

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: June 3, 2008

Consent

Regular

Public Hearing

Department:

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to: Approve a Second Amendment to the Agreement (Resolution No. R-2002-0278) with Ogletree, Deakins, Nash, Smoak & Stewart, P.A., for Legal Services, pursuant to which David M. DeMaio, Esq. will continue to represent the interests of the County, Maurice Rosenstock and Daniel Hyndman in the case of James McCarthy v. Palm Beach County, et al., Case No. CA 01-13485 AO, at the same schedule of rates, but in an adjusted amount of \$250,000, and costs in an adjusted amount not to exceed \$48,000. Original contract funding was approved on February 26, 2002, by way of Agenda Item # 5B-5 in an amount not to exceed \$130,000 for legal services and costs not to exceed \$25,000; the first Amendment to that contract was approved on April 10, 2007, by way of Agenda item # 6F-1 at a new schedule of rates in an amount not to exceed \$180,000 and costs not to exceed \$25,000.

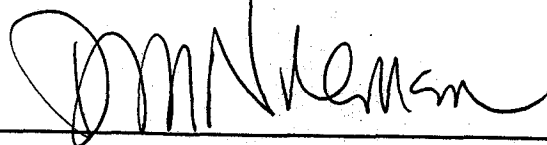
**Summary:** James McCarthy claims that he was arrested in December 1997, and charged with twenty-two counts of grand theft, as a result of false information provided to the State Attorney's Office by Maurice Rosenstock and Daniel Hyndman. DeMaio is a former Assistant United States Attorney who has handled similar lawsuits, and David DeMaio has represented the Palm Beach County Sheriff's Office and the City of West Palm Beach. COUNTYWIDE (AJM)

**Background and Justification:** At the time of McCarthy's arrest, Rosenstock was a consultant to the County and Hyndman was an Assistant County Attorney. McCarthy was (and is) president of County Collection Services, Inc. ("CCSI"), which had been assigned approximately 11,000 accounts to collect on the County's behalf. Two audits, one of which was conducted by the County's Internal Auditor, disclosed that CCSI had not paid all the amounts it had collected to the County. Civil litigation between the County and CCSI, involving claims and counterclaims over who owes what to whom, was resolved in the County's favor, and is now on appeal. McCarthy was successful in having the criminal charges dismissed by arguing that he lacked the specific intent the crime requires. After threatening this lawsuit for some time, McCarthy filed it in late 2001, and trial began on March 19, 2007. A mistrial was ordered when Plaintiff's counsel was hospitalized. At the time of the mistrial, the Court had granted the County's Motion for Directed Verdict on the only count applicable to it, and the individual Defendants each had one count remaining against them. Extensive delays caused by the Plaintiff's tactics and the need to retry the case have necessitated an adjustment to the cap.

**Attachments:**

- 1. Second Amendment to Agreement Between Palm Beach County and Ogletree, Deakins, Nash, Smoak & Stewart, P.C. for Legal Services

Recommended by:



5/14/08

Department Director

Date

Approved by:

N/A

Assistant County Administrator

Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2008	2009	2010	2011	2012
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$298,000</u>	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
 NET FISCAL IMPACT	 \$298,000	_____	_____	_____	_____
 # ADDITIONAL FTE POSITIONS (Cumulative)	 _____	_____	_____	_____	_____
 Is Item Included in Current Budget?	 Yes <u>X</u> No _____				

Budget Account No.: Fund 5010 Agency 700 Org. 7130 Object 4511  
Reporting Category \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

**C. Departmental Fiscal Review:** \_\_\_\_\_

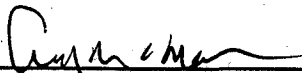
**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

5/22/08 *Atwillhite 5.23.08* OFMB 5/22/08 CM 5/22/08 5/22/08 *Am J. Juelet 5/27/08*  
 Contract Development and Control

**B. Legal Sufficiency:**

**This amendment complies with our review requirements.**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director

**THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.**

**SECOND AMENDMENT TO AGREEMENT BETWEEN PALM BEACH COUNTY AND  
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C., FOR LEGAL SERVICES**

**THIS SECOND AMENDMENT TO AGREEMENT**, made and entered this \_\_\_\_\_ day of May, 2008, by and between **PALM BEACH COUNTY**, a political subdivision of the State of Florida (the "COUNTY"), and **OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.**, successor-in-interest to Whelan, DeMaio & Kiszkiel, P.A. ("OUTSIDE COUNSEL")

**WITNESSETH:**

**WHEREAS**, OUTSIDE COUNSEL is representing the interests of the COUNTY, Maurice Rosenstock, and Daniel Hyndman, in the matter of James McCarthy v. Palm Beach County, et al., pursuant to an Agreement for Legal Services (R2002 0278) between the County and Whelan, DeMaio & Kiszkiel, P.A., entered February 22, 2002, (the "Agreement"), and

**WHEREAS**, Whelan, DeMaio & Kiszkiel, P.A., merged into the law firm of OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C., as of January 1, 2004; and,

**WHEREAS**, the litigation has been considerably delayed and complicated by, among other things, abatement of the case while a related matter was litigated, Plaintiff's tactics, and the Court's congested trial docket;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements expressed herein the parties agree as follows:

1. The above recitals are true and correct and incorporated herein by reference.
2. The rate of compensation for LEGAL SERVICES as provided in the Agreement will remain as follows: 1st to 4th year associates, \$195.00/hr.; 5th year associates and up, \$210.00/hr.; Partners, \$225.00/hr, up to an amount not to exceed \$250,000. OUTSIDE COUNSEL shall notify the COUNTY, in writing, when the fees have reached 90% of the contractual limit.

3. Out-of-pocket costs and expenses shall not exceed \$48,000. OUTSIDE COUNSEL shall notify the COUNTY, in writing, when the fees have reached 90% of the contractual limit.

4. This Amendment to Agreement shall be effective as of June 1, 2008, but shall apply to all fees and costs incurred on the Legal Services, whether incurred prior to June 1, 2008, or thereafter.

5. All other terms and conditions of the parties' Agreement remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have duly executed this **SECOND AMENDMENT TO AGREEMENT** on the day and year reflected in the first line hereof.

ATTEST:  
Sharon Bock, Clerk & Comptroller

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Addie Greene, Chair

WITNESS:

Anabel Rodriguez  
Signature

OUTSIDE COUNSEL:

David M. DeMaio  
David M. DeMaio, Esquire

Anabel Rodriguez  
Name (Type or Print)

David M. DeMaio  
Typed or Printed Name

Michelle CRT  
Signature

Managing Shareholder  
Title

Michelle CRT  
Name (Type or Print)

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

Ordey M. Cannon  
Chief Assistant County Attorney