



MEMORANDUM

Date: May 2, 2019

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Public Defense Services Request to Retain Outside Counsel**

Board of Supervisors Policy C6.1 allows the County Administrator to appoint outside counsel in specific circumstances. Such is rarely done and only with the full knowledge and consent of the County Attorney; usually in cases where the County Attorney has a direct conflict in representing a specific case relating to the County or Board of Supervisors.

Attached is a July 2, 2018 memorandum from Dean Brault, Director of Public Defense Services regarding the creation of a Pima County Bonding Agency. Mr. Brault proposes that Pima County create a new position under the direction of the Finance Department where that employee would register as a bail bondsperson requiring posting a \$10,000 bond with the state and the payment of a \$166 fee. Mr. Brault suggests that this employee implement a program utilizing Pretrial Services employees at initial appearance to offer contracts to any individual held on a bond when Pretrial Services recommends release. In the event the defendant agrees to abide by the conditions of release, Pima County would post the bond. While the idea of a Community Bonding Agency is being used in other parts of the country, Mr. Brault believes it is necessary to obtain a legal opinion as to whether it can be legally accomplished here in Arizona.

At the end of Mr. Brault's memorandum, he suggests that, "given that the Pima County Attorney's Office is the agency frequently advocating that individuals be held in the jail, they have a conflict of interest in providing the County with legal advice and that outside counsel be retained to investigate this idea." In an October 3, 2018 email to Mr. Brault (copy attached), Pima County Attorney – Chief Civil Deputy Andrew Flagg indicated that his office could possibly have a conflict in rendering an opinion in this circumstance.

If you have any questions regarding this matter, please contact me.

Attachments

c: The Honorable Barbara LaWall, Pima County Attorney
Amelia Craig Cramer, Chief Deputy, Pima county Attorney
Andrew Flagg, Chief Civil Deputy, Pima County Attorney
Dean Brault, Director, Pima County Public Defense Services

ATTACHMENT 1



PUBLIC DEFENSE SERVICES

MEMORANDUM

To: C.H. Huckelberry
County Administrator

Date: July 2, 2018

From: Dean Brault
PDS Director

Subject: Creation of a Pima County Bonding Agent

Pima County currently conducts initial appearances on criminal cases every morning and every evening of every day. Pima County has an agreement with the City of Tucson whereby Tucson City Court magistrates set the conditions of release for all individuals booked into the Pima County Jail. Pretrial Services (PTS), under the direction of the Pima County Superior Court, makes release recommendations based on a nationally accepted risk assessment tool that is evidence based to evaluate the risk for non-appearance and re-offending. Based on this assessment, PTS recommends that an individual either be released on his or her recognizance (ROR), be released to the third party custody of PTS, be released to the third party custody of pretrial services with enhanced supervision, or "No ROR," which is essentially a recommendation that the individual either be held on a bond or that it is possible they can be held without bond. The rate at which the initial appearance judge complied with the PTS recommendation for FY16/17 was 86%.

While I do not yet have data from PTS, from years of professional experience, the vast majority of non-compliance cases involve individuals that had a PTS recommendation for release ROR or to PTS that were held on a bond of some amount. While some clients are able to post their bond, it often takes a significant amount of time to be able to do so. Many defendants are not able to post their bond. The defendant's attorney will almost always file a motion to modify the client's conditions of release and ask that it be heard as soon as possible. If a person is indicted, it usually takes about 24 days or more from the arrest date for the assigned Superior Court judge to hear the motion. Such motions in cases where the PTS recommendation was for release of some sort are almost always granted. For clients whose charges are dismissed pre-indictment, those who cannot post the bond usually remain in jail for 10 days.

The population of individuals that pretrial services recommends for release that are held on a bond represents a sizeable portion of the jail who never should have been held there and are highly likely to be released upon reconsideration of their conditions of release.

Assuming the number of felony defendants remains constant at 1,800 per quarter, that only 13% are held against PTS's recommendation, a 38% dismissal rate after an average of 7 days in-custody, a 24 day wait for a motion to modify, and a 95% compliance rate at the Superior Court means that over 26,000 unnecessary bed days are happening each year. At the rate for second and subsequent days at the jail of \$95.00 per day, this amounts to just under 2.5 million dollars a year in unnecessary bed days.

Defendants frequently lose jobs, housing, and incur other collateral consequences of being in jail unnecessarily in addition to the direct and indirect costs to the county. In order to avoid these costs, I am proposing that Pima County create a new position under the direction of the Finance Department that is responsible for reducing the costs associated with the operation of the Pima County Jail. This employee would register as a bail bondsperson, which requires posting of a \$10,000 bond with the state and a fee of \$166. This employee would then implement a program that would utilize PTS workers at initial appearances to offer contracts to any individual who is held on a bond when PTS was recommending release. If the defendant agrees to abide by Pretrial Services' conditions of release, then Pima County would post his or her bond.

I would propose that this apply to all cases where the bond set was \$30,000 or less and where the charges were not under chapters 11, 14, or 35.1, which are homicide, sex, and child pornography cases.

Given that if a defendant fails to appear at court and the bond is forfeited, the funds are deposited into the County's general fund, and thus there are no financial consequences to the county for such failures to appear. If a defendant is arrested on new charges, he or she will be held without bond at their initial appearance at the discretion of the prosecutor not to make such a request.

I would suggest that given that the Pima County Attorney's Office is the agency frequently advocating that individuals be held in the jail, they have a conflict of interest in providing the County with legal advice and that outside counsel be retained to investigate this idea.

cc: Wendy Petersen
Assistant County Administrator

Terrance Cheung
Program Manager

Spencer Graves
Program Coordinator

ATTACHMENT 2

Amanda N. Colon-Sisco

From: Andrew Flagg
Sent: Wednesday, October 3, 2018 10:24 AM
To: Dean Brault
Cc: Wendy Petersen
Subject: RE: Community Bond Organization

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Dean,

Typically, we would determine whether we have a conflict after receiving a specific formal request for legal advice, usually from CHH. Here, though what I've been told about the proposal is quite vague, based on what I do understand, I do believe we would have a conflict and would select outside counsel to provide advice to County Administration or the Board.

Unless there's some reason I'm not thinking of that we should do it otherwise, my suggestion would be to have a request to our office come from CHH that we can then refer out. I have not decided on who outside counsel would be in this instance—I believe it would need to be someone who understands, and preferably has some experience, advising local government entities regarding their authority under state law. I am certainly open to suggestions.

Thanks,
Andy

Andy Flagg | Chief Civil Deputy
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From: Dean Brault [mailto:Dean.Brault@pima.gov]
Sent: Wednesday, October 3, 2018 10:05 AM
To: Andrew Flagg <Andrew.Flagg@pcao.pima.gov>
Cc: Wendy Petersen <Wendy.Petersen@pima.gov>
Subject: Community Bond Organization

I'm emailing to follow up on a phone call we had recently. On that call, you indicated to me that the County Attorney believed that there was a conflict of interest in providing legal advice regarding the creation of a community bond

foundation. You said that you would refer it to outside counsel, but that a formal request for the project had not yet been submitted to the County Attorney's Office.

Ms. Peterson will be making the request, but part of that requires a statement that a conflict exists. Please respond in whatever the appropriate form is to so indicate so that she can make the appropriate request to the Board of Supervisors.

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