24 recommended budget.

#### **BACKGROUND INFORMATION**

The Department is the public prosecutor and has the mandated responsibility to prosecute crimes committed within San Bernardino County, including city jurisdictions, pursuant to Government Code 26500. The Department's Appellate Services Unit (ASU) handles criminal writs and appeals on behalf of the Department, along with significant Superior Court post-conviction litigation and other matters. Assignments within this unit focus on petitions for writs of habeas corpus, other writs of mandate and prohibition, appeals within the District Courts of Appeal and the Supreme Court of California, amicus curiae briefs in state and federal court, and post-conviction motions based upon immigration consequences, DNA testing and discovery. The unit's tasks also include responding to motions to recuse the office and responses to requests made under the Public Records Act.

A ruling on any appeal could be made immediately after oral arguments or up to several months later. Further litigation of the cases with the California Supreme Court will likely extend well beyond that time. The Department requests approval to contract with Grover Merritt to represent the People of the State of California

on cases being addressed by ASU. Grover Merritt served as the Lead Deputy District Attorney for ASU for many years and handled some of the office's most significant appellate-related litigation. The office has been seeking to strengthen ASU both as a result of the demands placed on post-conviction litigation from legislative change, and because of the upcoming retirements of two of the unit's long-term members. ASU positions are difficult to fill due to the intensely academic nature of much of the assignment. Although the Department looks for both internal and external candidates during recruitments, it is rare to find someone with significant experience in the field. Mr. Merritt will help cover the duties until the upcoming vacancies are filled.

Under PEPR, a retired person shall not be eligible to be employed, pursuant to Government Code section 7522.56(f), for a period of 180 days following the date of retirement unless he or she meets one of the following conditions:

- (1) The employer certifies the nature of the employment and that the appointment is necessary to fill a critically needed position before 180 days has passed and the appointment has been approved by the governing body of the employer in a public meeting. The appointment may not be placed on a consent calendar.
- (2) The retiree is a public safety officer or firefighter hired to perform function or functions regularly performed by a public safety officer or firefighter.

The Department certifies the nature of the employment and that the contract for employment with Grover Merritt is necessary to fill a critically needed position prior to the 180-day requirement.

#### **PROCUREMENT**

N/A

#### **REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Cynthia O'Neill, Principal Assistant County Counsel, 387-5455) on December 12, 2022; Human Resources (Gina King, Human Resources Deputy Director, 387-5570) on December 12, 2022; Finance (Kathleen Gonzalez, Administrative Analyst III, 387-5412) on December 14, 2022; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on December 14, 2022.