



# WESTMINSTER

## Staff Report

TO: The Mayor and Members of the City Council

DATE: October 29, 2014

SUBJECT: Study Session Agenda for November 3, 2014

PREPARED BY: J. Brent McFall, City Manager

Please Note: Study Sessions and Post City Council meetings are open to the public, and individuals are welcome to attend and observe. However, these meetings are not intended to be interactive with the audience, as this time is set aside for City Council to receive information, make inquiries, and provide Staff with policy direction.

Looking ahead to next Monday night's Study Session, the following schedule has been prepared:

*A light dinner will be served in the Council Family Room* 6:00 P.M.

### CITY COUNCIL REPORTS

1. Report from Mayor (5 minutes)
2. Reports from City Councillors (10 minutes)

### PRESENTATIONS

6:30 P.M.

1. Municipal Court Public Defender Services

### EXECUTIVE SESSION

1. Review and discussion of the finalists for the City Attorney position and discussion of issues that may be subject to negotiation pursuant to Section 1-11-3(C)(1) and (7), W.M.C., and Section 24-6-402(4)(e) and (f), C.R.S.- *Verbal*

### INFORMATION ONLY ITEMS

1. Westminster 303 Employee Training

Additional items may come up between now and Monday night. City Council will be apprised of any changes to the Study Session meeting schedule.

Respectfully submitted,

J. Brent McFall  
City Manager

**NOTE:** Persons needing an accommodation must notify the City Manager's Office no later than noon the Thursday prior to the scheduled Study Session to allow adequate time to make arrangements. You can call [303-658-2161](tel:303-658-2161) /TTY 711 or State Relay) or write to [mbarajas@cityofwestminster.us](mailto:mbarajas@cityofwestminster.us) to make a reasonable accommodation request.



## Staff Report

City Council Study Session Meeting  
November 3, 2014



**SUBJECT:** Municipal Court Public Defender Services Contract  
**Prepared By:** Debbie Mitchell, General Services Director  
Carol J. Barnhardt, Municipal Court Administrator

### Recommended City Council Action

Concur with Staff recommendation to execute an agreement with David Rockwell for Municipal Court public defender services for the twelve-month period beginning January 1, 2015, and authorize up to four one-year renewals of the agreement.

### Summary Statement

- Since 2010, the Municipal Court has utilized the services of David Rockwell as public defender at the Municipal Court. The 5 year contract agreement for these services expires at the end of 2014, and City Staff prepared a Request for Proposals (RFP) to obtain competitive bids.
- An RFP was developed and two individuals submitted sealed bids. They were: David Rockwell and Linda Lauchli.
- The proposed flat rates submitted by the two attorneys ranged from \$67,500 to \$70,000.
- Interviews by a six-member selection panel were conducted on September 25, 2014.
- Based on a review of the candidates' qualifications and the interview process, the oral board selection panel is recommending that David Rockwell has the best qualifications to perform the public defender services at the Municipal Court.
- This is a one-year contract that is renewable for up to four additional years.
- The Contract price for renewal periods shall be negotiated and agreed to by both parties, and any adjustment shall not exceed an annual percent change of more than 1% per year.

**Expenditure Required:** \$80,000

**Source of Funds:** General Fund – 2015 Municipal Court Budget  
2015 General Services Department Operating Budget  
2015 Supplemental Appropriation (2014 Carryover Funds - if required)

## **Policy Issue**

Should City Council continue to contract for public defender services?

## **Alternative**

City Council could direct Staff to negotiate with several attorneys to perform public defender services. Staff does not recommend this alternative due to the administrative burden and expenses that would be incurred.

City Council could direct Staff to consider an in-house public defender position to be funded at a three-quarter (.75) full time equivalent (FTE). Staff does not recommend this option for the reasons detailed in the background information.

## **Background Information**

Public defender services are provided to indigent defendants in cases where jail time may be imposed if the defendant is convicted. The judges can appoint a public defender when justified by a defendant's lack of financial resources or mental incapacities.

The public defender confers with defendants to determine the issues involved in the case. The public defender explains the elements the prosecution must prove, and the consequences of a guilty plea to the original charge(s) or other possible charge(s). Public defender representation ends upon sentencing. If a defendant appeals or has probation revocations, the defendant must reapply and qualify for representation.

The public defender is scheduled every Wednesday. Hearings are scheduled at 8:00 a.m. for arraignments, pre-trials, hearings and in-custody matters. An afternoon docket starts at 1:00 p.m. and consists of pre-trials, Trials to the Court, and Jury Status Conferences. Public defender services are also required in court on the Thursdays when public defender cases are scheduled for jury trial(s). Double jury trials are scheduled every other Thursday. Additional public defender coverage is required in the event two public defender jury cases proceed to jury trial. The public defender is responsible to provide additional coverage for double jury trial days. The public defender dedicates additional work hours to client interviews, discovery, case development and preparation.

Since 2010, David Rockwell has provided public defender services for the Municipal Court. The 5 year contract agreement for these services expires at the end of 2014, and City Staff prepared a Request for Proposals (RFP) to obtain competitive bids. City Staff, through the RFP process, sought legal representation for indigent defendants that have been charged with a municipal code violation, including domestic violence, and/or criminal traffic violation, and face possible jail sentences.

The RFP proposals required:

- Resumes of attorneys who will provide public defender services, (including the bidder and any attorneys who may be providing backup, additional and/or conflict coverage)
- A minimum of three professional references for the bidder
- A description of criminal law experience, specialized areas of practice and, in particular, public defender experience, and the percentage each constitutes of their total practice
- An overview of how the public defender services will be managed and who will be the key personnel including backup support if public defender is not available to provide contracted services because of conflicts, scheduling problems, vacations, etc.

- Any other information the bidder felt would be helpful for the selection committee
- Full disclosure as to whether responding attorney(s) has been disciplined or sanctioned for a breach or possible breach of ethics or unprofessional conduct (including a private letter of admonition, reprimand or censure).
- A proposed flat fee to provide all of the required services for the 2015 calendar year. Fees were required to include expenses for all attorneys, secretarial and clerical services, costs of mailing, all related expenses, and anticipated time necessary to perform all the public defender functions, duties and responsibilities.
- A proposal for fixed pricing for five years. Without any representation or guarantee that renewal will occur, bidders were asked to set a fee for up to 5 years of service, not to exceed a 1% annual increase.

The proposed agreement requested that bidders propose a flat fee, to be paid one-twelfth of the annual payment on a monthly basis. For accountability, the public defender is required to submit an invoice to the Municipal Court Administrator for monthly fees and reimbursable expenses. Allowable and reimbursable expenses include: costs of subpoenas, service of process copies of government documents, language interpreters (to be provided by the Court upon approval), transcripts (to be provided by the Court upon approval), and expert witnesses (to be approved by the Court).

On September 11, 2014, two sealed bids were submitted and opened by the City Purchasing Agent and the Court Administrator. The two bidders were: David Rockwell and Linda Lauchli. The flat rate proposal from Linda Lauchli was \$67,500 and the flat rate proposal from David Rockwell was \$70,000.

On September 25, 2014, a six-member oral board selection panel conducted interviews. The selection panel was comprised of Councillor Alberto Garcia, General Services Director Debbie Mitchell, Court Administrator Carol Barnhardt, Probation Supervisor Brian Poggenklass, Senior Human Resource Analyst Donna Diaz, and Assistant City Attorney Leslie Annand. Both of the candidates participated in an interview that covered approximately 15 questions and both candidates submitted written responses to 12 questions.

The following factors were considered for each candidate:

1. Prior Experience as Public Defender
2. Communication Skills
3. Credibility
4. Attitude, Interest, Motivation
5. Overall Impression

As a result of this process and after an in-depth discussion, the selection panel is recommending that Council approve a contract with David Rockwell based on his experience in criminal law and his interest in providing this service to indigent defendants. The selection panel determined that David Rockwell has the requisite qualifications to perform the public defender services.

Statistical and Cost Information: In 2013, the Municipal Court received 11,605 new case filings. Of that total, there were 2,307 municipal ordinance filings, 333 domestic violence filings, 8,325 traffic violations, and 640 parking violations.

In 2013, there were 51 jury trials scheduled with jurors appearing. There were 42 actual trials held of which 27 were public defender jury trials. Of those 27 public defender jury trials, 8 trials were additional

attorney coverage cases (2 public defender trials on a double jury day and/or additional Wednesday coverage). Additional attorney coverage requirements in 2013 included one case with approximately 13 hours additional coverage. Conflict cases totaled 7 cases with approximately 31 hours of attorney time.

For 2014, through July, there were 37 jury trials scheduled with jurors appearing. There were 31 actual trials held of which 23 were public defender jury trials. Of those 23 public defender jury trials, 8 trials were additional attorney coverage cases (2 public defender trials on a double jury day and/or additional Wednesday coverage). Additional coverage through July totaled 8 cases with approximately 86 hours. Conflict cases through July totaled 13 cases with approximately 67 hours of attorney time.

For 2013, the public defender represented 791 defendants with a total of 935 separate cases. It is anticipated that for 2014, these numbers are estimated to increase by approximately 39%.

Appeals requiring Public Defender services are minimal, possibly 1 per year.

The complexity of the municipal ordinance cases and the domestic violence cases, along with recent legislative changes, have increased the workload of the current public defender. It appears that with societal changes and anticipated ongoing legislative changes, what the Court has experienced in late 2013 through 2014 may now be the new “norm.”

In March 2014, the Court Administrator surveyed surrounding cities, several follow the Chief Justice Directive in regard to payment to their public defenders, and Lakewood has a contract with a private firm for \$87,000 annually. It should be noted on the attached survey that Lakewood is the only court that handles domestic violence cases.

The State Court, under Chief Justice Directive 04-04, amended July 1, 2014, increased what State Court Appointed Counsel are paid hourly from \$65 per hour to \$75 per hour effective July 1, 2014. The last State increase was effective July 1, 2008. The public defender contract will cover all services with the exception of conflict counsel needs contracted separately by the City. To stay competitive with what other municipal courts are paying public defenders and conflict attorneys, and to retain qualified public defender services for our Court, staff recommends increasing the conflict counsel pay from \$50 per hour, that has been paid since at least 2006, to \$70 per hour with a maximum cap of \$1,000 per case, with or without trial.

In-house staffing of public defender responsibilities were explored by Staff at City Council’s request. Anticipated costs for an in-house public defender position reflect a three-quarter (.75) full time equivalent (FTE) position based on current time spent by the contract public defenders. After investigation of this option, staff is recommending continuance of a contract arrangement because of several challenges in-house counsel presents as outlined below.

Cost Prohibitive: Funding for a three-quarter (.75) FTE wages and benefits based on an Assistant Prosecuting Attorney, E9, at the beginning of the third quartile would be approximately \$74,271. Cost of a computer, desk, phone, and supplies are estimated to be \$4,000. Additional backup attorney fees of approximately \$11,000 brings the total for comparable services to the public defender contract to \$90,000. This assumes that current staff could absorb administrative support for the position.

Backup Attorney(s): Staff would need to draft an RFP to solicit applicants, and funds be allocated for back up attorney coverage for leave, double jury day coverage, and for conflict cases. Currently the public defender has four back up attorneys that assist him with leave coverage, double jury days, and

conflict cases. The 2014 year to date costs through September for jury trials and double jury trials is \$11,037. Conflict coverage for this same time period year to date is \$3,068.

Workspace: The Court facility does not have adequate space available to house this individual. The current public defender meets with clients on Wednesdays, either in the hallway, the jury room and/or the courtroom. If Council would like to pursue this alternative, Staff would request funding for a remodel of the existing Court facility to house this individual with an office. Costs for this remodel are undetermined as of the date of this Staff report.

To whom would the in-house public defender report? It would be a challenge to have this individual report to someone in the current Municipal Court structure (General Services Director or Court Administrator) due to potential appearances of impropriety and/or potential conflicts of interest. Reporting to the City Attorney or Police Chief would be a direct conflict of interest; and, reporting to the City Manager or any other Departments would be problematic due to staffing and knowledge constraints.

Based on a review of both options and the current quality and stability of contract public defender services, Staff recommends continuing the outsourced arrangement. The Court has been allocated a budget of \$30,812 since approximately 2006 for public defender services to cover the monthly fees and additional expenditures for jury trials, conflict cases, backup assistance, and allowable expenses.

As part of the 2015/2016 budget process, Council authorized funding for public defender services. For 2015, public defender services have a funding level of \$30,812 within the Municipal Court budget. Additional funds were not requested in the 2015 budget because the outcome of the RFP bids were unknown at the time of budget development. Due to the increase in cost, Staff will look within the overall 2015 General Services Departmental budget to make up a portion of the deficiency in funding. Additional funding will be required and will be allocated via a 2015 supplemental appropriation from 2014 carryover funds. The request for funding for this action is \$70,000 for the public defender base agreement, funds for conflict counsel and additional allowable and reimbursable expenses of up to \$10,000 for a total of \$80,000 in anticipated expenses for 2015 public defender services. The contract price for renewal periods shall be negotiated and agreed to by both parties, and any adjustment shall not exceed a 1% annual percent change.

This is a one-year contract that is renewable for up to four additional years.

This Staff recommendation achieves the Strategic Plan Goals of “Excellence in City Services” by providing services for indigent defendants.

Respectfully submitted,

J. Brent McFall  
City Manager

Attachment – Public Defender Comparisons

## PUBLIC DEFENDER COMPARISONS

Information collected March 2014

| STATE/CITY | FEES  | CONTRACT   | PROCESS   |
|------------|---|--|---|
| Englewood  | When needed – follow Chief Justice Directive regarding court appointed counsel  | No contract  | Utilize University of Denver law students when possible at no cost. Retain a list of attorneys that petition the judge to be used on an “as needed” basis   |
| Thornton   | <p>\$65 per hour</p> <p>\$500 maximum cap if case does not go to trial; \$1,000 cap if case goes to trial.</p> <p>State rate but elected to lower cap since municipal cases don’t require as many appearances as state cases</p>  | No contract with any attorneys   | Attorneys send judge a letter of interest and resume and he decides who goes on the list  |
| Greeley    | <p>\$45 per hour</p> <p>Max cap:</p> <p>Misdemeanor - \$1,000</p> <p>Revocation Hearing - \$250</p> <p>Trial to Court - \$750</p> <p>Jury Trial – \$1,000</p> <p>Other Hearings - \$250</p> <p>Average Total spent over last 2-3 years was \$7,000 - \$8,000 yearly</p> | No contract  | Have a list of attorneys that the judge chooses from  |
| Arvada     | Same as Thornton  |  |   |
| Lakewood   | <p>\$87,000 annually, paid in 12 payments.</p> <p>Amount covers jury trials and appeals</p>   | <p>Contract with Attorney Kevin Flesch.</p> <p>5 year contract, renewable yearly. City notifies contractor by November 30th of each year of intent to renew.</p> | <p>Provides all court appearances, filing of documents, subpoena service, investigative work, represents defendants until case is closed or until court allows attorney to withdraw upon showing of good cause.</p> <p>Contractor not obligated to represent defendants if ethical conflict occurs.</p> |

| STATE/CITY                | FEES | CONTRACT  | PROCESS   |
|---------------------------|------|---|---|
| Lakewood<br>continued ... |      | <p>Salary can increase yearly, it's based on submission of a proposal and approval by the presiding judge and court administrator.</p> <p>Public Defender spends about 30 hours per month at court.</p> <p>They set up an office for him; he comes in 1-2 times a week to see defendant; usually is not there all day unless trials or disposition.</p> <p>About 28 jury trials and this included other cases as well.</p> <p>Public Defender had approximately 925 hearings scheduled with about 670 actually being held.</p> <p>Alternative counsel – they have another agreement with another attorney and pay him \$65 per hour for service with a cap of \$7,500 per year.</p> | <p>Contract is non-exclusive and city retains the right to contract with additional public defenders and/or to perform public defender services</p> |





WESTMINSTER

## Staff Report



Information Only Staff Report  
November 3, 2014

SUBJECT: Westminster 303 Employee Training

PREPARED BY: Jackie June, Employee Development Coordinator  
Lisa Chrisman, Employee Development & Benefits Manager

### Summary Statement

This report is for City Council information only and requires no action by City Council. Westminster 303 is a class developed to provide employees with the opportunity to interact with City Council and the City Manager's Office, as well as to learn valuable information about the intricacies of City government. It is the third class in a series that includes Westminster 101 and 202. This year, Westminster 303 will be held on Monday, November 10, 2014. The class will include dinner with City Council and observation of the Pre-Council Briefing that will be held in the Multipurpose Room in City Hall.

### Background Information

This class is the third in a series of classes that provides information to City employees about our City Values, Mission and Government. Employees learn about the services each department provides and how the City supports each of City Council's Strategic Plan goals. Employees deepen their understanding of the complexities of running a city government and the inter-relatedness of every facet of the organization and the community. Westminster 303 encourages employees to take ownership of City operations by becoming informed ambassadors for City Council's strategic objectives and City services. This class supports Council's goal of "Excellence in City Services" by maintaining and enhancing employee morale and confidence in City Council and management.

Respectfully submitted,

J. Brent McFall  
City Manager