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FILED

JUL 30 2021

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MENDOCINO, UKIAH BRANCH

11 * * * * *

12 MENDOCINO COUNTY SHERIFF
13 MATTHEW KENDALL,

14 Plaintiff,

15 v.

16 MENDOCINO COUNTY BOARD OF
17 SUPERVISORS,

18 Defendant.

Case No.:

21CV00561

DECLARATION OF MATTHEW KENDALL
IN SUPPORT OF MOTION FOR AN EX
PARTE ORDER PURSUANT TO
GOVERNMENT CODE §31000.6
DECLARING THE COUNTY COUNSEL
HAS A CONFLICT OF INTEREST IN
REPRESENTING BOTH THE BOARD OF
SUPERVISORS AND THE SHERIFF AND
APPOINTING THE LAW OFFICE OF
DUNCAN M. JAMES AS THE ATTORNEY
FOR THE SHERIFF

Date: July 30, 2021

Time: 2:00PM

Dept.: G

19 I, MATT KENDALL, declare:

20 1. I am the Sheriff of Mendocino County California. My term in office expires in
21 January, 2023.

22 2. Following my appointment to office, I began having difficulties with Carmel
23 Angelo, the Mendocino County Chief Executive Officer ("the CEO") and Fifth District
24

25 1

26 DECLARATION OF MATTHEW KENDALL IN SUPPORT OF MOTION FOR AN EX PARTE
ORDER PURSUANT TO GOVERNMENT CODE §31000.6 DECLARING THE COUNTY COUNSEL
HAS A CONFLICT OF INTEREST IN REPRESENTING BOTH THE BOARD OF SUPERVISORS
AND THE SHERIFF AND APPOINTING THE LAW OFFICE OF DUNCAN M. JAMES AS THE
ATTORNEY FOR THE SHERIFF

1 Supervisor Ted Williams regarding the operation of my office, as hereinafter set forth. The
2 main ongoing issues are: (1) the operation of the Mendocino County Sheriff's Office
3 information technology infrastructure ("SHERIFF'S IT"), including but not limited to budget,
4 staffing and potential litigation relating thereto; (2) the attempted take-over of the SHERIFF'S
5 IT department by the County; (3) the extent of any authority the Sheriff may have to spend
6 county funds for non-emergency expenses beyond what has previously been budgeted and
7 appropriated; and, (4) the CEO's budget recommendations to the Board of Supervisors, which
8 includes a reduction of approximately 1.5 million dollars. (See Sheriff Kendall's declaration in
9 support of this ex parte motion.)

10 3. I met with County Counsel Christian Curtis regarding these issues with the
11 BOARD and Ms. Angelo and Mr. Curtis' conflict of interest in representing both the BOARD
12 and Ms. Angelo on the one hand and the Sheriff's Office on the other.

13 4. As a result of those discussions Sheriff Kendall submitted a request on June 23,
14 2021 to the BOARD that counsel be appointed to represent him regarding the matters as more
15 particularly detailed in an email. Attached hereto as Exhibit A is a true and correct copy of my
16 email to the Mendocino County Board of Supervisors dated June 23, 2021, requesting the
17 appointment of conflicts attorney to represent my office in the place and stead of the Mendocino
18 County Counsel Christian Curtis.

19 5. On June 23, 2021, County Counsel Curtis contacted the SHERIFF advising CEO
20 Angelo had concerns over how the item was presented and he wished for more time to calm and
21 explain the process to CEO Angelo. As a result of follow-up discussions between the SHERIFF
22 and County Counsel Curtis the SHERIFF withdrew the item and requested the matter be placed
23 on the BOARD agenda for a later date.

1 6. When it became apparent that no progress was being made in resolving the issue
2 of the SHERIFF hiring his own attorney to handle the conflict matters, the SHERIFF again
3 requested the matter be placed on the BOARD'S agenda nearly one month later for the
4 BOARD'S meeting to take place on July 20, 2021. Attached hereto as Exhibit B is a true and
5 correct copy of my written request to the Mendocino County Board of Supervisors dated July
6 16, 2021, requesting the appointment of conflicts attorney to represent my office in the place
7 and stead of the Mendocino County Counsel Christian Curtis.

8 7. Attached hereto as Exhibit C is a true and correct copy of the Agenda for the
9 Mendocino County Board of Supervisors meeting dated July 20, 2021.

10 8. Item 5e) on the agenda is titled "Discussion and Possible Action Including
11 Approval of Agreement with the Law Office of Duncan M. James in the Amount of \$50,000 to
12 Provide the Sheriff with Legal Assistance Pursuant to Government Code section 31000.6
13 Effective Upon Execution with No Term End Date."

14 The "*Recommended Action*" was to "Approve Agreement with the Law Office of
15 Duncan M. James [...]."

16 9. To my knowledge, the County Counsel submitted no documents in opposition to
17 my request for a finding there was a conflict-of-interest and that the Law Office of Duncan M.
18 James be hired as my conflicts counsel.

19 10. I was present during the meeting, which took place via video conferencing.

20 11. During the hearing, Mendocino County Counsel Christian Curtis stated on
21 multiple occasions that he had a conflict-of-interest: in representing both the Mendocino County
22 Board of Supervisors and my office; and, that an ethical wall could not be created.

23 12. In spite of that admission, the BOARD failed to pass any motion that there was a
24 conflict-of-interest the BOARD and indicated it was to be brought back before the BOARD on
25

1 a later date, August 3, 2021. No member of the Mendocino County Board of Supervisors at the
2 July 20, 2021 meeting made a motion either in support of or opposition to my request.

3 13. My request to have the appointment of conflicts counsel includes, but is not
4 limited to, the following facts:

5 a. In 2019 I was contacted by the Mendocino County Sheriff Office
6 Information Technology ("SHERIFF IT") Manager who advised me that he had been contacted
7 by a deputy in the Mendocino County Executive Office ("CEO"), Janelle Rau ("RAU") in the
8 parking area of county administration building. RAU told the SHERIFF IT Manager that she
9 was moving to take over the SHERIFF IT and it was simply a matter of when. One of my
10 numerous concerns is there are numerous people in the office of the CEO who hadn't passed the
11 required California Department of Justice background checks.

12 b. The SHERIFF IT Manager again contacted me on the same subject a
13 second time in 2019 to advise me that he had been contacted by Tom Jacobson from Client First
14 who advised him the Mendocino County Board of Supervisors ("BOARD") were moving to
15 take over SHERIFF'S IT. I was very surprised when I received that information because up
16 until that point in time, other than the comments made by RAU, I was unaware of any efforts to
17 take over the SHERIFF'S IT.

18 c. During 2019 my office had a dispatcher retire. This dispatcher has been
19 working part time in Sheriff's IT to assist in the integrations with the computer aided
20 dispatching. Upon her retirement I spoke with the SHERIFF'S IT Manager and Dispatch
21 supervisors. We decided instead of hiring a dispatcher we would hire an IT person to fill her
22 place. Mendocino County Undersheriff Brewster worked with the Mendocino County's Human
23 Resources Department ("HR") to complete the changes. I was gone to training during the week
24 it was to be heard by the BOARD. When I returned, I learned the item had not gone forward

1 and that RAU had pulled the item off the agenda and told HR she wanted to go in a different
2 direction. When Undersheriff Brewster confronted RAU and asked her what happened she
3 denied any knowledge of the events which resulted in the matter not being heard by the
4 BOARD. When Undersheriff Brewster explained she had pulled the item, she stated she had
5 forgotten however gave no further explanation.

6 d. On March 23, 2021, there was a BOARD Agenda Item 5c) to be heard on
7 proposes changes to the Mendocino County Information Services Department ("COUNTY IT").
8 In reviewing the budgeting instructions we received, we discovered \$286,000.00 was allocated
9 for enterprise IT. It appeared as though the effect of these budgeting changes would be the
10 restructuring of COUNTY IT, the creation of a new position of Chief Information Officer (CIO)
11 and the takeover of the SHERIFF'S IT by the COUNTY IT. In my opinion, such a takeover
12 would infringe on my duties as Sheriff, which allow us to maintain secure connections with the
13 California Law Enforcement Telecommunications System (CLETS) through the California
14 Department of Justice (DOJ) as well the Federal National Crime Information Center (NCIC).
15 These secure connections to DOJ and NCIC computer systems allow me the ability to
16 effectively detect and investigate crimes. They also are necessary in many mandated entries
17 including entry of missing persons, stolen and recovered property, the tracking of firearms,
18 wanted persons, functions of housing and maintaining our inmate populations and reporting to
19 the California Department of Justice.

20 e. The email system in the Sheriff's Office is maintained by the COUNTY
21 IT. We were working toward removing it from the COUNTY IT and including it in the
22 SHERIFF IT, where it, belongs because of the confidential nature of the communications which
23 include those relating to ongoing criminal investigations and communications from informants
24 regarding the on-going commission of crimes. In the past, unauthorized county employees have

1 accessed the email system as evidenced by the 2016 Mendocino County Grand Jury Report.
2 Any such unauthorized access to the Sheriff's emails could potentially not only jeopardize
3 criminal investigations it could place of lives of informants at risk. In addition, the Sheriff's
4 Office is the connection point for state and federal DOJ connections which could have an effect
5 on agencies who receive their information through us. The Ukiah, Ft Bragg and Willits Police
6 Department have some of their DOJ connections through us as does the Mendocino County
7 District Attorney and the Mendocino County Probation Department. A Request for Proposal for
8 bids relating to a new server was prepared and we received a generic refusal to move forward.

9 f. During the course of budget hearings for the 2021-2022 budgets, the
10 budget presentations completed by the CEO's office included reference to a Government Code
11 section which indicated the BOARD could hold department heads civilly liable for going over
12 budget. County Counsel Christian Curtis advised the board this was legal and it appears they
13 will attempt to hold me civilly liable for deficits which they built into the budget in spite of the
14 fact the Sheriff's office budget was structurally underfunded. My office was instructed to meet
15 with Assistant CEO Darci Antle regarding budgeting issues. Antle gave strange instructions
16 which simply didn't make sense to us. I don't understand if this was a misunderstanding of
17 county budgeting or was it an attempt to control expenditures through misguided direction.
18 Following the meeting we remained underfunded by in excess of \$2,000,000. I am extremely
19 concerned about these issues because of the aforementioned discussions at the BOARD, it was
20 brought up the department heads can be held personally liable for overages in their budgets.
21 Knowing we had been underfunded to begin with I remain extremely concerned about our
22 offices ability to investigate ongoing criminal activity because of the lack of adequate funding
23 and the county threatening to sue me personally to recover any budget overage.

1 g. My concerns led me to contact Mendocino County Counsel Christian
2 Curtis. During the week of June 23, 2021. I spoke with Mr. Curtis regarding the issues and
3 explained to him I would be seeking outside counsel. Mr. Curtis agreed that we are in conflict
4 and that I would have to make a request of the BOARD regarding conflicts counsel. I prepared
5 a memo and asked if he would review it prior to submission to the BOARD to ensure I hadn't
6 misspoken about any of his actions. He agreed and asked me to change a couple of small issues
7 which I did. Mr. Curtis instructed me to send the item to the clerk of the board so we could get
8 it on calendar for a BOARD meeting.

9 h. Pursuant to his direction on June 23, 2021, I sent the memo to the Clerk
10 of the Board after which Christian Curtis contacted me and advised he had to calm the CFO and
11 explain the process to her and requested that I pull back the memo. At his request it was
12 withdrawn.

13 Mr. Curtis provided me a list of law firms commonly used by Mendocino County to
14 review, a copy of which is attached hereto as Exhibit D. There are no law firms in that list that
15 meet the experience and qualifications of this law office. Without regard to their litigation
16 experience which is detailed in the attached resume, attorney Duncan M. James was a
17 prosecutor in Mendocino County for twelve (12) years (1967-1979), which included ten (10)
18 years as the Mendocino County District Attorney. In addition, according to his resume from
19 1967 through 1976 he performed all of the functions of Mendocino County Counsel as legal
20 advisor to the Board of Supervisors, all elected and non-elected department heads and county
21 commissions and all school and special services districts in Mendocino County; and, the County
22 Counsel office was created while he was District Attorney in response to his request that the
23 Board of Supervisors create the County Counsel's Office. The resumes also point to Douglas L.
24 Losak's extensive civil government experience in the Mendocino County Counsel's Office from
25

1 January, 2003 until October, 2015. None of the law firms included on that list provided to me
2 can match that level of experience representing Mendocino County.

3 i. As is more particularly detailed in the letter from Duncan M. James to me
4 dated July 16, 2021 (Exhibit B), the hourly rates of the principals in the law firm are the lowest
5 of any of the law firms included in the list (Exhibit D) when compared to hourly rates for other
6 attorneys of similar stature in their law firms.

7 j. On July 16, 2021, at approximately 1600 hours, I received the fee
8 schedule and an attachment from Duncan James' Office to be attached to the item before the
9 BOARD for the hearing on July 20, 2021. I sent this item to the Clerk of the BOARD on July
10 16, 2021. On the morning of the hearing on July 20, 2021, I checked the agenda item and saw it
11 hadn't been attached. I called Mr. Curtis and asked about this. He indicated they hadn't
12 received it. I could see it had been delivered so I sent it again, this time directly to Mr. Curtis.
13 He indicated copies would be given to the BOARD members during their lunch break. It
14 entailed approximately 50 pages.

15 k. Eventually the issue was heard by the BOARD in the afternoon of July
16 20, 2021. During the hearing I asked several times if they would agree there was a conflict of
17 interest. No one even made a motion on that point. They simply stated they didn't want
18 Duncan James' law firm and pointed to the litigation where the City of Ukiah was a defendant,
19 which resulted in a major financial settlement for the plaintiff therein; and, the Duncan James'
20 law firm was suing the COUNTY over the firing of the Agricultural Commissioner. Neither of
21 those cases have anything to do with Mr. Curtis' conflict of interest as detailed about.
22 Ultimately no decision was made however Christian Curtis stated he would find another law
23 firm to present on behalf of the BOARD to represent me and the BOARD took no action on my
24 request.

Exhibit A

MATTHEW C. KENDALL
Sheriff-Coroner



Darren T. Brewster
Undersheriff

Captain Gregory L. Van Patten
Field Services

Captain Tim Pearce
Corrections

County of Mendocino Office Of The Sheriff-Coroner

Date: June 23rd, 2021

To: Mendocino County Board of Supervisors
From: Matt Kendall, Mendocino County Sheriff
Regarding: Request for authorization to hire independent legal counsel

Recently the Mendocino County Board of Supervisors discussed a possible merger of the Mendocino County Sheriff's Information Technology Department (Sheriff's IT) and Mendocino County Information Services Department (County's IT). This appears to be a continuation Board of Supervisors Agenda Item 5c) which was heard on 03/23/21 that proposed changes to the Mendocino Information Services Department that would: (1) fund the restructure of the Information Services department; (2) create a new Chief Information Officer position; and, (3) merge the Sheriff's IT and County's IT departments. In my opinion, it appears to be the same issue but merely approaching it from a different direction

Last week, the CEO's office called a meeting for 06/18/21 at the direction of the Board of Supervisors regarding the Sheriff and County IT departments. It appeared this was movement in an attempt at consolidation of the County's IT and Sheriff's IT, which I strongly oppose. In attendance at the meeting were representatives of the: CEO; County Counsel; County IT; Sheriff's IT; Undersheriff Brewster; and, outside contractors. At the beginning of the meeting, in response to a question by Undersheriff Brewster as to why the County Counsel was present, County Counsel Christian Curtis, advised the Undersheriff that he was ultimately representing the Board of Supervisors. Because of my concern that the County may move forward with consolidation, which I believe is in direct conflict with state law, Undersheriff Brewster was of the opinion that the County Counsel had a conflict of interest and could not represent both the Sheriff's Office and the Board of Supervisor. Since the Sheriff's Office was not represented by independent counsel, Undersheriff Brewster and the Sheriff's IT representative left the meeting.

This is not the first time the issue of a conflict of interest has arisen regarding the County Counsel representing both the Board of Supervisors and the Sheriff's Office regarding a disputed issue and the Sheriff's Office was not represented by independent counsel. Recently the Board of Supervisors was advised by County Counsel that the Board of Supervisors can proceed against department heads to recover expenditures in excess of their approved budget. I am not speaking for any department other than the Sheriff's Office when I state that the Sheriff's Office disputes that opinion and questions why the Board of Supervisors was not advised of the Government Code sections and case law in relation to expenditures incurred by the Sheriff's office regarding the detection and investigation of crime, even though those expenditures may exceed the budgeted amounts.

These are just two recent opinions made by County Counsel that are at variance with my understanding of the law as it relates to the operation of my office. Therefore I am making a request under government code 31000.6 for independent counsel on matters which are currently of concern. I have discussed this current concern with County Counsel Curtis who has advised his office cannot advise me on the current issues due to a conflict.

This conflict of interest is not limited to meetings. It includes other contacts with the County Counsel's office where disputes have arisen between other county departments including the CEO and the Sheriff's Office. It is not the role of the County Counsel to be a mediator. It is his obligation to represent or advocate for the Board of Supervisors or CEO to the best of his ability, even where this conflicts with the Sheriff's Office. Also, this simply isn't fair to County Counsel Curtis as he cannot ethically serve two parties who are in conflict. At the same time, the Sheriff's office is entitled to independent legal advice which is uninfluenced by the Board of Supervisors, either individually or as a group, or the CEO'S office.

I am therefore requesting the Board of Supervisors immediately authorize the Sheriff's Office to sign a contract with independent legal counsel of my choosing to handle all future legal issues arising in my office.

Respectfully,
Sheriff Matt Kendall

951 Low Gap Road
Ukiah, California 95482

707-463-4411
Fax 707-468-3404

Exhibit B

LAW OFFICE OF DUNCAN M. JAMES

Duncan M. James
Donald J. McMullen
K. J. Flavetta
Douglas L. Losak

LAMBS INN
P. O. BOX 1381
445 NORTH STATE STREET
UKIAH, CALIFORNIA 95482
(707) 468-9271

FAX (707) 468-0453
lawoffice@duncanjames.com

July 16, 2021

Matt Kendall
MENDOCINO COUNTY SHERIFF
951 Low Gap Road
Ukiah, CA 95482

Re: Selection of Law Office of Duncan M. James

Dear Sheriff Kendall:

Attached are resumes for myself (Attachment A), Donald McMullen (Attachment B) and Doug Losak (Attachment C), all of who would be actively involved in various aspects of your issues with the Mendocino County Board of Supervisors and County Executive Office.

I have reviewed the list of law firms provided to you by the County Counsel. There are no law firms in that list that meet the experience and qualifications of this law office. Without regard to our litigation experience which is detailed in the attached resume's, as a prosecutor for twelve (12) years (1967-1979), which included ten (10) years as the Mendocino County District Attorney, from 1967 through 1976 I performed all of the functions of Mendocino County Counsel as legal advisor to the Board of Supervisors, all elected and non-elected department heads and county commissions and all school and special services districts in Mendocino County. The County Counsel office was created while I was District Attorney in response to my requested that the Board of Supervisors split the civil function from my office and create the County Counsel's Office.

Douglas L. Losak, from my office, also has extensive civil government experience in the Mendocino County Counsel's Office from January, 2003 until October, 2015. None of the law firms included on that list can match that level of experience representing Mendocino County.

In addition, my office has extensive trial experience as evidenced by our resume's including my success in before the United States Supreme Court in a voter and states' rights case, in which I personally argued on behalf of the Mendocino County Clerk who I represented in my civil capacity as District Attorney. The case is entitled "Viola N. Richardson, as County Clerk, et. al. v. Abran Ramirez, et. al." (1974) 418 U.S. 24 [41 L.Ed.2d 551] 94 S.Ct. 2655. The United States Supreme Court reversed a unanimous decision of the California Supreme decision in *Abran Ramirez v. Edmund G. Brown, Jr.* (1973) 9 Cal.3d 199.

In reviewing the list of law firms you received from the County Counsel, the rates ranged from \$212 per hour for the Nevada County Counsel Office to \$640 per hour for Hawkins, Delefield Wood, LLP, whose main practice is as bond counsel. I would suspect the hourly rate from the Nevada County Counsel fails to consider the costs of staff, rent for space occupied based on fair market value of similar space in the community and overhead, which each of the

