



# County of Santa Cruz

## COUNTY ADMINISTRATIVE OFFICE

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SUSAN A. MAURIELLO, J.D., COUNTY ADMINISTRATIVE OFFICER

Agenda: January 26, 1999

January 18, 1999

### BOARD OF SUPERVISORS

County of Santa Cruz

**701** Ocean Street

Santa Cruz, CA 95060

### AUTHORIZATION FOR LEGAL FEES IN THE SPECIAL CIRCUMSTANCES CASE OF PEOPLE VS. GABRIEL ADAM BANES

Dear Board Members:

The attached letter from attorney Tom Wallraff (Attachment 1) requests your Board's approval for authorization of attorney fees in the special circumstance case of People vs. Gabriel Adam Banes. This request is pursuant to Paragraph 7 of the current contract between the County and the Public Defender Conflict of Interest firm of Wallraff and Gilman which is attached for your Board's information (Attachment 2). Mr. Wallraff's letter includes the Superior Court's findings and recommendations for the existence of special circumstances as required by the contract.

The letter from Mr. Wallraff provides further detail for the requested authorization and explains that the defendant is currently facing special circumstances which could lead to the death penalty along with three additional defendants for the murder of Gaylord Chilcote of Watsonville. Two of the additional defendants are represented by other court appointed counsel that are not under contract with the County and your Board's authorization is therefore not required for their legal fees. The fourth defendant may be represented by private counsel.

## AUTHORIZATION FOR LEGAL FEES IN THE CAPITAL/DEATH PENALTY CASE OF PEOPLE VS. GABRIEL ADAM BANES

Historically, all special circumstance cases have been approved for extraordinary compensation. Given the commitment of time required for defense in these types of cases, and one that is joined with three additional defendants, the conflict Public Defender's office would be severely constrained in their ability to continue managing the ongoing caseload and properly and adequately defend the special circumstance case. Allegations of inadequate defense due to financial constraints bear the risk of reversals or retrials, which would result in increased cost to the County.

### FINANCING CONSIDERATIONS

As your Board is aware, it is very difficult to accurately project costs for these cases due to the varying length and complexity of issues related to each case. In addition, delays in trial proceedings and/or the elimination of the special circumstances leading to the death penalty could defer or significantly reduce expenditures.

It is possible that the costs for the legal fees, investigation and expert witnesses for the four defendants in these cases will exceed our current year appropriations for court appointed counsel and related expenses and we would need to return to your Board at a later date for additional appropriations. In order to develop some budgetary framework we will request all defense counsel to provide us with an estimate of expenses although, as discussed earlier, it is very difficult to project these costs with any certainty.

Finally, as your Board may recall, the State of California does have a homicide reimbursement program which was established to assist counties with these extraordinary costs (Attachment 3). Unfortunately, the current provisions of this program require the County to expend over \$1 million in County funds on trial costs prior to receiving any State reimbursement, resulting in an enormous up front financial obligation by the County and a relatively meaningless State reimbursement program. However, as in previous special circumstances cases we will be working with the various departments and private counsel to accurately track these costs so that we may participate in the State reimbursement program to the extent allowable.

BOARD OF SUPERVISORS

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AGENDA: January 26, 1999

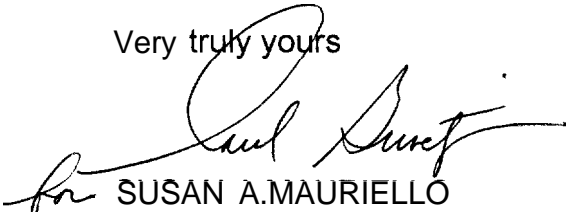
AUTHORIZATION FOR LEGAL FEES IN THE CAPITAL/DEATH PENALTY CASE OF  
PEOPLE VS. GABRIEL ADAM BANES

## SUMMARY AND RECOMMENDATION

It has been several years since the County has been faced with the financial burden of special circumstances cases. As stated in Mr. Wallraff's letter, these cases require extraordinary attention due to the significant responsibility and legal precedents that have been established in this area. We have consistently advocated for the cost of indigent defense, particularly in extraordinary cases, to be borne by the State of California and we will continue to work with our legislators toward that end.

It is therefore RECOMMENDED that your Board approve the request of attorney Tom Wallraff for compensation at the rate of \$95 per hour in the special circumstance case of People vs. Gabriel Adam Banes pursuant to the terms of the County's Public Defender conflict of interest contract as authorized by the Superior Court.

Very truly yours



for SUSAN A. MAURIELLO  
County Administrative Officer

cc. Superior Court  
Auditor-Controller  
County Counsel  
Wallraff and Gilman

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**WALLRAFF & GILMAN**

ATTORNEYS AT LAW

THOMAS R. WALLRAFF  
 ISABEL GILMAN  
 SAMARA C. MARION  
 TED MENEICE  
 BERNARD M. PREGERSON  
 LISA K. McCAMEY

136 VERNON STREET, SANTA CRUZ, CA 95060  
 (831) 427-1774  
 FAX (831) 458-3437

January 13, 1999

JAN 19 1999

Jeff Almquist  
 Chairperson  
 SANTA CRUZ COUNTY  
 BOARD OF SUPERVISORS  
 701 Ocean Street  
 Santa Cruz, CA 95060

**Re: People v. Gabriel Adam Banes**  
**Superior Court Case No. S8-10509**

Dear Mr. Almquist:

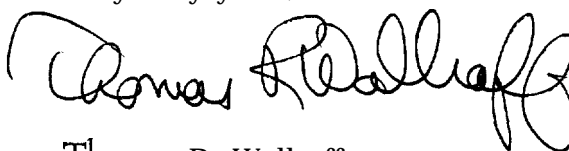
Pursuant to our contract with the County of Santa Cruz, I am advising the County of the existence of special circumstances in the above-entitled case and requesting that the Board of Supervisors approve the compensation outlined in Paragraph 7 of the Public Defender Conflict of Interest Services contract. I've attached a copy of Presiding Judge Heather Morse's recommendation for the approval of said request. To my knowledge, such fees have been approved by the Board in every special circumstances case filed in Santa Cruz County.

Mr. Banes is joined with three other defendants charged with special circumstances. People v. Banes promises to be an extraordinary drain on our office. There are four defendants, but because of the legal and factual challenges inherent in defending a client facing special circumstances. To date, the prosecution has resisted all efforts to avoid the filing of special circumstances. Both sides must prepare to thoroughly contest all issues. This requires investigation and preparation for the penalty phase of a trial in which my office will be charged with trying to convince a jury to spare Mr. Banes' life.

Jeff Ahnquist  
Re: People v. Banes  
January 13, 1999  
Page Two

For the reasons summarized above, I respectfully request that the Board approve the compensation outlined in our contract. If the Board has any questions, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas R. Wallraff". The signature is fluid and cursive, with the first name "Thomas" and last name "Wallraff" clearly distinguishable.

Thomas R. Wallraff

TRW/kb  
Enclosure

1 THOMAS R. WALLRAFF, CSB # 88270  
2 WALLRAFF & GILMAN  
3 136 Vernon Street  
4 Santa Cruz, CA 95060  
5 (83 1) 427-1774

6 Attorneys for Defendant

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FILED

JAN 11 1999

CHRISTINE PATTON, CLERK  
BY *m. Clark*  
DEPUTY, SANTA CRUZ COUNTY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SANTA CRUZ

10 THE PEOPLE OF THE STATE OF  
11 CALIFORNIA,

No. S8-10509

12 Plaintiff,

FINDINGS AND ORDER

SEALER \_\_\_\_\_

13 vs.

14 GABRIEL ADAM BANES,

15 Defendant.  
16 \_\_\_\_\_/

17 FINDINGS AND ORDER

18 I find that extraordinary circumstances exist in the special circumstances murder case of  
19 PEOPLE V. GABRIEL ADAM BANES, S8- 10509, and recommend that the Board of Supervisors  
20 approve the payment of funds as outlined in the Conflict Public Defenders Contract as follows:

21 Reimbursement at the rate of \$95.00 per hour for Thomas R. Wallraff, appointed counsel.

22 ~~Reimbursement of associate counsel at \$85.00 per hour.~~ \*

23 \* Pursuant to P.C. §987.9

24 *Heather Morse*  
25 HONORABLE HEATHER MORSE  
26 Presiding Judge of the Superior Court  
27  
28

## Agreement Public Defender Conflict of Interest Services

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- adult probation violations
- juvenile criminal cases
- L.P.S. cases
- W & I Section 300 cases
- paternity cases
- co-defendant cases
- conflict of interest cases declared that arise solely  
from the CONTRACTOR'S private criminal practice
- other assigned cases
- conflict of interest cases that are assigned as a result of a conflict declared by  
the other Conflicts' Contractor.

CONTRACTOR shall provide other reports as may be requested from time to time by the County Administrative Officer. CONTRACTOR shall annually report to the County Administrative Officer the frequency and cost of other services in representing parties, including witness fees, scientific investigation, interpreting and other services.

5. COUNTY shall pay to CONTRACTOR as compensation for the services of CONTRACTOR as follows:

1997-98 \$43,995 per month not to exceed \$527,940.

1998-99 \$46,195 per month not to exceed \$554,337.

6. COUNTY shall pay CONTRACTOR for the cost of court transcripts, medical, psychological and psychiatric experts, witness fees and such specialized services as may be required.

✱

7. It is understood and agreed that CONTRACTOR may be appointed in extraordinary felony cases which could require unusual time and expense. In only the most extreme circumstances will CONTRACTOR request extra compensation for such an appointment. When such a case does arise, CONTRACTOR shall so advise the COUNTY and shall petition the Superior Court for a recommendation to the Board of Supervisors as to:

# Agreement Public Defender Conflict of Interest Services

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- (1) the existence of the extraordinary circumstances, and
- (2) the CONTRACTOR'S requested extra compensation.

Any such request by Contractor must include a complete justification of the anticipated extra expenses. Extra compensation shall generally be limited to special circumstances felony cases.

If the Superior Court agrees that extra fees are warranted and reasonable, then the Presiding Judge shall make the recommendation to the Board of Supervisors, which will be responsible for any supplemental appropriation. Special approval and authorization by the Board of Supervisors is required prior to the expenditure of funds. Compensation for such cases shall be as follows:

## New Appointments

- . First Case assigned in a fiscal year

<u>Year</u>	<u>Hourly Rate</u>
1997-98	\$95.00
1998-99	\$95.00

- . Second attorney and/or case and subsequent cases assigned in a fiscal year.

<u>Year</u>	<u>Hourly Rate</u>
1997-98	\$ 8 5 . 0 0
1 9 9 8 - 9 9	\$85.00

8. CONTRACTOR may handle private criminal cases, except in those cases where there would be a conflict with a previous assignment arising out of this contract. CONTRACTOR shall not receive any referral fee or any other fee from any person to whom they refer any criminal case during the term of this contract. Members of the office of the CONTRACTOR may handle private criminal cases outside of Santa Cruz County with the condition that no cases are taken which create a conflict of interest with pending cases assigned under this contract. It is further agreed that the firm



## GOVERNMENT CODE SECTION 15200-15204

**15200.** The Legislature hereby declares that: (1) The uniform administration of justice throughout the State is a matter of statewide interest; (2) The prosecution and conduct of trials of persons accused of homicide should not be hampered or delayed by any lack of funds **available** to the counties for such purposes; **(3)** A county should not be required to bear the entire costs of a trial involving a homicide if such costs will seriously impair the finances of the county; and (4) It is the intention of the Legislature in enacting this chapter to provide for state assistance to counties in such emergency situations.

15201. As used in this chapter, "costs incurred by the county" mean all cost, except normal salaries and expenses, incurred by the county in bringing to trial or trials, including the trial or trials of, a person or persons for the offense of homicide, including costs, except normal salaries and expenses, incurred by the district attorney in investigation and prosecution, by the sheriff in investigation, by the public defender or court-appointed attorney or attorneys in investigation and defense, and all other costs, except normal salaries and expenses, incurred by the county in connection with bringing the person or persons to trial including the trial itself including extraordinary expenses for such services as witness fees and expenses, court-appointed expert witnesses, reporter fees, and costs in preparing transcripts. Trial cost shall also include all pretrials, hearings, and postconviction proceedings, if any.

**15202.** (a) A county with a population of **300,000** or less, **at** the time of the 1980 decennial census, that is responsible for the cost of a trial or trials or any hearing of a person for the offense of homicide may apply to the Controller for reimbursement of 90 percent of the costs incurred by the county for each homicide trial or hearing, without regard to fiscal years, in excess of the amount of money derived by the county from a tax of 0.00625 of 1 percent of the full value of property assessed for purposes of taxation within the county.

(b) (1) A county with a population of 200,000 or less, as of January 1, 1990, that is responsible for the cost of two or more trials or hearings within a fiscal year of a person or persons for the offense of homicide may apply to the Controller for reimbursement of 90 percent of the costs incurred in a fiscal year by the county for the conduct of the first trial within a fiscal year, and 85 percent of the costs incurred in a fiscal year by the county for the conduct of any and all subsequent trials or hearings in excess of the amount of money derived by the county from a tax of 0.00625 of 1 percent of the full value of property assessed for purposes of taxation within the county.

(2) A county with a population of 200,000 or less, as of January 1, 1990, that, within a fiscal year, is reimbursed for costs incurred by the county for the conduct of only one trial or hearing pursuant to subdivision (a) shall be reimbursed for that one trial or hearing in subsequent fiscal years for costs incurred in those subsequent fiscal years without again being required to expend county funds

equal to 0.00625 of 1 percent of the full value of property assessed for purposes of taxation within the county, so long as all reimbursements to the county under this paragraph are for only that one trial or hearing.

For purposes of this subdivision, in determining the costs of a homicide trial, trials, hearing, or hearings, the costs shall include, all pretrial, trial, and posttrial costs incurred in connection with the investigation, prosecution, and defense of a homicide case or cases within a fiscal year, including, but not limited to, the costs incurred by the district attorney, sheriff, public defender, and witnesses, that were reasonably required by the court and participants in the case or cases, and other extraordinary costs associated with the investigation in homicide cases.

(c) A county with a population exceeding 300,000 at the time of the 1980 decennial census that is responsible for the cost of a trial or trials or any hearing of a person for the offense of homicide may apply to the Controller for reimbursement of 80 percent of the costs incurred by the county in excess of the amount of money derived by the county from a tax of 0.00625 of 1 percent, and not in excess of the amount of money derived from a tax of 0.0125 of 1 percent, and for reimbursement of 100 percent of the costs incurred in excess of the amount of money derived from a tax of 0.0125 percent, of the full value of property assessed for purposes of taxation within the county.

(d) The Controller shall not reimburse any county for costs that exceed the standards for travel and per diem expenses set forth in Sections 700 to 715, inclusive, and Section 718 of Title 2 of the California Code of Regulations. The Controller may reimburse extraordinary costs in unusual cases if the county provides sufficient justification of the need for these expenditures. Nothing in this section shall permit the reimbursement of costs for travel in excess of 1,000 miles on any single round trip, without the prior approval of the Attorney General.

(e) The Legislature recognizes that the conduct of trials for persons accused of homicide should not be hampered or delayed because of a lack of funds available to the counties for that purpose. While this section is intended to provide an equitable basis for determining the allocation to the state of the costs of homicide trials in any particular county, the rising costs of those trials necessitate an objective study to assure reasonable financial restraints and incentives for cost-effectiveness that do not place an unreasonable burden on the treasury of the smaller counties.

This section shall remain operative only until January 1, 2000, and as of that date is repealed.

15202. A county which is responsible for the cost of a trial or trials or any hearing of a person for the offense of homicide may apply to the Controller for reimbursement of the costs incurred by the county in excess of the amount of money derived by the county from a tax of 0.0125 of 1 percent of the full value of property assessed for purposes of taxation within the county.

The Controller shall not reimburse any county for costs that exceed the State Board of Control's standards for travel and per diem expenses. The Controller may reimburse extraordinary costs in unusual cases if the county provides sufficient justification of the need for these expenditures. Nothing in this section shall permit the reimbursement of costs for travel in excess of 1,000 miles on any single round trip, without the prior approval of the Attorney General.

This section shall become operative on January 1, 2000.

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15202.1. (a) If the venue for trial of a homicide case has been changed from the county which is eligible for reimbursement under Section 15202 to a location more than 60 miles from the county seat of that county, and the district attorney of that county has entered into a contract with an attorney to try the case or an investigator to assist in the trial of the case, the Controller shall reimburse the county for the actual costs of the attorney or investigator under this section, at an hourly rate not to exceed the hourly rate charged state agencies by the Attorney General for similar attorney services or investigators, without further showing of justification. Nothing in this section shall permit the reimbursement of costs for travel in excess of 1,000 miles on any single round trip, without the prior approval of the Attorney General.

(b) (1) This section shall apply to any homicide cases in which a final judgment was entered prior to January 1, 1990.

(2) The limitation provided in this subdivision shall not apply to Sierra County. Instead, the County of Sierra may apply to the Controller for reimbursement pursuant to subdivision (a) for its costs incident to the prosecution of the homicide trial of People v. Corjasso.

15203. If the county meets the conditions described in Section 15202 and applies to the State Controller for reimbursement pursuant to that section, and the State Controller determines that the reimbursement meets the provisions of Section 15201, the State Controller shall request the Director of Finance to include any amounts necessary to fulfill the purposes of Section 15202 annually in a request for deficiency appropriation in augmentation of the emergency fund.

15204. The State Controller may establish rules and regulations to carry out the purposes of this chapter.

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