



MARIPOSA COUNTY

County Counsel • (209) 966-3222



RESOLUTION - ACTION REQUESTED 2018-179

MEETING: April 24, 2018
TO: The Board of Supervisors
FROM: Steve Dahlem, County Counsel - Interim Human Resources Director
RE: Approve Letter Retainer Agreement with Colantuono, Highsmith & Whatley, PC

RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement with Colantuono, Highsmith & Whatley, PC to defend the County of Mariposa in the matter of *Thomas Kroon v. County of Mariposa*; Mariposa County Superior Court Case No. 11065; and Authorize the Board of Supervisors Chair to Sign the Agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

On March 29, 2018 Thomas Kroon filed a Petition for Writ of Mandate and Complaint for Validation and Declaratory Relief (Mariposa County Superior Court Case No. 11065), which the County has not yet been properly serviced with. Generally, Case No. 11065 seeks to invalidate Resolution Nos. 2018-57, 2018-58 and 2018-60, which establish the formation of the Yosemite West Zone of Benefit and adoption of water and wastewater rates.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

FINANCIAL IMPACT:

The funding for this agreement will be paid from the County's Liability fund and there is currently sufficient money in this fund for this Legal Services Agreement.

ATTACHMENTS:

Legal Services Agt-Kroon(PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Merlin Jones, District II Supervisor

SECONDER: Kevin Cann, District IV Supervisor

AYES: Smallcombe, Jones, Long, Cann, Menetrey

420 Sierra College Drive, Suite 140
Grass Valley, CA 95945
Voice (530) 432-7357
Fax (530) 432-7356

COLANTUONO
HIGHSMITH
WHATLEY, PC

RES. NO. 18-179

Michael G. Colantuono
(530) 432-7359
MColantuono@chwlaw.us

RECEIVED

April 9, 2018

APR 17 2018

MARIPOSA CO. COUNSEL

VIA E-MAIL

Steven W. Dahlem, County Counsel
County of Mariposa
P. O. Box 189
Mariposa, CA 95338-0189

Re: **Representation of County of Mariposa in *Kroon v. County of Mariposa, et al.*, Mariposa Superior Court Case No. 11065**

Dear Steve:

As you asked, I write to propose the terms under which we agree to represent the County of Mariposa ("you" or "the County)) by defending the lawsuit identified above challenging water and sewer fees recently imposed on the Yosemite West subdivision. As you know, we currently represent the County in the *Davis* and *Davis II* lawsuits and provide advice on other revenue matters. These are our only current projects for you; if we can assist you on other matters, please let me know. Colantuono, Highsmith & Whatley, PC and all of its professionals are very pleased to have the opportunity to represent you in this matter.

This letter sets forth the basis upon which our firm will provide legal services to you and bill you for services and costs. The firm maintains a conflict of interest index which lists all clients of our firm and matters in which we represent them. We will not represent any party with an interest that may be adverse to an indexed person without first determining if a professional conflict of interest would arise. We propose to index the following with respect to this matter:

Client-Affiliated Parties:

County of Mariposa

Adverse Parties:

Thomas Kroon.

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Please let me know if either of these names are incorrect or if there are other parties with an interest in this matter that we should list such as, for example, any other parties expected to answer the validation complaint. Unless we hear from you to the contrary, we will assume that the above listing is accurate and complete.

We have reviewed our files and our conflicts index and have no other client relationships which would interfere with our ability to represent you in this matter.

As we have discussed, the nature of the matter makes it impossible for us to precisely estimate the total fees you may incur. You will receive monthly statements informing you of the fees and costs incurred during the prior month. We will, of course, do our best to represent you efficiently and without undue expense.

Please make payments payable to Colantuono, Highsmith & Whatley, PC directly to our Grass Valley office at:

Colantuono, Highsmith & Whatley, PC
420 Sierra College Drive, Suite 140
Grass Valley, CA 95945-5091.

Our federal employer identification number is 75-3031545.

John Jones and I will have primary responsibility for your representation, and the firm will use other attorneys and legal assistants in the best exercise of our professional judgment. If at any time you have questions, concerns or criticisms, please contact me at once. Naturally, we expect you to keep us reasonably informed of all significant developments in matters relating to this representation.

We review all statements before they are issued to ensure that the amount charged is appropriate. The statement for fees is simply the product of the hours worked multiplied by the hourly rates for the attorneys and legal assistants who did the work.

Our hourly rates are based upon the experience, reputation and ability of the lawyer or legal assistant performing the services, and for 2018 range between \$205 and \$495 per hour for attorneys' time, and between \$135 and \$170 for the time of paralegals

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and legal assistants. As a courtesy to you, however, we agree to cap our rates at \$350 per hour. Our rate structure in general and the rates of particular lawyers may be increased from time to time, and are usually adjusted as of the beginning of each calendar year but we will not lift the \$350 cap without first discussing that with you.

It may be necessary to bill you for items such as, but not limited to, authorized travel, long distance telephone calls, filing fees, photocopying, computerized legal research outside the scope of our Westlaw contract and the like. These items are separately itemized on our statement as "disbursements." These amounts will be billed in addition to our fees.

We will send you monthly statements, and expect payment within 15 days of the billing date. If payment is not received within 30 days of the billing date, we reserve the right to charge interest on the unpaid balance at the rate of 1% per month and to terminate our representation.

We rarely have disputes with clients over our fees. Nevertheless, you should be aware that you are entitled to require that any fee dispute be resolved by binding arbitration in Los Angeles or Nevada Counties pursuant to the arbitration rules for legal fee disputes of the respective County Bar Association. We agree that all disputes between us regarding the services rendered or fees charged not resolved via County Bar fee arbitration will be submitted to binding arbitration in Sacramento to be conducted by ADR Services, Inc. in accordance with its commercial arbitration rules. **YOU SHOULD REVIEW THIS PARAGRAPH CAREFULLY AND, IF YOU WISH, SEEK INDEPENDENT LEGAL COUNSEL REGARDING IT, AS YOU AND WE ARE AGREEING TO FOREGO SIGNIFICANT RIGHTS IN THE EVENT OF A DISPUTE BETWEEN US, INCLUDING THE RIGHT TO A JURY TRIAL.**

You have the right to terminate our representation at any time. We have the same right, subject to an obligation to give you reasonable notice to arrange alternative representation. In either circumstance, you agree to secure new counsel to represent you as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record. Notwithstanding the termination of our representation, you will remain obligated to pay to us all fees and costs incurred earlier.

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You agree that we may, in our discretion, maintain all or part of your client file in electronic format. The firm may store part or all of your documents using secure cloud storage services. If so, the firm will apply all reasonable methods to maintain the confidentiality of your files, just as it does for your non-digital information. Your data will be password protected and encrypted using currently available technology. Clients requiring information from their files may obtain it only by written request to us.

You also agree that following termination of our attorney-client relationship, we will not be required to maintain your client files in this and all other matters for more than two years. If you ask us to deliver your file to you, you agree that delivery of an electronic version, together with any materials that cannot be saved electronically, satisfies our obligation to release all your client papers and property to you. Two years after termination of our relationship, and after reasonable notice, you agree that we will be free to destroy your client file, including all electronic records. We may also discharge our obligation to maintain your file before two years expire by mailing a copy to you at your address last known to us. You agree that "reasonable notice" means our mailing a notice of our intent to destroy your client file to you at that address.

I apologize for the formality of this letter, but we are required by California law to provide this information to you in writing. We are also required to inform you that we currently maintain professional liability insurance coverage.

Please review the foregoing and, if it meets with your approval, execute it and return it to me by fax, mail or email. If you have any questions, please feel free to call me at the direct-dial number above. Thank you for the opportunity to represent you!

Very truly yours,



Michael G. Colantuono

MGC:mgc

c: Rhonda Scherf

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On behalf of County of Mariposa, I agree to retain Colantuono, Highsmith & Whatley, PC to provide legal services as set forth above.

Rosemarie Smallcombe Date: April 24, 2018
Signature

By: Rosemarie Smallcombe

Title: Board Chair

APPROVED AS TO FORM:

Steven W. Dahlem
STEVEN W. DAHLEM
COUNTY COUNSEL