



**Local Agency Formation Commission**  
**LAFCO of Napa County**

1700 Second Street, Suite 268  
Napa, California 94559  
Telephone: (707) 259-8645  
Facsimile: (707) 251-1053  
<http://napa.lafco.ca.gov>

**May 5, 2008**  
**Agenda Item No. 7c**

April 21, 2008

**TO:** Local Agency Formation Commission

**FROM:** Keene Simonds, Executive Officer

**SUBJECT: Options for the Appointment of Alternate Legal Counsel (Action)**

The Commission will receive a report identifying and evaluating options regarding the appointment of alternate legal counsel. The report is being presented for discussion and possible action by the Commission.

---

California Government Code Section 56384(b) directs the Commission to appoint its own legal counsel. The code section also directs the Commission to appoint alternate legal counsel if it determines its legal counsel is subject to a conflict of interest as defined under the Political Reform Act of 1974. The Commission may recover its costs associated with using alternate legal counsel by charging fees to applicants under certain conditions.

### **Background**

On July 1, 2003, the Commission entered into its current support services agreement with the County of Napa. The agreement establishes the terms and conditions for the County to provide personnel and related services necessary for the Commission to fulfill its regulatory and planning responsibilities. The agreement specifies County Counsel shall provide legal services to the Commission unless a conflict of interest exists. The agreement also specifies Jacqueline M. Gong of the County Council's Office shall serve as Commission Counsel. County Counsel may designate another attorney to serve as legal counsel only upon the consent of the Commission.

### **Discussion**

On January 1, 2001, the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 became effective and significantly expanded the duties and responsibilities of the Commission with regard to coordinating orderly growth and development. A measurable outcome of this legislation is that the Commission is more proactive in initiating reviews that impact local governmental agencies and services. Markedly, the Commission's increasingly active role has generated new questions from local agencies regarding potential conflict of interests involving the use of County Counsel.

---

Jack Gingles, Commissioner  
Mayor, City of Calistoga

Juliana Inman, Commissioner  
Councilmember, City of Napa

Cindy Coffey, Alternate Commissioner  
Councilmember, City of American Canyon

Brad Wagenknecht, Chair  
County of Napa Supervisor, 1st District

Bill Dodd, Commissioner  
County of Napa Supervisor, 4th District

Mark Luce, Alternate Commissioner  
County of Napa Supervisor, 2nd District

Brian J. Kelly, Vice Chair  
Representative of the General Public

Gregory Rodeno, Alternate Commissioner  
Representative of the General Public

Keene Simonds  
Executive Officer

At the February 4, 2008 meeting, the Commission adopted a study schedule calendaring municipal service reviews and sphere of influence reviews for the 2008-2012 period. In anticipation of initiating these reviews, staff believes it is timely for the Commission to consider its options and preferences with respect to appointing alternate legal counsel.

## **Analysis**

### **Options for Appointing Alternative Legal Counsel**

The Commission has two distinct options with regard to appointing alternate legal counsel: (a) appoint as needed or (b) appoint and retain in advance. The first option to appoint alternate legal counsel as needed effectively represents the status quo. This requires the Commission to select and negotiate an agreement for legal services in response to a specific issue in which it determines a conflict exists for County Counsel. The key advantage to this option is that it provides maximum flexibility to the Commission in tailoring the appointment of alternate legal counsel based on the firm or individual's expertise relative to a particular issue. However, this option may generate protractive debate if the issue before the Commission is already contested. This option may also compound existing constraints on the Commission to process and consider a proposal within the timeframes prescribed under the law.

The second option to appoint and retain alternate legal counsel in advance of any one particular issue in which the Commission determines a conflict exists for County Counsel reflects a growing practice among other commissions in California. The key advantage to this option is that it helps protect the appointment of alternate legal counsel from conflicts arising from a particular issue before the Commission. This option also provides a cost-control measure for the Commission by establishing a known hourly charge, which can be used to help budget annual legal service costs. Disadvantages associated with this option include appointing an alternate legal counsel whose expertise may be outside the scope of an issue before the Commission.

### **Fiscal Impact**

At the April 7, 2008 meeting, the Commission adopted a proposed budget for 2008-2009. The proposed budget includes a new methodology to divide the total projected number of hours needed for legal services in the fiscal year (160) between the anticipated hourly rates of County Counsel (\$156) and an outside counsel (\$190).<sup>1</sup> As provided in the proposed budget, it is anticipated that three-fourths of legal services in the upcoming fiscal year will continue to be provided by County Counsel with the remaining one-fourth provided by outside counsel. This new methodology helps protect against incurring deficits within the legal services expense account as a result of the Commission electing to use alternate legal counsel regardless of whether the appointment is done as needed or in advance.

---

<sup>1</sup> The anticipated hourly rate for outside counsel represents the current median amount charged by three private law firms that work for other commissions in California. These firms include Scott Browne and Associates (\$175), Colantuono and Levin (\$190), and Best Best & Krieger (\$195).

As noted, the law allows the Commission to recover its costs in using alternate legal counsel if it is consistent with its adopted fee schedule. The Commission's current fee schedule does not include a charge relating to the use of alternate legal counsel. As such, a separate review of the fee schedule is needed to consider adding a new and equitable charge to applicants to recover the costs in using alternate legal counsel. Nonetheless, it is important to note that the Commission is not eligible to recover its costs in using alternate legal counsel for any activities it has initiated on its own, such as preparing municipal service reviews or sphere of influence reviews.

### **Conclusion**

It is reasonable to assume that there may be issues before the Commission in which the County will be an active proponent or opponent. Although it has not occurred in the past, it is also reasonable to assume that a particular issue may create a substantive conflict for County Counsel in the view of the Commission. It is with this in mind that staff believes appointing and retaining alternate legal counsel in advance of any one particular issue is appropriate and responsive to the Commission's interests and needs.

### **Recommendation**

If it is the preference of the Commission to appoint and retain alternate legal counsel in advance, staff recommends approving one of the three following actions.

- 1) Direct the Executive Officer to take appropriate actions to recruit qualified candidates for the position of alternate legal counsel and present a report to the Commission at a future regular meeting identifying respondents with their resumes. The Commission will determine the candidates it will interview as part of a future special meeting. The Commission will consider making an appointment at the conclusion of the special meeting or at its next regular meeting.
- 2) Establish and authorize a subcommittee to include two appointed Commissioners and the Executive Officer to take appropriate actions to recruit and interview qualified candidates for the position of alternate legal counsel. Direct the subcommittee to present a recommendation for alternate legal counsel to the Commission for consideration at a future regular meeting.
- 3) Direct the Executive Officer to take appropriate actions to recruit and interview qualified candidates for the position of alternate legal counsel. Direct the Executive Officer to present a recommendation for alternate legal counsel to the Commission for consideration at a future regular meeting.

If it is the preference of the Commission to appoint alternate legal counsel as needed, no action is necessary.

Respectfully submitted,

---

Keene Simonds  
Executive Officer