

Date: March 02, 2010

To: Board of Acquisition and Contract

From: Robert F. Meehan
County Attorney

Re: Authority to enter into a retainer agreement with the law firm of Bleakley Platt & Schmidt LLP to provide legal representation to Dr. Louis Roh in the matters of Jeffrey Deskovic v. City of Peekskill, Putnam County, Westchester County, David Levine, Thomas McIntyre, Walter Brovarksi, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh, Millard Hyland, George Bolen, Peter Insero, the Legal Aid Society of Westchester County and Alan Tweed and Linda McGarr v. City of Peekskill, Putnam County, Westchester County, David Levine, Thomas McIntyre, Walter Brovarksi, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh, Millard Hyland, George Bolen, Peter Insero, the Legal Aid Society of Westchester County (hereinafter the "Deskovic Matters"), for a term commencing on February 1, 2010 and continuing through January 31, 2011, in an amount not-to-exceed \$200,000.00

By Act No 6-2010, approved on March 1, 2010, the Westchester County Board of Legislators authorized the County to retain, at County expense, the law firm of Bleakley Platt & Schmidt LLP to provide legal representation to Dr. Louis Roh in connection with the Deskovic Matters, and to pay the firm an amount not-to-exceed \$200,000.00. Under section 161.11(1) of the Laws of Westchester County, the authority of your Honorable Board is also required.

The Deskovic Matters involve a federal lawsuit commenced under 42 U.S.C. §1983 for alleged deprivations of rights secured under the Fourth and Fourteenth Amendments of the United States Constitution. There are also state law claims for malicious prosecution, as well as intentional and reckless infliction of emotional distress. In addition to the federal action commenced by Deskovic, his mother, Linda McGarr, commenced an action based upon a claim of loss of familial association, allegedly resulting from the same constitutional violations. Discovery in the two actions is proceeding jointly. The cases are assigned to United States District Judge Kenneth Karras.

On December 7, 1990, Plaintiff was convicted of the rape and murder of Angela Correa, and subsequently sentenced to fifteen years to life in prison. His conviction was

vacated and he was released from prison on September 20, 2006, and on November 2, 2006, the indictment was dismissed on the ground of actual innocence. Plaintiff was exonerated after advanced DNA testing revealed that the semen found inside of the victim belonged to Stephen Cunningham, an individual serving time in New York State prison for a 1993 murder. Cunningham, when confronted with this evidence by investigators from the District Attorney's Office, confessed to Correa's rape and murder. Cunningham subsequently pled guilty to the murder charge and was sentenced to twenty (20) years to life in prison.

The Westchester County defendants in this litigation are presently the County of Westchester; Dr. Millard Hyland, Chief Medical Examiner for Westchester County; and Dr. Louis Roh, who until his retirement from the Medical Examiner's office was the Deputy Chief Medical Examiner. Dr. Roh performed the autopsy on Angela Correa and testified in connection with the criminal proceeding.

The parties are in the midst of discovery. Although this matter was being handled exclusively by Stuart Kahan, Esq., of the law firm of Oxman Tulis Kirkpatrick Whyatt & Geiger LLP, on behalf of all the County defendants, recent developments in this matter have led counsel to conclude that a conflict exists such that it is inappropriate for Mr. Kahan to continue to handle this matter on behalf of all the defendants. Consequently, pursuant to Section 297.31(2)(b)(i) of the Laws of Westchester County, the County Attorney is seeking authorization from this Honorable Board to retain separate counsel to represent Dr. Louis Roh in an "of counsel" capacity to the County Attorney.

Accordingly, authority is now respectfully requested to enter into an outside counsel retainer agreement with the law firm of Bleakley Platt & Schmidt LLP, One North Lexington Avenue, White Plains, New York, to provide legal representation to Dr. Louis Roh in connection with the Deskovic Matters for a term commencing on February 1, 2010 and continuing through January 31, 2011. In consideration for services to be rendered, Bleakley Platt & Schmidt LLP shall be paid at the rate of \$195.00 per hour, for a total aggregate amount not-to-exceed \$200,000.00, inclusive of all expenses.

Accordingly, your favorable action on the annexed Resolution is most respectfully urged and recommended.

RFM/JPG/sw

RESOLUTION

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

RESOLVED, that the County of Westchester is authorized to enter into an outside counsel retainer agreement with the law firm of Bleakley Platt & Schmidt LLP (the "Firm"), One North Lexington Avenue, White Plains, New York, to provide legal representation to Dr. Louis Roh in the matters of Jeffrey Deskovic v. City of Peekskill, Putnam County, Westchester County, David Levine, Thomas McIntyre, Walter Broyarksi, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh, Millard Hyland, George Bolen, Peter Inero, the Legal Aid Society of Westchester County and Alan Tweed and Linda McGarr v. City of Peekskill, Putnam County, Westchester County, David Levine, Thomas McIntyre, Walter Brovarksi, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh, Millard Hyland, George Bolen, Peter Inero, the Legal Aid Society of Westchester County, for a term commencing on February 1, 2010 and continuing through January 31, 2011; and be it further

RESOLVED, that in consideration for services to be rendered, the Firm shall be paid at the rate of One Hundred Ninety-Five (\$195.00) dollars per hour, not-to-exceed the sum of Two Hundred Thousand (\$200,000.00) dollars, inclusive of all expenses; 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 the Firm, then the Firm shall have the right to terminate this Agreement upon reasonable prior written notice; and be it further

RESOLVED, that the County Attorney or his duly authorized designee is hereby authorized to take such action and execute such documents as may be necessary and proper 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	0560	4923		\$200,000

Budget Funding Year(s) Current Start Date 2/01/10 End Date 1/31/11
(must match resolution)

Funding Source Tax Dollars _____

State Aid _____

\$200,000 Federal Aid _____

(must match resolution) Other 6N _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 3-25-2010 - JOMARY VIEIRA, SECRETARY