

32873

Date: March 15, 2013

To: Board of Acquisition and Contract

From: Robert F. Meehan
County Attorney

Re: Authority to enter into a retainer agreement with David S. Poppick, Esq., pursuant to which he will represent Janet DiFiore and take such legal action as may be deemed necessary with respect to the lawsuit entitled Nubreed Ent. Inc., etc. v. DiFiore.

For the matter of Nubreed Ent. Inc., etc. v. DiFiore, I determined, based upon a review of the facts and circumstances of the case, that representation of District Attorney Janet DiFiore (the "District Attorney") by the County Attorney's Office would not be appropriate or advisable. Therefore, I certified to the Westchester County Board of Legislators (the "BOL") that the District Attorney is entitled to representation by private counsel in accordance with Section 297.31(2)(b) of the Laws of Westchester County.

Subsequently, on January 7, 2013, the BOL approved Act 2013-3, which authorized the County to enter into a retainer agreement with David S. Poppick, Esq., pursuant to which Mr. Poppick will represent the District Attorney in connection with the matter of Nubreed Ent. Inc., etc. v. DiFiore, at a cost not to exceed \$290.00 per hour, with Mr. Poppick being authorized and empowered to undertake such legal action and prepare all documents necessary or desirable in the defense of the District Attorney in said matter. Mr. Poppick's reasonable attorneys fees shall be paid by the County during the pendency of said matter, subject to approval by act of the BOL.

In order to enter into such a retainer agreement, authority from your Honorable Board is required, pursuant to Chapter 161. Accordingly, the County respectfully requests authority to enter into a retainer agreement with Mr. Poppick, pursuant to which Mr. Poppick will represent the District Attorney in connection with the matter of Nubreed Ent. Inc., etc. v. DiFiore, at a cost not to exceed \$290.00 per hour, with Mr. Poppick being authorized and empowered to undertake such legal action and prepare all documents necessary or desirable in the defense of the District Attorney in said matter (the "Agreement"). Under the proposed Agreement, Mr. Poppick's reasonable attorneys fees shall be paid by the County during the pendency of said matter, subject to approval by act of the BOL.

I respectfully recommend the adoption of the attached Resolution.

RFM/bdm/mn

RESOLUTION

Upon a communication from the County Attorney, be it hereby:

RESOLVED, that the County of Westchester (the "County") is hereby authorized to enter into a retainer agreement with David S. Poppick, Esq., pursuant to which Mr. Poppick will represent Janet DiFiore (the "District Attorney") in connection with the matter of Nubreed Ent. Inc., etc. v. DiFiore, at a cost not to exceed \$290.00 per hour, with Mr. Poppick being authorized and empowered to undertake such legal action and prepare all documents necessary or desirable in the defense of the District Attorney in said matter (the "Agreement"); and be it further

RESOLVED, the under the Agreement, Mr. Poppick's reasonable attorneys fees shall be paid by the County during the pendency of said matter, subject to approval by act of the BOL; and be it further

RESOLVED, that this Agreement is subject to County appropriations; and be it further

RESOLVED, that this Agreement is also subject to further financial analysis of the impact of any New York State Budget (the "State Budget") proposed and adopted during the term of this Agreement. The County shall retain the right, upon the occurrence of any release by the Governor of a proposed State Budget and/or the adoption of a State Budget or any amendments thereto, and for a reasonable period of time after such release(s) or adoption(s), to conduct an analysis of the impacts of any such State Budget on County finances. After such analysis, the County shall retain the right to either terminate this Agreement or to renegotiate the amounts and rates approved herein. If the County subsequently offers to pay a reduced amount to Mr. Poppick, then Mr. Poppick shall have the right to terminate this Agreement upon reasonable prior written notice; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to take such action and execute such documents as may be necessary and appropriate to effect the purposes hereof.

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub- Object	Trust Account	Dollars
615	59	0687/3150	4923		NTE \$290/hour

Budget Funding Year(s): _____ Start Date: _____ End Date: _____
 (must match resolution)

Funding Source Tax Dollars _____
 State Aid _____
 NTE \$290/hour Federal Aid _____
 (must match resolution) Other 6N _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/30/2013 - JOMARY WEINER SECRETARY