



# WASHOE COUNTY

Integrity Communication Service

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## STAFF REPORT

BOARD MEETING DATE: April 16, 2024

**DATE:** Thursday, April 11, 2024

**TO:** Board of County Commissioners

**FROM:** Lori Cooke, Budget Manager, Finance  
(775) 328-2072, [lcooke@washoecounty.gov](mailto:lcooke@washoecounty.gov)  
Patsy Buxton, Principal Fiscal Analyst, Finance  
(775) 328-2071, [pbuxton@washoecounty.gov](mailto:pbuxton@washoecounty.gov)

**THROUGH:** Abigail Yacoben, Chief Financial Officer  
(775) 325-8243, [ayacoben@washoecounty.gov](mailto:ayacoben@washoecounty.gov)

**SUBJECT:** Recommendation to approve the use of General Fund Contingency in the total amount of [\$1,200,000] for fiscal year 2024 in accordance with Nevada Revised Statute (NRS) 354.598005 to 1) increase expenditure authority in Conflict Counsel in the total amount of [\$1,138,500] to support cost increases for court appointed attorneys; 2) increase expenditure authority in Public Defender's Office for Expert Witness Fees [\$46,500] to support reasonable and necessary costs to meet minimum Due Process rights in the Tracy Petrocelli Trial; 3) increase expenditure authority in Alternate Public Defender's Office for Expert Witness Fees [\$15,000] to support reasonable and necessary costs to meet minimum Due Process rights in the Avram Nika Trial; and direct the Comptroller to make the appropriate cross-functional budget appropriation transfers.[Total fiscal year 2024 impact \$1,200,000; net fiscal impact \$-0-]. (All Commission Districts)

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### **SUMMARY**

Nevada Revised Statute (NRS) 354.598005(5) provides that "budget appropriations may be transferred between functions, funds, or contingency accounts .... if such a transfer does not increase the total appropriation for any fiscal year and is not in conflict with other statutory provisions". Further, Nevada Revised Statute (NRS) 354.608 states that "no expenditure may be made directly from a contingency account, except as a transfer to the appropriate account...in accordance with the procedure established in NRS 354.598005".

The purpose of this item is to consider approval of the use of the General Fund Contingency account. Approval of this recommendation will align budget authority for expenditures already incurred, or anticipated to be incurred, for Fiscal Year 2024 (FY24), including providing additional resources to Conflict Counsel, Public Defender, and the Alternate Public Defender's Office for increased expenditures for court appointed

AGENDA ITEM # \_\_\_\_\_

attorneys and expert witness fees. All adjustments are within the Washoe County existing approved FY24 budget.

Approval of these transfers will leave \$4,215,355 available in FY24 General Fund Contingency.

**Washoe County Strategic Objective supported by this item:** Fiscal Sustainability

### **PREVIOUS ACTION**

On December 12, 2023, the BCC approved the use of General Fund Contingency in the total amount of \$95,000 for fiscal year 2024 to increase expenditure authority for the 2024 Joy Lake Road Pipe Failure.

On May 16, 2023, the BCC approved the Fiscal Year 2024 Final Washoe County Budget, which included \$5,510,355 of General Fund Contingency.

### **BACKGROUND**

The County must stay within its adjusted budget for each fund, with certain very limited exceptions, and by function. To remain compliant with this statutory requirement, a General Fund Contingency account transfer totaling \$1,200,000 is needed for increased court appointed attorney's expenditures in Conflict Counsel and increased expert witness fees in the Public Defender and Alternate Public Defender's Office. This adjustment will cover actual and/or anticipated FY24 fund and functional expenditures.

Approval of these transfers will leave \$4,215,355 available in FY24 General Fund Contingency.

The following General Fund Contingency budget appropriation transfers are necessary:

### **Conflict Counsel**

The volume of cases assigned to the conflict attorneys has increased in FY24. There have been several lengthy and complex cases which require more time by the attorney than an average case resulting in increased expenditures. In addition, in FY23 a request was received and approved to increase the hourly rate for conflict attorneys effective April 24, 2023. The transfer of \$1,138,500 is required to cover the actual and anticipated expenses of these impacts.

Pursuant to the Supreme Court of the State of Nevada's order in ADKT No. 411, the District Court was required, and did file a plan to consolidate the appointment process in criminal cases where there is a conflict in both the Public Defender and the Alternate Public Defender's offices. This plan became effective on July 1, 2008. The Plan calls for the administration of the process to appoint counsel both in conflict cases and on behalf of the court, to be provided under a contract by a qualified attorney. Washoe County has a part-time (.53 FTE) Appointed Counsel Administrator position to provide administrative services and administer the assignment of a group of private attorneys in case of conflicts of interest with both the Washoe County Public Defender's and the Washoe County Alternate Public Defender's Office. To qualify for participation in this process, all attorneys must qualify under an approval process administered by an

independent selection committee of attorneys from both the public and private sectors. Attorneys are then assigned cases on a rotating basis under contract with the County.

### **Public Defender**

Mr. Tracy Petrocelli is entitled to constitutionally effective legal representation and the Public Defender was appointed by the Commission to provide that representation. The Public Defender has verified that this expenditure is required to provide adequate representation. The Public Defender has an obligation under statute, case law, and ethical rules to zealously investigate possible legal claims, thoroughly evaluate those claims, and present mitigating evidence at a capital sentencing hearing.

This case has been entangled in legal proceedings in the state and federal courts for over forty years. Mr. Petrocelli was convicted of first-degree murder and sentenced to death on September 8, 1982 for killing James Wilson in November 1981. Having seemingly exhausted his state appellate and habeas remedies over the next 12 years, he sought federal relief in 1994. It took another 7 years for the Ninth Circuit Court of Appeals to reverse the denial of federal habeas relief in part and remand for further proceedings. The District Court for the District of Nevada (federal court) stayed the federal case and allowed Mr. Petrocelli to pursue some of his habeas claims in the Second Judicial District Court. Those claims were ultimately denied, and the Nevada Supreme Court affirmed the denial of the state habeas claims in 2007.

The federal habeas proceedings resumed in 2007. The federal district court denied Mr. Petrocelli's fourth amended petition for writ of habeas corpus 6 years later, in 2013. Five years after that, in 2018, the Ninth Circuit Court of Appeals upheld his conviction, but reversed the death sentence due to the State's presentation during the capital sentencing phase of improper testimony from Dr. Gerow. In 2018, Mr. Petrocelli went through a second capital sentencing hearing. He was sentenced to death a second time.

Most recently, his death sentence was reversed based on errors with jury instructions. The case is back at the Second Judicial District Court for re-sentencing. The State has indicated its intent to pursue the death penalty once again.

The capital sentencing hearing was scheduled for October 2023 and was continued. The capital sentencing hearing is set for ten days beginning July 15, 2024, in Department 7 of the Second Judicial District Court. Actual and anticipated public defense expenses are reasonable and necessary for the Public Defender to meet the minimum Due Process rights for Mr. Petrocelli. The transfer of \$46,500 is required to cover the actual and anticipated expenses of these impacts.

### **Alternate Public Defender**

Mr. Avram Nika is entitled to constitutionally effective legal representation and the Alternate Public Defender was appointed by the Commission to provide that representation. The Alternate Public Defender has verified that this expenditure is required to provide adequate representation.

Mr. Nika's death sentence was vacated by the 9<sup>th</sup> Circuit Court of Appeals because original trial counsel did not conduct an adequate mitigation investigation.

Mr. Nika has been on death row since 1995. He is Serbian, and his family and all of his military and educational materials are in Serbia. The Alternate Public Defender must retain experts to collect and review records and perform evaluations regarding Mr. Nika's childhood in Serbia, his mental and physical health issues, and all other potential mitigating evidence. This requires consulting with experts who speak Serbian and are experts in Serbian culture and language. The Alternate Public Defender's Office must put together mitigation that is over 30 years old. This preparation meets the minimal Due Process and Humanitarian rights afforded to Mr. Nika and requires the use of specialists in this field. These expenses are direct outcomes from initially having the death penalty included as a sentencing option and the fact that this case is almost 30 years old. The United States Supreme Court and the Nevada Supreme Court have both stated that "death is different." Actual and anticipated public defense expenses are reasonable and necessary for the Alternate Public Defender to meet the minimum Due Process rights for Mr. Nika. The transfer of \$15,000 is required to cover the actual and anticipated expenses of these impacts.

### **FISCAL IMPACT**

If approved, the use of General Fund contingency in account 189000-820000 and the associated cross-functional budget appropriation transfers are anticipated to bring the budget into alignment with actual and/or anticipated expenditures for Fiscal Year 2024 (FY24) for the items outlined above. All adjustments are within the existing approved budget for Washoe County and are summarized in the following table.

#### **General Fund Contingency Transfer:**

<b>Fund/Function</b>	<b>Department/ Expenditure/Transfer</b>	<b>Cost Object(s)/ G-L Account(s)</b>	<b>Budget Change</b>
<b>General Fund (F100)</b>	<b>Contingency Funds</b>		
General Gov't	Contingency	189000-820000	(1,200,000.00)
<b>Subtotal Contingency</b>			<b>(850,400.00)</b>
<b>General Fund (F100)</b>	<b>Department/Expenditure</b>		
Judicial	Conflict Counsel	101010-710839	1,138,500.00
Judicial	Public Defender	124100-710888	46,500.00
Judicial	Alternate Public Defender	128010-710888	15,000.00
<b>Subtotal Expenditures</b>			<b>1,200,000.00</b>
<b>NET TOTAL CONTINGENCY</b>			<b>-0.00-</b>

\*Upon approval, Comptroller will need to process all budget appropriation transfers as outlined above.

### **RECOMMENDATION**

Recommendation to approve the use of General Fund Contingency in the total amount of [\$1,200,000] for fiscal year 2024 in accordance with Nevada Revised Statute (NRS) 354.598005 to 1) increase expenditure authority in Conflict Counsel in the total amount of [\$1,138,500] to support cost increases for court appointed attorneys; 2) increase expenditure authority in Public Defender's Office for Expert Witness Fees [\$46,500] to support reasonable and necessary costs to meet minimum Due Process rights in the Tracy

Petrocelli Trial; 3) increase expenditure authority in Alternate Public Defender's Office for Expert Witness Fees [\$15,000] to support reasonable and necessary costs to meet minimum Due Process rights in the Avram Nika Trial; and direct the Comptroller to make the appropriate cross-functional budget appropriation transfers.[Total fiscal year 2024 impact \$1,200,000; net fiscal impact \$-0-]. (All Commission Districts)

### **POSSIBLE MOTION**

Should the Board agree with staff's recommendation, a possible motion would be:  
*"approve the use of General Fund Contingency in the total amount of [\$1,200,000] for fiscal year 2024 in accordance with Nevada Revised Statute (NRS) 354.598005 to 1) increase expenditure authority in Conflict Counsel in the total amount of [\$1,138,500] to support cost increases for court appointed attorneys; 2) increase expenditure authority in Public Defender's Office for Expert Witness Fees [\$46,500] to support reasonable and necessary costs to meet minimum Due Process rights in the Tracy Petrocelli Trial; 3) increase expenditure authority in Alternate Public Defender's Office for Expert Witness Fees [\$15,000] to support reasonable and necessary costs to meet minimum Due Process rights in the Avram Nika Trial; and direct the Comptroller to make the appropriate cross-functional budget appropriation transfers.[Total fiscal year 2024 impact \$1,200,000; net fiscal impact \$-0-].(All Commission Districts)"*