

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: April 21, 2009

Consent Regular
 Public Hearing

Department

Submitted By: COUNTY ATTORNEY

Submitted For:

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Payment of current and future invoices not to exceed a total of \$6,000 to the Leon County Board of County Commissioners for Palm Beach County's pro-rata share of professional services rendered by Nabors, Giblin & Nickerson in the Criminal Conflict and Civil Regional Counsel litigation styled *Leon County, et al. v. Jeffrey Lewis, et al.*, Second Judicial Circuit Civil Case No. 2008-CA-2475. The current invoice, Invoice No. 4 in the amount of \$307.11 for services rendered February 1-28, 2009, is attached.

Summary: Leon County retained Nabors, Giblin & Nickerson to challenge the state law that requires counties to fund the Office of Criminal Conflict and Civil Regional Counsel. In response to the request for other counties to participate in the litigation, the County Attorney recommended that Palm Beach County join and expend up to \$6,000. Palm Beach County was named along with 25 other counties as a plaintiff in the subject action. Past invoices approved to date by the Board of County Commissioners total \$2,299.96. This item requests approval of the itemized Nabors, Giblin & Nickerson invoice attached, as well as approval for payment of future invoices up to the six thousand dollar cap. Payment of the current sum due, \$307.11, will bring the total expended to date to \$2,607.07, leaving an authorized balance of \$3,392.93. Countywide (DMN)

Background and Justification: During the 2007 legislative session, the State Legislature created the Office of Criminal Conflict and Civil Regional Counsel. This office was created to provide "adequate representation to persons entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law" according to Florida State Statute 27.511; i.e., to provide legal services to criminal defendants whom the Public Defender's Office could not represent due to conflicts of interest, and to supervise private court-appointed attorneys in child dependency cases and other civil actions. The result of this legislation is that counties are burdened with funding the Office of Criminal Conflict and Civil Regional Counsel.

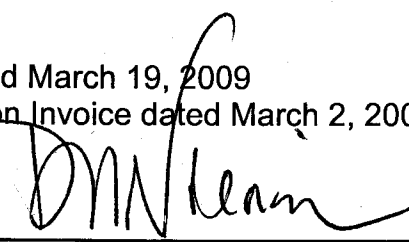
(continued on page 3)

Attachments:

1. Leon County Invoice dated March 19, 2009
2. Nabors, Giblin & Nickerson Invoice dated March 2, 2009

Recommended by: _____

County Attorney



3/31/09

Date

Approved by: _____

N/A

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures					
Operating Costs	\$ 307.11	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	\$307.11	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes ___ No ___

Budget Account No.: Fund 0001 Department 760 Unit 7601 Object 3125

Reporting Category _____

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

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

John Duke 4-1-09
OFMB
4/1/09 CN 3/31/09

John J. Jacoby 4/12/09
Contract Development and Control

B. Legal Sufficiency:

N/A
Assistant County Attorney

C. Other Department Review:

Department Director

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

(continued from page 1)

Two complaints in Leon County Circuit Court were filed in July 2008 challenging the constitutionality of the new state statute. The first complaint was filed by 25 counties, including Palm Beach County, and the Florida Association of Counties (FAC) against the four Regional Conflict Counsels, as well as the Speaker of the House and the President of the Senate. The second suit was filed by Volusia County alone against the State of Florida and other entities. Both cases have similar issues and were consolidated before the same judge. The Defendants filed a Motion to Dismiss on numerous grounds, which was denied with regard to Palm Beach County, et.al. on October 13, 2008. The motion for summary judgment filed by FACA participating counties was argued in Leon County Circuit Court on December 12, 2008. The judge took the matter under advisement, and on December 18, rendered an order granting the counties' motion. The court ruled in favor of the counties on two counts:

- (1) The court ruled that the portion of the legislation creating the regional conflict counsel that attempts to shift the funding requirements for the regional counsel offices from the state to the counties is unconstitutional and not binding on the counties because it violates Article V, section 14 of the Florida Constitution (relates to state court funding) and because the legislature, in attempting to expand the definition of "public defender" has violated Article V, section 18 of the Florida Constitution (constitutional definition of public defender).
- (2) The court ruled that the funding shift for regional conflict counsel is not binding, under Article VII, section 18 (the unfunded mandate provision) on the counties because the legislature failed to find that the law fulfills an important state interest before attempting the cost shift.

This was a great order for the counties; so much so that the State filed an appeal to the Supreme Court of Florida on January 5, 2009, appealing the District Court's decision of December 18. That appeal is still pending at the time of this writing.



Leon County

Board of County Commissioners

301 South Monroe Street, Tallahassee, Florida 32301
(850) 606-5302 www.leoncountyfl.gov

County Attorney's Office
Suite 202, 301 S. Monroe Street
Tallahassee, FL 32301
(850) 606-2500 (Telephone)
(850) 606-2501 (Telefax)

Commissioners

BILL PROCTOR
District 1

JANE G. SAULS
District 2

JOHN DAILEY
District 3

BRYAN DESLOGE
District 4

BOB RACKLEFF
District 5

CLIFF THAELL
At-Large

AKIN AKINYEMI
At-Large

PARWEZ ALAM
County Administrator

HERBERT W.A. THIELE
County Attorney

March 19, 2009

Denise M. Nieman, Esq.
Palm Beach County Attorney
301 N. Olive Avenue
Suite 601
West Palm Beach, FL 33401

Re: Criminal Conflict and Regional Civil Counsel Litigation

Dear Ms. Nieman:

Enclosed please find Invoice No. 4 with regard to the above-referenced matter. We have calculated your pro-rata share and it is reflected on said invoice. We have also enclosed a copy of the March, 2009 invoice from Nabors, Giblin & Nickerson for your review and file.

Should you have any questions or need additional information, please contact the County Attorney's Office.

Sincerely yours,

COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

Herbert W. A. Thiele, Esq.
County Attorney

HWAT/eal
Enclosure

cc: Ginger Delegal, Esq., General Counsel, Florida Association of Counties

RECEIVED
MARCH 2009
NIEMAN
ATTORNEY



Leon County

Board of County Commissioners

301 South Monroe Street, Tallahassee, Florida 32301
(850) 606-5302 www.leoncountyfl.gov

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County Administrator

HERBERT W.A. THIELE
County Attorney

March 19, 2009

Denise M. Nieman, Esq.
Palm Beach County Attorney
301 N. Olive Avenue
Suite 601
West Palm Beach, FL 33401

Re: *Leon County, et al v. Jeffrey Lewis, et al*
Second Judicial Circuit Civil Case No. 2008-CA-2475
Criminal Conflict and Civil Regional Counsel Litigation
Invoice No. 4

Equal 2/3 Share of Total Net Amount LESS	
Remaining Capped Counties Share for 3/9/09 Invoice	\$307.11
TOTAL AMOUNT DUE:	<u>\$307.11</u>

Please make checks payable to Leon County. Tax ID# 59-6000708.

**Nabors
Giblin &
Nickerson** P.A.
ATTORNEYS AT LAW
Post Office Box 11008
Tallahassee, Florida 32302
Telephone: (850) 224-4070

March 2, 2009
Bill through 02/28/2009
Invoice# 024 08041 21790 Q

Herbert W. A. Thiele, County Attorney

Leon County Courthouse
301 South Monroe Street
Tallahassee, FL 32301

Re: Funding of Offices of Criminal Conflict & civil Regional Counsel

<u>PROFESSIONAL SERVICES</u>			<u>Hours</u>	<u>Amount</u>
02/02/2009	HFC	Review add'l AG letters; organize & chart	0.30	\$75.00
02/02/2009	HFC	Exchange of e-mails; docketing statement, AG letters, stay issues	0.30	\$75.00
02/04/2009	HFC	E-mail correspondence w/Jim Curry - AG letters; conflict counsel issues	0.30	\$75.00
02/04/2009	HFC	Review Jim Peters faxed materials; review rules re: stay	0.20	\$50.00
02/08/2009	HFC	Calls from & to Lou Hubener - expediting appeal; various	0.25	\$62.50
02/08/2009	HFC	Call to Ed - re: Hubener request, various	0.25	\$62.50
02/08/2009	HFC	Second call w/Lou H - issues re: conflict counsel activity; appeal; transcript	0.25	\$62.50
02/09/2009	HFC	Call w/Ed - discuss m/expedite appeal; various	0.25	\$62.50
02/09/2009	EAD	Review of Motion to Expedite Appeal	0.50	\$125.00
02/11/2009	RLN	Review pleadings and correspondence	0.75	\$187.50
02/13/2009	HFC	Confer w/CJS - briefing issues; review Peters e-mail; review rules re: automatic stay; review final judgment; research stay issue	1.10	\$275.00
02/16/2009	HFC	Review Peters e-mail; forward; exchange of e-mails w/Ginger, Ed; review & compare county lists re: non-compliance	0.80	\$200.00
02/16/2009	HFC	Call from Jim Peters - "non-compliant" counties; various	0.25	\$62.50
02/17/2009	HFC	Further e-mails from Peters; review order expediting; calendar; forward	0.50	\$125.00
02/18/2009	HFC	Review record on appeal index; docket due dates; confer w/CJS - missing documents;	0.80	\$200.00

024	Leon County		Invoice# 21790	Page 2
		review files for same; confer w/Ed - briefing issues		
02/18/2009	CJS	Reviewing file documents; reviewing record index and docket; coordinating the preparation of a working copy of the record.	3.50	\$700.00
02/19/2009	HFC	Prepare Appellees' docketing statement; confer w/CJS - briefing issues, time lines; confer w/Ed re: substitution issues	0.50	\$125.00
02/19/2009	RLN	Review pleadings; conference with Bethany Burgess	0.75	\$187.50
02/19/2009	CJS	Reviewing record documents; drafting statement of case and facts; reviewing case law.	5.50	\$1,100.00
02/20/2009	HFC	Review transcript; exchange of e-mails w/Ed, Ginger; forward file documents	0.90	\$225.00
02/20/2009	CJS	Reviewing case law.	0.50	\$100.00
02/22/2009	CJS	Reviewing transcripts and case law.	0.75	\$150.00
02/25/2009	HFC	Begin review of State's Initial Brief; confer w/CJS - re: scheduling, responding	1.00	\$250.00
02/25/2009	HFC	Calls from Ed - State's Brief - various	0.25	\$62.50
02/25/2009	CJS	Reviewing Initial Brief; phone conversation with Ed Dion regarding draft of brief.	1.00	\$200.00
02/25/2009	EAD	Review Appellants' Initial Brief	0.50	\$125.00
02/26/2009	HFC	Review initial brief (continued) - notes re: issues raised; confer w/CJS - various	1.40	\$350.00
02/26/2009	BAB	Reviewing appellate brief of state, meeting with Carly Schrader re drafting appellate brief of Leon	0.75	\$150.00
02/26/2009	CJS	Reviewing initial brief; outlining argument for answer brief.	1.70	\$340.00
02/26/2009	CJS	Outlining arguments for answer brief; in-house discussion with Bethany Burgess; drafting answer brief.	2.50	\$500.00
02/27/2009	HFC	Finalize review of brief; research re: raising issues not raised in trial court; review Arline comments; confer w/CJS - briefing issues	1.70	\$425.00
02/27/2009	HFC	Call w/Ed - review of State brief; various	0.25	\$62.50
02/27/2009	CJS	Drafting answer brief.	0.50	\$100.00
02/27/2009	CJS	Drafting answer brief.	2.50	\$500.00
Total Fees				<u>\$7,352.50</u>

024 Leon County

Invoice# 21790

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DISBURSEMENTS

01/19/2009	AT&T TeleConference Services; Conference Call on 12/22/08	26.05
01/23/2009	Harry F. Chiles: Parking on 12/12/08	2.50
02/25/2009	Accurage Stenotype Reporters, Inc.: Transcript of hearing with J. Cooper taken on 12/12/08	133.40
02/28/2009	Copying Charges	195.25
02/28/2009	Long Distance Telephone Charges	2.88
02/28/2009	LexisNexis Research Charges	76.92
02/28/2009	Postage	2.85

Total Disbursements

\$439.85

BILLING SUMMARY

Burgess, Bethany A	0.75	hrs	200.00	/hr	150.00
Chiles, Harry F.	11.55	hrs	250.00	/hr	2,887.50
Dion, Edward A.	1.00	hrs	250.00	/hr	250.00
Nabors, Robert L.	1.50	hrs	250.00	/hr	375.00
Schrader, Carly J.	18.45	hrs	200.00	/hr	3,690.00

TOTAL FEES

\$7,352.50

TOTAL DISBURSEMENTS

\$439.85

Total balance now due

\$7,792.35

AT&T TeleConference Services



ACCOUNT ID: 79278666-00001
 CUSTOMER: ATTN: PAULA DORN
 NABORS, GIBLIN, & NICKERSON P.A.

BILL DATE: JAN 01 2009

DETAIL OF SERVICE USAGE

ITEM QTY TYPE DATE TIME MINUTES TOTAL

AUDIO DIAL-OUT TELECONFERENCES

024-08041

CONFERENCE: BCS2957
 HOST NAME: CARLY SCHRADER
 HOST NUMBER: 850-224-4070

RESERVED MINUTES: 30
 RESERVED CONNECTIONS: 5 DIAL-OUT

ITEM	QTY	TYPE	DATE	TIME	MINUTES	TOTAL
1. CARLY SCHRADER	850-224-4070	OPER DO	12/22/2008	03:01pm	10	3.90
2. HARRY CHILES	850-508-5873	OPER DO	12/22/2008	03:01pm	10	3.90
3. JONATHAN GLOGAU	850-414-3817	OPER DO	12/22/2008	03:01pm	10	3.90
4. DANIEL ECKERT	386-736-5950	OPER DO	12/22/2008	03:01pm	10	3.90
5. JUDGE JOHN COOP	850-577-4313	OPER DO	12/22/2008	03:01pm	10	3.90

SUBTOTAL 50 19.50
 UNIVERSAL CONNECTIVITY CHARGE 1.96
 ADMINISTRATIVE EXPENSE FEE 0.17
 PROPERTY TAX ALLOTMENT 0.53
 FEDERAL REGULATORY FEE 0.46
 TAXES 3.43

TOTAL FOR CONFERENCE ID: BCS2957 50 \$26.05

CALL TYPE CONFERENCE SUMMARY

CALL TYPE	CONFERENCES	CONNECTIONS	MINUTES	CHARGES
AUDIO DIAL-OUT	1	5	50	26.05
	<u>1</u>	<u>5</u>	<u>50</u>	<u>\$26.05</u>

Hearing - Leon Co. v Lewis
024-08041

REPUBLIC PARKING
DOWNTOWN GARAGE
215 S CALHOUN STREET
(850)224-5524

Receipt# 52186
12/12/08 11:30 In 12/12/08 08:59 Out
12/12/08 08:59 In 12/12/08 11:30 Out
Tx#A198398

Fee 1	\$	2.50
Total Fee		\$	2.50
CASH PAID		\$	2.50
Cash Tender		\$	2.50
Change Due		\$	0.00

HFC

Accurate Stenotype Reporters, Inc.

2894-A Remington Green Lane
 Tallahassee, FL 32308
 (850)878-2221
 Employer ID No. 59-2708168

Invoice

DATE	INVOICE #
2/20/2009	ZN12128A

BILL TO
Nabors, Giblin & Nickerson 1500 Mahan Drive, Suite 200 Tallahassee, FL 32308 224-4070
Attention:

JOB INFORMATION
Volucia County v. SOF Case NO.: 2008 - CA 2448, 2475 Hearing with J. Cooper taken on 12-12-08 from 10:00 - 11:13 a.m.
Reported by: Tracy L. Brown

FEES AND CHARGES	QTY	RATE	AMOUNT
Transcript - Copy	58	2.30	133.40
Condensed transcript - no charge		0.00	0.00
Word index - no charge		0.00	0.00
to be picked up			

Handwritten note:
 2/20/09
 024-08041
 OK to Pay
 LFC

IT'S BEEN A PLEASURE WORKING WITH YOU.
 DUE UPON RECEIPT. INTEREST ACCRUES AT 12%
 AFTER 45 DAYS. PLEASE RETURN YELLOW COPY

Total	\$133.40
--------------	-----------------

Nabors, Giblin & Nickerson, P.A.
Expense Report

Client Number: 024
Matter Number: 08041
As of: 2/28/09

Photocopies: 781 @ .25 - Total: \$195.25

Postage: Total \$2.85

See attached for details

Facsimile: 0 pages @ \$1.00/pg - Total \$0.00



Printed Tuesday, March 03, 2009
at 2:43:28PM

Telephone By Account, Detail

Nabors Giblin & Nickerson

Date between (2009/02/02 and 2009/02/28) And Client Number = '024' And Matter Number = '08041'

Starting Date: 2/5/2009 Ending Date: 2/25/2009 Number of Days: 21

Date	Time	Extensi	Number	Destination	Duration	Amount
Site: 0, Tallahassee						
Client Number: 024, Leon County						
Matter Number: 08041, Funding of Offices						
2/5/2009	1:05:00PM	1324	(954) 525-8000	FTLAUDERDL FL	11.60	\$1.44
2/18/2009	12:34:00PM	1324	(954) 525-8000	FTLAUDERDL FL	2.00	\$0.24
2/25/2009	3:46:00PM	1312	(954) 525-8000	FTLAUDERDL FL	10.20	\$1.20
Totals for Matter Number: 08041					23.80	\$2.88
Totals for Client Number: 024					23.80	\$2.88
Totals for Site: 0					23.80	\$2.88
<i>Report Totals:</i>					23.80	\$2.88