BOARD OF COUNTY COMMISSION
AGENDA ITEM SUMMARY

Meeting Date: 4/20/05 - KW

Division County Attorney's Office

Bulk Item: Yes ___ No X

** PUBLIC HEARING 3:00 P.M. **

Staff Contact Person: Bob Shillinger

AGENDA ITEM WORDING:
Adoption of a Resolution of the Board of County Commissioners of Monroe County, Florida setting the rate for attorney's fees sought by the County Attorney's Office under Section 2-365 of the Monroe County Code.

ITEM BACKGROUND: Section 2-365 of the County Code requires that the Board adopt by resolution the rate for attorney's fees sought by the County Attorney's office on behalf of the County. In most cases, attorney's fees are recoverable only if provided for by statute or in contract. A party may be awarded attorney's fees, absent a statutory or contractual right, in the rare instance where a court finds that a matter was frivolous or brought in bad faith.

When attorney's fees are appropriate, Florida law allows for the recovery of attorney's fees for government staff lawyers at a reasonable rate as measured against the local community, not just the cost of salary and benefits for that particular attorney. Staff proposes setting the rate at $200.00 per hour. That rate falls towards the lower end of the range of hour rates charged by attorneys within the County.

PREVIOUS RELEVANT BOCC ACTION:
BOCC approval on 3/16/05 to advertise for one public hearing to be held April 20, 2005 in Key West. In December 2004, the Board adopted Section 2-365 as part of the County Attorney's office ordinance.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:
Approval.

TOTAL COST: N/A

BUDGETED: Yes ___ No ___

COST TO COUNTY: N/A

SOURCE OF FUNDS: ___

REVENUE PRODUCING: Yes ___ No X

AMOUNT PER MONTH ___ **Year** ___

APPROVED BY: County Atty ___ OMB/Purchasing ___ Risk Management ___

DIVISION DIRECTOR APPROVAL: John R. Collins 03/28/05
JOHN R. COLLINS, COUNTY ATTORNEY

DOCUMENTATION: Included X Not Required ___

NOTICE OF INTENTION TO CONSIDER
ADOPTION OF PROPOSED RESOLUTION

NOTICE IS HEREBY GIVEN TO WHOM IT MAY CONCERN that on **Wednesday, April 20, 2005, at 3:00 PM at the Harvey Government Center, 1200 Truman Avenue, Key West, Monroe County, Florida**, the Board of County Commissioners of Monroe County, Florida, intends to consider the adoption of the following proposed County Resolution:

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA SETTING THE RATE FOR ATTORNEY'S FEES SOUGHT BY THE COUNTY ATTORNEY'S OFFICE UNDER SECTION 2-365 OF THE MONROE COUNTY CODE.

Pursuant to Section 286.0105, Florida Statutes, notice is given that if a person decided to appeal any decision made by the Board with respect to any matter considered at such hearings or meetings, he will need a record of the proceedings, and that, for such purpose, he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

Copies of the above-referenced ordinance are available for review at the various public libraries in Monroe County, Florida.

Dated at Key West, Florida, this 16th day of March, 2005.

DANNY L. KOLHAGE, Clerk of the Circuit Court
and ex officio Clerk of the Board of County
Commissioners of Monroe County, Florida

(SEAL)

Publication dates:

Reporter	**(Fr) 4/1 – 4/8**
Keynoter	**(Sa) 4/2 – 4/9**
KW Citizen	**(Su) 4/3 – 4/10**

RESOLUTION NO. –2005

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA SETTING THE RATE FOR ATTORNEY'S FEES SOUGHT BY THE COUNTY ATTORNEY'S OFFICE UNDER SECTION 2-365 OF THE MONROE COUNTY CODE.

WHEREAS, the Office of the County Attorney is authorized by Section 2-365 of the Monroe County Code to seek attorneys fees in certain matters; and

WHEREAS, Section 2-365 of the Monroe County Code requires the Board to set by resolution the basic hourly rates for services rendered by the County Attorney's office; and

WHEREAS, controlling case law in Florida authorizes government entities such as the County to seek reimbursement for the services of staff attorneys at the reasonable prevailing rate in the community even if that amount exceeds the cost of the particular staff attorney's compensation package (salary plus benefits); *see, Computer Task Group, Inc. v. Palm Beach County,* 782 So.2d 942 Fla. 4th DCA 2001); *Leibowitz v. City of Miami Beach,* 683 So.2d 204 (Fla. 3d DCA 1996); and *City of Boca Raton v. Faith Baptist Church*, 423 So.2d 1021 (Fla. 4th DCA 1982); and

WHEREAS, attorneys in the County Attorney's office routinely litigate cases on behalf of the County which often result in the County being entitled to attorney's fees; and

WHEREAS, the Board finds that it has been presented with substantial, competent evidence that the rate of two hundred dollars ($200.00) per hour falls within the range of reasonable attorney's fees charged by attorneys practicing in Monroe County possessing similar skill, experience, reputation, and competence of those attorneys serving as County Attorney and Assistant County Attorney;

NOW THEREFORE; BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, THAT

1. The hourly rate for attorney's fees sought by the Office of the County Attorney, in circumstances set forth in Section 2-365 of the Monroe County Code, shall be two hundred dollars ($200.00) per hour.

2. This rate may be adjusted by a subsequent vote of the Board after a public hearing.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the ___ day of _____, A.D., 2005.

Mayor Dixie Spehar	_____
Mayor Charles "Sonny" McCoy	_____
Commissioner Murray Nelson	_____
Commissioner George Neugent	_____
Commissioner David Rice	_____

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

BY:_____
Mayor Dixie Spehar

ATTEST: DANNY KOHLAGE, CLERK

_____
DEPUTY CLERK

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

JOHN R. COLLINS
COUNTY ATTORNEY
Date 03/28/05

State of Florida
County of Monroe

AFFIDAVIT OF FRANKLIN GREENMAN, ESQ.

Before me personally appeared FRANKLIN GREENMAN, who upon being duly sworn, affirmed under the penalties of perjury that the following facts are true:

1. I am an attorney currently licensed to practice law in the State of Florida and have been practicing since 19 80 .

2. I have a private civil practice in Marathon predominantly serving the Middle Keys in Monroe County, Florida.

3. I am not employed by nor do I represent Monroe County in any capacity.

4. I am familiar with the levels of experience, skill, and competence as well as the reputation of attorney's practicing in the Monroe County Attorney's office.

5. I am familiar with the prevailing rates charged by local attorneys with similar experience, skill, competence, and reputation.

6. Based on my experience practicing law in Monroe County, I am of the opinion that the hourly rate of two hundred dollars per hour ($200.00) falls towards the lower end of the range of the prevailing rates charged by attorneys with similar experience, skill, competence, and reputation who are practicing in Monroe County, Florida.

7. Based on my experience practicing law in Monroe County, I am of the opinion that the hourly rate of two hundred dollars per hour ($200.00) would be a reasonable rate to charge for legal services rendered by the Monroe County Attorney's office.

Dated this 29 th day of March 2005.

Franklin D. Greenman, Esq.
Fla. Bar No.: 290815

The foregoing instrument was sworn to and acknowledged before me this 29th day of March 2005, who is personally known to me or produced ID.

Zoraida Ban
Notary Public
State of Florida

ZORAIDA BAN
MY COMMISSION # DD 292166
EXPIRES: April 27, 2008
Bonded Thru Notary Public Underwriters

State of Florida
County of Monroe

AFFIDAVIT OF LEIGHTON G. MORSE, ESQ.

Before me personally appeared LEIGHTON G. MORSE, Esq., who upon being duly sworn, affirmed under the penalties of perjury that the following facts are true:

1. I am an attorney currently licensed to practice law in the State of Florida and have been practicing since 1986.

2. I have a private civil practice predominantly serving the Key West and Lower Keys communities in Monroe County, Florida.

3. I am not employed by nor do I represent Monroe County in any capacity.

4. I am familiar with the levels of experience, skill, and competence as well as the reputation of attorneys practicing in the Monroe County Attorney's office.

5. I am familiar with the prevailing rates charged by local attorneys with similar experience, skill, competence, and reputation.

6. In my opinion, the hourly rate of two hundred dollars per hour ($200.00) falls towards the lower end of the range of the prevailing rates charged by attorneys with similar experience, skill, competence, and reputation who are practicing in Monroe County.

7. In my opinion, the hourly rate of two hundred dollars per hour ($200.00) would be a reasonable rate to charge for legal services rendered by the Monroe County Attorney's office.

Affiant Further Sayeth Naught. Dated this 15th day of March 2005.

Leighton G. Morse
FBN: 545147

The foregoing instrument was sworn to and acknowledged before me this __ day of March 2005, who is personally known to me or produced ID.

Matilda L. Taylor
Commission #DD323978
Expires: May 26, 2008
Bonded Thru
Atlantic Bonding Co., Inc.

Notary Public

State of Florida
County of Monroe

AFFIDAVIT OF NICHOLAS MULICK, ESQ.

Before me personally appeared NICHOLAS MULICK, who upon being duly sworn, affirmed under the penalties of perjury that the following facts are true:

1. I am an attorney currently licensed to practice law in the State of Florida and have been practicing since 1985.

2. I have a private civil practice predominantly serving the Upper Keys in Monroe County, Florida.

3. I am not employed by nor do I represent Monroe County in any capacity.

4. I am familiar with the levels of experience, skill, and competence as well as the reputation of attorney's practicing in the Monroe County Attorney's office.

5. I am familiar with the prevailing rates charged by local attorneys with similar experience, skill, competence, and reputation.

6. Based on my experience practicing law in Monroe County, I am of the opinion that the hourly rate of two hundred dollars per hour ($200.00) falls towards the lower end of the range of the prevailing rates charged by attorneys with similar experience, skill, competence, and reputation who are practicing in Monroe County, Florida.

7. Based on my experience practicing law in Monroe County, I am of the opinion that the hourly rate of two hundred dollars per hour ($200.00) would be a reasonable rate to charge for legal services rendered by the Monroe County Attorney's office.

Dated this 21 th day of March 2005.

Nicholas Mulick, Esq.
Fla. Bar No.:

The foregoing instrument was sworn to and acknowledged before me this 21st day of March 2005, who is personally known to me or produced ID.

LISA CAREY
MY COMMISSION # DD 110800
EXPIRES: July 12, 2006
Bonded Thru Notary Public Underwriters

Notary Public
State of Florida

State of Florida
County of Monroe

AFFIDAVIT OF DAVID MANZ, ESQ.

Before me personally appeared DAVID MANZ, who upon being duly sworn, affirmed under the penalties of perjury that the following facts are true:

1. I am an attorney currently licensed to practice law in the State of Florida and have been practicing since 1988 *. I am Board Certified by the Florida Bar in Marital and Family Law.

2. I have a private civil practice in Marathon predominantly serving the Middle Keys in Monroe County, Florida.

3. I am not employed by nor do I represent Monroe County in any capacity.

4. I am familiar with the levels of experience, skill, and competence as well as the reputation of attorney's practicing in the Monroe County Attorney's office.

5. I am familiar with the prevailing rates charged by local attorneys with similar experience, skill, competence, and reputation.

6. Based on my experience practicing law in Monroe County, I am of the opinion that the hourly rate of two hundred dollars per hour ($200.00) falls towards the lower end of the range of the prevailing rates charged by attorneys with similar experience, skill, competence, and reputation who are practicing in Monroe County, Florida.

7. Based on my experience practicing law in Monroe County, I am of the opinion that the hourly rate of two hundred dollars per hour ($200.00) would be a reasonable rate to charge for legal services rendered by the Monroe County Attorney's office.

Dated this 22 th day of March 2005.

* 1984 in Alabama
1988 in Florida

David Manz, Esq.
Fla. Bar No.: 735740

The foregoing instrument was sworn to and acknowledged before me this __ day of March 2005, who is personally known to me or produced ID.

FRANKLIN D. GREENMAN
MY COMMISSION # DD 324801
EXPIRES: June 1, 2008
Bonded Thru Notary Public Underwriters

Notary Public
State of Florida