



MARIPOSA COUNTY

Sheriff's Office • (209) 966-3615



RESOLUTION - ACTION REQUESTED 2016-291

MEETING: June 14, 2016

TO: The Board of Supervisors

FROM: Doug Binnewies, Sheriff-Coroner-Public Administrator

RE: Professional Service Agreement with Starchman and Bryant Attorneys at Law

RECOMMENDATION AND JUSTIFICATION:

Approve a Legal Services Agreement Authorizing the Mariposa County Public Administrator to retain Starchman and Bryant Attorneys at Law to Proceed with the Administrating of Estates; and Authorize the Board of Supervisors Chair to Sign the Legal Services Agreement. The Mariposa County Public Administrator investigates and may administer the estates of Mariposa County residents who die with no next of kin, with no appropriate person willing or able to act as administrator and/or when appointed by the court because of an extraordinary situation.

It is common and necessary for the Public Administrator to obtain attorney services in order to proceed with the administrating of the estate. The Legal Services Agreement is being pursued to expedite the process of individual cases. There is no impact to the General Fund as all fees associated with this agreement are the responsibility of the estate.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

Similar Professional Services Agreements have been supported.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Not support the Professional Services Agreement which would cause the Public Administrator to pursue specific and individual agreements per case when opened. This could cause delay and potential asset devaluation of the estate.

FINANCIAL IMPACT:

All Fees are defined in the Agreement and attached Probate Code. No Impact to General Fund as all fees are the responsibility of the estate.

ATTACHMENTS:

2016-2017 Starchman & Bryant Legal Services Agreement (PDF)
10810 California Probate Code (PDF)

CAO RECOMMENDATION

Requested Action Recommended

Mary Hodson
Mary Hodson, CAO 6/6/2016

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER: Kevin Cann, District IV Supervisor
SECONDER: Marshall Long, District III Supervisor
AYES: Rosemarie Smallcombe, Marshall Long, Kevin Cann, John Carrier
EXCUSED: Merlin Jones

LEGAL SERVICES AGREEMENT
REPRESENTATION BY STARCHMAN & BRYANT ATTORNEYS AT LAW

1. **IDENTIFICATION OF PARTIES.** This agreement is made between STARCHMAN & BRYANT ATTORNEYS AT LAW, hereafter referred to as "Law Firm," and COUNTY OF MARIPOSA, hereafter referred to as "Client."

This agreement is required by Business and Professions Code §6148 and is intended to fulfill the requirements of that section.

2. **LEGAL SERVICES TO BE PROVIDED.** The legal services to be provided by Law Firm to Client are as follows: To represent MARIPOSA COUNTY PUBLIC ADMINISTRATOR, as the Public Administrator investigates and may administer the estates of Mariposa County residents who die with no next of kin, with no appropriate person willing or able to act as administrator and/or when appointed by the court because of an extraordinary situation.

3. **LEGAL SERVICES SPECIFICALLY EXCLUDED.** Legal services that are excluded under this agreement specifically include, but are not limited to, the following: Arrangements for preparation and filing of any required federal and state fiduciary income tax returns; representation of Client as an individual, rather than as Administrator, with respect to any litigation pertaining to the estate. If Client wishes that Law Firm provide any legal services excluded under this agreement, a separate written agreement between Law Firm and Client will be required. Because of the conflict it would create, however, Law Firm could not represent Client both as Administrator and as an individual with respect to any litigation pertaining to the estate. Law Firm cannot represent the Public Administrator in any instance where to do so would conflict with Law Firm's duties to an existing or former client as identified in Law Firm's conflicts of interest index.

4. **RESPONSIBILITIES OF LAW FIRM AND CLIENT.** Law Firm will perform the legal services called for under this agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. Client will be truthful and cooperative with Law Firm; keep Law Firm reasonably informed of developments and of Client's address, telephone numbers, and whereabouts; and timely make any payments required by this agreement. Client will assist Law Firm in providing necessary information and documents and will appear when necessary at legal proceedings.

5. **ATTORNEY FEES.** Law Firm's fees are set forth as follows. For those estates for which a petition is filed with the Superior Court on behalf of the estate, all attorney fees are payable out of the estate and not by Client individually:

Administration of Small Estate (\$50,000 or Less): \$2,000

Petition to Determine Succession to Real Property (between \$50,000 and \$150,000): \$3,000

Petition for Probate: Law Firm's fees will be set by the Court at or near the end of administration of the estate under the rules for attorney compensation set out in California

Probate Code section 10810 (copy attached). Law Firm's fees for ordinary services will be based on the amount of estate accounted for. "The amount of estate accounted for" means the total amount of the inventory plus gains over appraisal value on sales, plus receipts, less losses on sales, without reference to encumbrances or other obligations on property in the estate, if any. In addition, the Court may authorize payment of additional fees for "extraordinary services" if they are rendered to the estate. Extraordinary services include, but are not limited to, sales of real property and estate litigation. Any fees for extraordinary services require a petition by Law Firm and approval by the Court.

With regard to legal consultation provided to Public Administrator for general legal questions or investigations that do not result in Law Firm filing a petition with the Superior Court on behalf of the estate, or providing services for transfer of any non-probate assets such as property held in joint tenancy or payable-on-death form, the Client shall pay such attorneys fees which shall be billed at the hourly rate of \$195 per hour.

6. COSTS. It is understood by both parties that the Chair of the Mariposa County Board of Supervisors is executing this document on behalf of the Public Administrator's office to provide legal services relating to the Public Administrator's duties. With regard to the administration of a specific estate through probate proceedings in the Superior Court, any obligation to Starchman & Bryant is through that estate and it is understood by both parties that County of Mariposa accepts no responsibility or liability regarding any payments to Starchman & Bryant. Any other legal services provided under this agreement shall be the responsibility of Mariposa County. County of Mariposa will pay in advance all "costs" in connection with Law Firm's representation of Client under this agreement including, but not limited to Superior Court filing fees, publication fees, and probate referee appraisal fees, and such costs will be reimbursed to County of Mariposa by such estate, if such funds are available.

7. DISCHARGE OF LAW FIRM. Client may discharge Law Firm at any time by written notice effective when received by Law Firm. Unless specifically agreed by Law Firm and Client, Law Firm will provide no further services and advance no further costs on Client's behalf after receipt of the notice. If Law Firm is Client's attorney of record in any proceeding, Client will execute and return a substitution-of-attorney form immediately on its receipt from Law Firm. Notwithstanding the discharge, all unpaid charges will become due and payable upon close of probate and upon court approval. After services conclude, Law Firm will, upon Client's request in writing, deliver Client's file, and property in Law Firm's possession, whether or not Client have paid for all services.

8. WITHDRAWAL OF ATTORNEY. Law Firm may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this agreement, refusal to cooperate or to follow Law Firm's advice on a material matter or any fact or circumstance that would render Law Firm's continuing representation unlawful or unethical. When Law Firm's services conclude, all unpaid charges will become due and payable upon close of probate and upon court approval. After services conclude, Law Firm will, upon Client's request in writing, deliver

Client's file, and property in Law Firm's possession, whether or not Client have paid for all services.

9. RELEASE, RETENTION, AND DISPOSITION OF CLIENT'S PAPERS AND PROPERTY. At the termination of services under this agreement, Law Firm will release promptly to Client, upon Client's request in writing, all of Client's papers and property. After five years have passed since the termination of services under this agreement, Law Firm may dispose of Client's papers and property. If Client desires to have Law Firm retain Client's papers and property beyond five years after the termination of services, Client must make separate written arrangements with Law Firm. "Client's papers and property" include correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to Client's representation, whether Client has paid for them or not.

10. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this agreement and nothing in Law Firm's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Law Firm makes no such promises or guarantees. Law Firm's comments about the outcome of the matter are expressions of opinion only.

11. ENTIRE AGREEMENT. This agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this agreement will be binding on the parties. This agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

12. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

13. MODIFICATION BY SUBSEQUENT AGREEMENT. This agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement only to the extent that the parties carry it out.

14. TERM. The term of this agreement shall be the remainder of the current Mariposa County fiscal year 2016-2017.

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15. EFFECTIVE DATE OF AGREEMENT. The effective date of this agreement will be the date when it is executed by the last of the parties to do so.

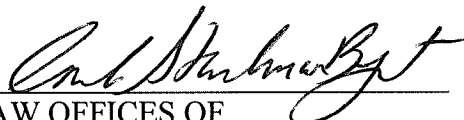
The foregoing is agreed to by:

Date: 6-15-16



JOHN CARRIER, CHAIR
Mariposa County Board of Supervisors

Date: 5-5-16



LAW OFFICES OF
STARCHMAN & BRYANT
ATTORNEYS AT LAW
By: Anita Starchman Bryant

APPROVED AS TO FORM:



STEVEN W. DAHLEM
COUNTY COUNSEL

ATTACHMENT (1)

CALIFORNIA PROBATE CODE

§ 10810. Compensation for conducting ordinary proceedings

(a) Subject to the provisions of this part, for ordinary services the attorney for the personal representative shall receive compensation based on the value of the estate accounted for by the personal representative, as follows:

- (1) Four percent on the first one hundred thousand dollars (\$100,000).
- (2) Three percent on the next one hundred thousand dollars (\$100,000).
- (3) Two percent on the next eight hundred thousand dollars (\$800,000).
- (4) One percent on the next nine million dollars (\$9,000,000).
- (5) One-half of 1 percent on the next fifteen million dollars (\$15,000,000).
- (6) For all amounts above twenty-five million dollars (\$25,000,000), a reasonable amount to be determined by the court.

(b) For the purposes of this section, the value of the estate accounted for by the personal representative is the total amount of the appraisal of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property.