



**Public Defender
COUNTY OF TULARE
AGENDA ITEM**

BOARD OF SUPERVISORS

KUYLER CROCKER
District One
PETE VANDER POEL
District Two
AMY SHUKLIAN
District Three
EDDIE VALERO
District Four
DENNIS TOWNSEND
District Five

AGENDA DATE: March 19, 2019 - REVISED

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
CONTACT PERSON: Thomas McGuire PHONE: 636-4582				

SUBJECT: Approval of Post-Retirement Employment of Ben Smukler

REQUEST(S):

That the Board of Supervisors:

1. Approve the Post-Retirement Employment of Chief Public Defender, Ben Smukler, as an Extra Help Attorney for the Public Defender Office, effective as of May 1, 2019.
2. Find that the position will be for a limited duration; requires the special skills and knowledge possessed by Mr. Smukler; that the nature of the employment and his appointment is necessary to fill a critically needed position before 180 days have passed from his retirement; and that the appointment be approved by the Board of Supervisors in a public meeting and not on the consent calendar; and
3. Waive the 180-day waiting period to return to work for the position.

SUMMARY:

Chief Public Defender Ben Smukler has been employed with the office since 1984 and will be retiring on March 29, 2019. Over his 35 years of employment Mr. Smukler has developed a wealth of experience, knowledge and skills handling some of the office's most difficult cases. Mr. Smukler, knowing that he had a set retirement date, successfully strove to resolve his workload, with two exceptions. Two of Mr. Smuker's most serious cases involving homicide charges remain open, People v. Rafael Hurtado [VCF090462] and People v. Nathan Hunt [VCF273216B]. Mr. Smukler has been representing Mr. Hurtado since April 2003, and, aside from murder charges, the case involves complex mental health issues. The Hurtado case has ongoing litigation that will extend into the summer. Mr. Hunt has been represented by Mr. Smukler since

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September 2015. The case involves capital charges, which through plea negotiations, will be avoided at sentencing. The sentencing hearing is currently set for May 30, 2019. As the assigned attorney, Mr. Smukler has long-established professional attorney client relationships with Mr. Hurtado and Mr. Hunt and developed intimate knowledge and insight into their cases, critical for their successful resolutions. His continued involvement in these cases is the most efficacious way of representing the client's, not only from a professional but also from a fiscal viewpoint. Only Mr. Smukler has the critical relationships with the clients and the in-depth knowledge of the cases to successfully and efficiently conclude the matters.

Mr. Smukler has been a California-licensed attorney since 1983 and his license is active and up-to-date with the State Bar. In order to protect the confidentiality of any work Mr. Smukler does for the County on these cases and any other matters after his retirement, and in order to comply with the post-retirement employment restrictions of the California Public Employees' Pension Reform Act ("PEPRA") and the County Employees' Retirement Law of 1937 ("1937 Act"), it is requested that the Board (1) approve the employment of Mr. Smukler as an Extra Help Attorney for the Public Defender's office, effective as of May 1, 2019, (2) find that the position will be for a limited duration, requires the special skills and knowledge possessed by Mr. Smukler, that the nature of the employment and his appointment is necessary to fill a critically needed position before 180 days have passed from his retirement, and that the appointment be approved by the Board of Supervisors in a public meeting and not on the consent calendar; and (3) waive the 180-day waiting period that would otherwise apply to such post-retirement employment. With such findings and waiver, Mr. Smukler will not be required to be reinstated from his retirement to active membership in the retirement system nor will his retirement benefits be suspended or terminated. He will be limited to working no more than 120 days or 960 hours, whichever is greater, during the balance of the 2018-19 and the 2019-20 fiscal year under the PEPRA and 1937 Act rules, which should be more than adequate to complete the needed work on the Hurtado and Hunt cases.

FISCAL IMPACT/FINANCING:

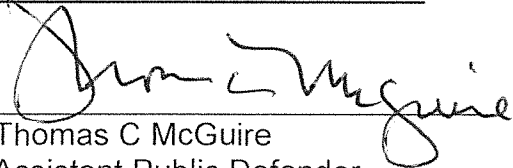
Approval of this request will have no additional net County cost. The costs for this request will be fully absorbed in the Public Defender's FY 2018/19 budget. The fiscal year 2019/2020 cost for this request will be budgeted in the existing extra help budget line for unit 1210.

LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:

The County's five-year strategic plan includes the Organizational Performance Initiative to promote continuous improvement of organization effectiveness and fiscal stability. This action meets the Organizational Performance measure of continually evaluating organizational structure to improve service delivery.

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ADMINISTRATIVE SIGN-OFF:



Thomas C McGuire
Assistant Public Defender

cc: County Administrative Office
Human Resources & Development
Tulare County Employees' Retirement Association

**BEFORE THE BOARD OF SUPERVISORS
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF APPROVAL OF)
POST- RETIREMENT EMPLOYMENT) Resolution No. _____
OF BEN SMUKLER)
)

UPON MOTION OF SUPERVISOR _____, SECONDED BY
SUPERVISOR _____, THE FOLLOWING WAS ADOPTED BY THE
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD _____
_____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

BY: _____
Deputy Clerk

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1. Approved the Post-Retirement Employment of Chief Public Defender, Ben Smukler, as an Extra Help Attorney for the Public Defender Office, effective as of May 1, 2019.
2. Found that the position will be for a limited duration; requires the special skills and knowledge possessed by Mr. Smukler; that the nature of the employment and his appointment is necessary to fill a critically needed position before 180 days have passed from his retirement; and the appointment has been approved by the Board of Supervisors in a public meeting and not on the consent calendar; and
3. Waived the 180-day waiting period to return to work for the position.