



DAVID SANDERS, PH.D.
Director

County of Los Angeles
DEPARTMENT OF CHILDREN AND FAMILY SERVICES
425 Shatto Place -- Los Angeles, California 90020
(213) 351-5602

May 9, 2006

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Board of Supervisors
GLORIA MOLINA
First District
YVONNE B. BURKE
Second District
ZEV YAROSLAVSKY
Third District
DON KNABE
Fourth District
MICHAEL D. ANTONOVICH
Fifth District

Dear Supervisors:

**REQUEST TO APPROVE AGREEMENT WITH THE OFFICE OF
INDEPENDENT REVIEW, DEPARTMENT OF CHILDREN AND
FAMILY SERVICES FOR THE PROVISION OF LEGAL SERVICES
(ALL SUPERVISORIAL DISTRICTS) – (3 VOTES)**

It is recommended that your Board:

1. Approve the implementation of an Office of Independent Review (OIR), Department of Children and Family Services (DCFS) to provide an independent review of County administrative investigations of children that are seriously injured or child fatalities due to suspected abuse or neglect who have been under the supervision of, or who are known to, DCFS.
2. Approve and instruct the Mayor to execute the attached agreement (Attachment A) with Michael Gennaco of OIR to provide specialized legal services, which includes serving as lead counsel and coordinating the work of two subordinate attorneys. Mr. Gennaco will oversee necessary specialized legal services and work of the subordinate attorneys at no cost to the County contingent upon his continued provision of specialized legal services to the Sheriff and reimbursement for necessary expenses. The period of the agreement is for three years beginning May 9, 2006 or date of execution, whichever is later, through May 8, 2009. Sufficient funding is included in the FY 2005-06 Adopted Budget and FY 2006-07 Proposed County Budget to accommodate reimbursement for necessary expenses.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS

In July 2005 and November 2005, your Board requested DCFS, in conjunction with the Auditor-Controller's office and in consultation with OIR, to report back with an implementation plan replicating the OIR model used for the Sheriff's Department. Reports were provided to your Board in November and December 2005. This Board action will enable DCFS to implement the OIR model.

DCFS-OIR will provide independent oversight of the County's administrative investigation of cases in which children are seriously injured or a child fatality due to suspected abuse or neglect who have been under the supervision of or known to DCFS, and make recommendations regarding the outcome of the administrative investigation and needed systemic changes. The Chief Attorney (Michael Gennaco) will oversee the provision of specialized legal services as indicated in the contract and oversee two subordinate attorneys who will be providing the specialized legal services under separate contracts which will be submitted to your Board for approval within the next 60 days.

Implementation of the DCFS-OIR and this agreement will enhance the County mission of ensuring and improving safety for children.

Implementation of Strategic Plan Goals

The recommended actions are consistent with the principles of the Countywide Strategic Plan Goals 1 (Service Excellence), 3 (Organizational Effectiveness), and 5 (Children and Families' Well-Being). The recommended actions will provide improved services to families and organization efficiency in delivering services to the public.

FISCAL IMPACT/FINANCING

This contract has no new fiscal impact. Sufficient funding is included in the FY 2005-06 Adopted Budget and FY 2006-07 Proposed County Budget to accommodate reimbursement for necessary expenses. The estimated annual cost for the upcoming contracts for two subordinate attorneys is approximately \$450,000. The contract costs will be financed using approximately 85% State/federal revenue and 15% net County cost.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

As recently highlighted by the media regarding child fatalities in New York City and experiences we have had here in Los Angeles County, the ability of the County to identify areas for improvement and make effective systemic changes across a number of public and private entities, is critical in providing quality services to youth known to the County, and to better ensure their safety. Enhancing the credibility and effectiveness of the County's internal investigations of child injuries or fatalities and providing recommendations for systemic internal and external changes to improve the safety of children and reduce the incidents of serious injuries or fatalities will have a positive effect on children throughout the County organization and with the community.

DCFS-OIR will be established organizationally to report to your Board and will include two subordinate attorneys under the supervision of the current Chief Attorney. The two additional attorneys will be identified and recommended to your Board within 60 days of the execution of this agreement. In identifying and recommending at least one of the Deputy Attorneys, OIR will give substantial preference to individuals with existing familiarity with foster care issues and an ability to quickly begin making appropriate recommendations for systemic changes to improve safety of children known to DCFS.

Cases referred to DCFS-OIR would include cases where a child known to DCFS: (1) sustains serious injuries as a result of suspected abuse or neglect and the injuries impede his/her normal activities and result in substantial medical problems and hospitalization; or (2) dies as a result of suspected abuse or neglect; or (3) other specific instances in which your Board feels DCFS-OIR involvement is warranted. Referrals to DCFS-OIR will be made by the Director of DCFS or the Deputy Director of the Finance Bureau, or their designee. DCFS would provide DCFS-OIR notification of any such case and related circumstances upon the information being provided to the department, and DCFS-OIR would immediately begin to work with the appropriate staff to establish the investigation structure and participate in the investigative process.

For cases DCFS-OIR is overseeing, DCFS-OIR will assist DCFS in providing reports to your Board within 30 days and, where deemed appropriate, again at 60 days and/or 90 days. In addition, DCFS-OIR will provide your Board and the Director of DCFS with an oversight report every six months, and an annual report.

The oversight report will provide the following information on each case DCFS-OIR has reviewed: (1) start date of DCFS-OIR involvement, (2) allegations/synopsis of case, (3) DCFS-OIR's recommendations, (4) results of the implementation of the recommendations, (5) employee discipline, (6) subsequent history on the case as warranted, and (7) any other relevant information.

The annual report, will: (1) describe DCFS-OIR recommendations for change to County and non-county agencies' policies and procedures that were developed by DCFS-OIR during the previous year, (2) contain a self-assessment of the DCFS-OIR program, and (3) provide the implementation status of any recommendations made by DCFS-OIR which have not previously been reported as fully implemented or abandoned.

In addition, when requested by your Board or the Director of DCFS on unique or extremely complex cases, DCFS-OIR will also provide an independent detailed report on these individual cases.

It is anticipated that Department will refer approximately 80 cases annually to DCFS-OIR. It is expected that DCFS-OIR will perform a thorough analysis and review of DCFS internal investigations to determine whether County policies, practices and procedures should be revised to prevent similar allegations of misconduct or inefficient duplication of effort, and when warranted, develop and propose recommendations for revisions of such implicated policies, practices and procedures. In addition, DCFS-OIR will assist DCFS in reducing the time for completion of investigations and in providing recommendations for needed changes and improvements.

DCFS proposes to initially evaluate the success of the program by determining the impact of the implementation of DCFS-OIR on the rate of subsequent serious injuries or death as compared to total caseload, and the overall implementation of DCFS-OIR recommendations and their subsequent impact on reducing the future rate of serious injury or death. Finally, it is the Department's desired goal to achieve our investigation and report completion within 90 days. However, given the variation and complexity of the cases reviewed and our unfamiliarity with the DCFS-OIR process, we will analyze and assess the impact of the DCFS-OIR process on the timelines to investigate and complete reports over the next 120 days, and report back to your Board with a proposed percentage target for cases completed timely to evaluate this process.

County Counsel has developed the agreement language and reviewed the Board letter. The Chief Administrative Office has reviewed and approved this Board letter.

CONTRACTING PROCESS

The services were procured through negotiations with OIR.

IMPACT ON CURRENT SERVICES

Approval of the attached agreement will allow the County to have an independent review of critical incidents and fatalities of children and to supplement needed systemic changes across County and non-county entities to improve the safety and well-being of children known to DCFS.

CONCLUSION

Upon approval by your Board, it is requested that the Executive Officer/Clerk of the Board send a copy at the adopted Board letter and attachments to:

Department of Children & Family Services
425 Shatto Place
Los Angeles, California 90020
Attention: Joan Smith, Deputy Director

Office of County Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012
Attention: Brandon Nichols, Deputy County Counsel

Respectfully submitted,


DAVID SANDERS, Ph.D.
DIRECTOR

DS:JS:bah

Attachment (1)

c: Chief Administrative Officer

OFFICE OF COUNTY COUNSEL
500 WEST TEMPLE STREET
LOS ANGELES, CA 90012

JUN 05 03 AM 3:10

FILED

AGREEMENT FOR SPECIALIZED LEGAL SERVICES

**OFFICE OF INDEPENDENT REVIEW,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

This agreement for specialized legal services (hereinafter "Agreement") is entered into as of _____, 2006, by and between the County of Los Angeles (hereinafter "County") and Michael Gennaco (hereinafter " Chief Attorney") for the purpose of providing services for the Office of Independent Review, Department of Children and Family Services (hereinafter "OIR DCFS").

RECITALS

WHEREAS, the County Board of Supervisors (hereinafter "Board") is charged with administration of the local programs of child protective services, foster care, and adoption; and

WHEREAS these programs are implemented through a complex variety of County departments and private agencies; and

WHEREAS, the County Department of Children and Family Services (hereinafter "DCFS") is the lead County department responsible for the implementation of these programs; and

WHEREAS, the Board, the Director of DCFS (hereinafter "Director"), and the heads of other involved agencies require accurate information about instances of child death or serious injury which occur in connection with these programs in order to effectively administer and implement them; and

WHEREAS, the County wishes to ensure that incidents of child death or serious injury which occur in foster care are investigated and reviewed in a timely, thorough, and impartial manner; and

WHEREAS, Government Code Section 31000 authorizes the Board to contract for specialized legal services with specially trained, experienced, expert and competent individuals and entities; and

WHEREAS, Chief Attorney has been determined to be specially qualified to provide these legal services;

NOW, THEREFORE, the County and Chief Attorney agree as follows:

This Agreement constitutes the entire agreement between County and Chief Attorney with regard to the subject matter hereof and no amendment, modification or waiver of any of the terms herein shall be valid unless it is made in writing and signed by both Chief Attorney and the Office of the County Counsel.

1. Scope of Services –Chief Attorney

Chief Attorney shall, during the term of this Agreement provide special legal services consisting of the following:

- (a) Serving as lead counsel for OIR DCFS and coordinating the work of the other OIR DCFS attorneys;
- (b) Developing recommendations for change to the many involved County and non-County agencies' policies and procedures to reduce the number of child deaths and serious injuries which occur in connection with the foster care program;
- (c) Reviewing and assisting DCFS internal affairs to conduct timely, effective, and impartial reviews of the circumstances relating to the death or serious injury of any child in foster care or, at the request of DCFS, children at risk of entering foster care in order to develop recommendations for the prevention of future death or serious injury and to assist DCFS in assessing the potential accountability of involved DCFS employees;
- (d) Providing the Board, an annual report which: 1) describes OIR DCFS' recommendations for change to County and non-County agencies' policies and procedures which were developed by OIR DCFS over the previous year; 2) includes a self-assessment of the OIR DCFS program; and 3) reports the implementation-status of any recommendations made by OIR-DCFS which have not previously been reported as fully implemented or abandoned;
- (e) Providing the Board an oversight report at least every six (6) months which contains, at minimum, the following information on each case reviewed by OIR DCFS in the previous six (6) months: 1) start date of OIR DCFS' involvement; 2) allegations/synopsis of the case; 3) OIR DCFS's recommendation(s); 4) result(s) of the implementation of any recommendations; 5) employee discipline (if any); 6) subsequent history; and 7) any other pertinent items relevant to a particular case;
- (f) Providing the Board and Director, detailed reports on individual cases when requested by the Board or the Director. Such reports shall contain, at minimum, a discussion of the following: 1) a summary of the investigation and recommendations for further investigation, if necessary; 2) an analysis of potential policy violations by DCFS employees; 3) identification of systemic problems within DCFS and other County or non-County agencies involved in the case; and 4) recommendations for change to DCFS' or other County or non-County agencies' systems, disposition of DCFS Internal Affairs investigation, and disciplinary action to any DCFS employees;

- (g) Assisting DCFS to report to the Board on cases of child death or serious injury which occur in connection with the fostercare program within thirty (30) days of the death or injury and, where deemed appropriate by DCFS, again at sixty (60) days and/or ninety (90) days;
- (h) Within thirty (30) days of the execution of this Agreement, identifying and recommending to the County an individual with appropriate qualifications to be hired as a Deputy Chief Attorney for OIR DCFS. In making any recommendations for Deputy Chief Attorney, Chief Attorney shall give strong preference to individuals with an ability to quickly begin making appropriate recommendations for systemic changes to the County's foster care system;
- (i) Within sixty (60) days of the execution of this Agreement, identifying and recommending to the County an individual with appropriate qualifications to be hired as a Deputy Attorney for OIR DCFS. In making any recommendations for Deputy Attorney, Chief Attorney shall give strong preference to individuals with an existing familiarity with foster care issues and an ability to quickly begin making appropriate recommendations for systemic changes to the County's foster care system;
- (j) Where necessary to ensure the accuracy and impartiality of the reviews conducted pursuant to this Agreement, directly participating in the shaping of DCFS internal affairs investigations, including interviewing witnesses, responding to locations related to the underlying incidents, and reviewing tangible evidence and relevant documentation;
- (k) Devising and recommending mechanisms to provide positive recognition and incentives to employees who have performed their duties in an exemplary fashion;
- (l) Setting the operational philosophy of the OIR DCFS, to ensure that the needs and goals of the Board, the Director, and the staff are met;
- (m) Establishing and maintaining liaison with the District Attorney, DCFS executives, Board's Children's Deputies, local and federal law enforcement, County Counsel, employee's unions, civil rights organizations, child and family advocate groups, and other outside entities;
- (n) Performing thorough analyses and reviews of selected DCFS internal investigations to determine whether DCFS policies, practices, and procedures should be reexamined to prevent similar allegations of misconduct or inefficient duplication of effort and, when warranted, develop and propose recommendations for revisions of such implicated policies, practices and procedures; and

(o) Developing a real-time response protocol to critical events that fall within the responsibility of OIR DCFS for OIR DCFS and the Los Angeles County Office of Independent Review (OIR Sheriff).

2. Term

The term of this Agreement shall be for a period of three (3) years, unless otherwise amended or terminated earlier as provided herein, commencing on _____, 2006, and extending up to and including _____, 2009.

Either party may, at its sole option and discretion, cancel or terminate this Agreement for any or no reason by giving the other party thirty (30) days written notice of such termination.

3. Compensation and Expenses

So long as Chief Attorney continues to provide specialized legal services to the Los Angeles County Sheriff in connection with the Office of Independent Review, he shall perform the specialized legal services pursuant to this Agreement at no additional cost to County. However, Chief Attorney shall be reimbursed for any actual and necessary expenses incurred by Chief Attorney pursuant to this Agreement. Reimbursement for necessary expenses shall be paid for such items at the same rates and on the same terms as for County employees pursuant to Chapter 5.40 of the County Code. If the Chief Attorney ceases to provide services to the Sheriff at any time, this agreement shall terminate.

Reimbursement of actual and necessary expenses shall be payable on a monthly basis within ten (10) working days after submission to and approval of an invoice by the Office of the County Counsel. Such invoices shall specify in detail the dates and reasons for incurring each item of expense for which reimbursement is claimed. Invoices shall be mailed or delivered to the Office of the County Counsel, 648 Kenneth Hahn Hall of Administration, 500 West Temple Street, Los Angeles, California 90012.

4. Access to Records and Confidentiality

Chief Attorney shall have an attorney-client relationship with the County of Los Angeles including, but not limited to, the Board and any Los Angeles County department involved in the provision of foster care, adoption, or child protective services while performing the specialized legal services provided pursuant to this Agreement.

All internal observations and determinations by the Chief Attorney in the performance of the specialized legal and internal review services pursuant to this Agreement are and shall be attorney work product and subject to the appropriate claims of privilege therein.

Chief Attorney shall ensure that all communications and reports prepared pursuant to this Agreement comply with applicable federal, state, and local statutes, laws, regulations, and ordinances including, but not limited to, those which govern the confidentiality of juvenile records. Additionally, all such information will be information acquired in confidence by a public employee in the course of his or her duties and not open or officially disclosed to the public within the meaning of Evidence Code Section 1040.

The confidentiality of all records and materials collected and used by Chief Attorney shall be preserved consistent with the terms of this Agreement and federal, state, and local statutes, laws, regulations, and ordinances and shall within ten (10) days of the date of expiration or termination of the Agreement be delivered to the Office of the County Counsel for confidential retention in the manner and for the periods required by law for confidential records of the County Counsel.

As special counsel performing specialized legal assistance and independent review, Chief Attorney shall have access on an attorney-client basis to such confidential records of the County, its departments and officers as may be material and relevant to performance of his services and responsibilities pursuant to this Agreement. Chief Attorney shall obtain and maintain as confidential all information and records obtained in the course and scope of his employment as Chief Attorney.

5. County's Contract Managers

The Office of the County Counsel will serve as County's contract manager for purposes of this Agreement.

6. No Assignment or Delegation

This Agreement shall not be assignable by Chief Attorney, in whole or in part. Any attempt to assign shall be void and confer no rights on any third parties.

All services and duties of the Chief Attorney pursuant to this Agreement are solely the responsibility of the Chief Attorney and may not be delegated without the prior written consent of County. Any person not employed by County whose services are utilized by Chief Attorney, with such prior written consent, to assist in the performance of Chief Attorney's services pursuant to this Agreement shall, prior to performing any such services, execute an addendum to this Agreement, approved as to form by County Counsel, agreeing to the terms of this Agreement, including all requirements of confidentiality.

Neither Chief Attorney nor any person assisting Chief Attorney shall have a criminal record of conviction of a felony or any crime of moral turpitude, a record of allegations of child abuse or neglect, or be listed on the Child Abuse Central Index. Chief Attorney shall be responsible for supervising and assuring the performance and quality of work of

any individual who is not a County employee whom he utilizes to assist him in the performance of his obligations under this Agreement, as allowed by this section.

All communications and reports to County pursuant to this Agreement shall be made or submitted only by Chief Attorney.

7. Independent Contractor Status

Chief Attorney is not, nor shall he nor any of his employees or agents be deemed for any purposes an employee of the County; nor shall Chief Attorney, his employees or agents be entitled to any rights, benefits, or privileges afforded to County employees.

Chief Attorney shall comply with all federal, state, and local statutes, laws, regulations, and ordinances related to the payment of any employer, income, disability, or other tax which may be due by virtue of any compensation received by Chief Attorney under this Agreement.

Chief Attorney represents and warrants the County, and County relies on such representation and warranty, that Chief Attorney has the necessary licenses, training, experience, skills, competence and expertise to fully and completely perform the specialized legal services called for under this Agreement. County and Chief Attorney understand and agree that Chief Attorney is wholly responsible for the means and methods of performing these specialized legal services and accomplishing the results, deliverables, objectives and/or purposes as specified and/or requested by County pursuant to this Agreement.

8. Indemnification

In consideration of the benefit to County of the specialized legal assistance and independent review services to be provided by Chief Attorney pursuant to this Agreement, County agrees to indemnify, defend and hold Chief Attorney harmless from claims or liability resulting from acts and omissions of Chief Attorney in the performance of services provided within the scope of services required pursuant to this Agreement, to the same extent as if Chief Attorney were a County employee under Section 995, et seq. of the Government Code.

Except as specifically provided herein, Chief Attorney agrees to indemnify, defend and hold County harmless from any and all other claims of liability for damages of any nature whatsoever arising from or connected with acts or omissions of Chief Attorney, including any workers' compensation claims, liability or expense arising from or connected with services performed by or on behalf of Chief Attorney by any person.

9. Office Space, Equipment and Staff Support

County agrees to provide Chief Attorney, at no cost to Chief Attorney, such office space, vehicle usage, use of related equipment, and staff support and assistance during the

term of this Agreement as may be mutually agreed upon by Chief Attorney and County's contract managers. Any and all other office space, equipment and/or staff support assistance utilized by Chief Attorney in providing services pursuant to this Agreement shall be the sole cost and responsibility of Chief Attorney.

10. Notices

Notices required or permitted pursuant to this Agreement shall be given in writing by personal delivery or deposit in the United States mail, first class postage prepaid, addressed as follows:

To County: Office of the County Counsel
648 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

With a copy to: Chief Administrative Officer
713 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

To Chief Attorney: Michael Gennaco, Esq.
4900 South Eastern Avenue
Suite 204
Commerce, California 90040

The address for notice may be changed by County or Chief Attorney, as the case may be, by written notice to the other party as provided therein.

IN WITNESS THEREOF, County and Chief Attorney have executed this Agreement as of the date first set forth above.

COUNTY OF LOS ANGELES

CHIEF ATTORNEY

By _____
Michael Antonovich, Mayor
Board of Supervisors



Michael Gennaco, Esq.

APPROVED AS TO FORM:
OFFICE OF THE COUNTY COUNSEL

By 

Deputy