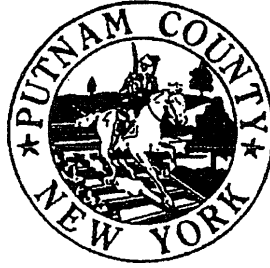


THE PUTNAM COUNTY LEGISLATURE

40 Gleneida Avenue
Carmel, New York 10512
(845) 808-1020 Fax (845) 808-1933

Paul E. Jonke *Chairman*
Amy E. Sayegh *Deputy Chair*
Diane Schonfeld *Clerk*
Robert Firriolo *Counsel*



Nancy Montgomery	Dist. 1
William Gouldman	Dist. 2
Toni E. Addonizio	Dist. 3
Ginny Nacerino	Dist. 4
Greg E. Ellner	Dist. 5
Paul E. Jonke	Dist. 6
Joseph Castellano	Dist. 7
Amy E. Sayegh	Dist. 8
Erin L. Crowley	Dist. 9

AGENDA

**SPECIAL RULES, ENACTMENTS & INTERGOVERNMENTAL RELATIONS COMMITTEE
TO BE HELD IN ROOM #318
PUTNAM COUNTY OFFICE BUILDING
CARMEL, NEW YORK 10512**

Members: Chairwoman Addonizio and Legislators Ellner & Nacerino

Tuesday _____ 6:00pm _____ October 8, 2024

- 1. Pledge of Allegiance**
- 2. Roll Call**
- 3. Approval/ Local Law Strengthening the Term Limit Provisions for the Office of Putnam County Legislator**
- 4. Approval/ Local Law Strengthening the Term Limit Provisions for the Office of Putnam County Executive**
- 5. Approval/ Litigation Settlement/ Krivak v. County of Putnam et al.**
- 6. Other Business**
- 7. Adjournment**

Revised - Chairman Jonke
9/30/24

cc: all
Zules

#3

A LOCAL LAW STRENGTHENING THE TERM LIMIT PROVISIONS FOR THE OFFICE OF PUTNAM COUNTY LEGISLATOR.

Section 1. The Legislature of the County of Putnam, New York hereby makes the following findings and determinations:

(a) that Local Law No. 8 of 2013 (“Local Law No. 8”), enacted by the County Legislature on July 2, 2013, sets forth a term limits regime for the office of County Legislator which currently may be amended merely by the favorable vote of two-thirds of all the members of the County Legislature, subject to permissive referendum; and

(b) that a system of governmental term limits engenders transparency in government, promotes the accountability of public officials, and increases public trust, as well as provides for the opportunity for new voices and new ideas to be heard; and

(c) that in order to engender transparency in government, promote accountability, and to increase public trust, this County Legislature is desirous of requiring a unanimous vote of the County Legislature in order to amend, modify or repeal term limits for the office of County Legislator; and

(d) that this County Legislature finds and determines that this Local Law changes its voting power and curtails its power relative to the amending, modifying or repealing of the term limits procedures of the County Legislature by increasing the number of affirmative votes necessary of the County Legislature in order to amend, modify or repeal the term limits procedures of the office of County Legislator, and

(e) that this County Legislature hereby finds and determines that this Local Law embraces only one subject: that of the term of the office of County Legislator,

NOW THEREFORE, BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF PUTNAM AS FOLLOWS:

Section 2. Article 2, Section 2.02 of the Putnam County Charter is hereby amended to read as follows:

A. The County Legislators shall be elected for terms of three (3) years at the general elections hereinafter provided and every three (3) years thereafter as follows:

(1) At the general election held in November of 2026, County Legislators from Legislative Districts Two, Three and Eight shall be elected for said term of three years.

(2) At the general election held in November of 2027, County Legislators from Legislative Districts One, Four and Seven shall be elected for said term of three years.

(3) At the general election held in November of 2025, County Legislators from Legislative Districts Five, Six and Nine shall be elected for said term of three years.

B. The County Legislators shall serve a maximum of four (4) terms, regardless of the fact that a "term" may not have been three (3) years, and whether or not consecutive, in his/her lifetime.

C. For the purposes of this Section, the service of any portion of a term, no matter how small, shall be considered a full term.

D. In no instance may a Legislator serve more than four terms or 12 years, whichever is less.

E. Except in the instance where a general or special state law would otherwise necessitate, amending, modifying or repealing the term limit provisions as set forth in this Section 2.02 may only be accomplished by the enactment of a local law adopted by the County Legislature by a unanimous vote of the whole of its number, subject to referendum on petition as provided in the Municipal Home Rule Law.

Section 3. Article 3, Section 3.04-B(d) of the Putnam County Charter is hereby amended to read as follows:

(d) Reconsideration.

Except as otherwise set forth in this Section 3.04-B, a vetoed enactment shall be resubmitted to the County Legislature together with the veto message at its next regular or special meeting, and such message shall be entered into its Book of Proceedings. Within thirty (30) days after such receipt and entry, the County Legislature may reconsider the vetoed enactment and pass the same over the County Executive's objections by a favorable vote of two-thirds (2/3) of the whole of its number on a roll-call vote. Only one such reconsideration vote shall be taken on any single vetoed enactment.

Other than the veto of an enactment necessitated by the passage of a general or special state law, a vetoed enactment amending, modifying or repealing the term limit provisions as set forth in Section 2.02 of the County Charter shall be resubmitted to the County Legislature together with the veto message at its next regular or special meeting, and such message shall be entered into its Book of Proceedings. Within thirty (30) days after such receipt and entry, the County Legislature may reconsider the vetoed enactment and pass the same over the County Executive's objections by a unanimous vote of the whole of its number on a roll-call vote. Only one such reconsideration vote shall be taken on any single vetoed enactment.

Section 4. Article 15, Section 15.01 of the Putnam County Charter is hereby amended to read as follows:

Except as otherwise set forth in this Section 15.01, a Charter amendment may be proposed by a member of the County Legislature, the County Executive or the Legislative bodies of any of the towns or villages of the County. The proposal must then be enacted by a local law passed by a two-thirds (2/3) vote of the County Legislature subject to referendum on petition as provided in the Municipal Home Rule Law. Any proposed amendment which would have the effect of transferring a function or duty of the County or of a town, village, district or other unit of local government of the County shall not become operative unless it is approved by mandatory referendum. Any amendment which would create or abolish an elected office; change the power of an elected County officer during his or her term of office; abolish, curtail or transfer to another

County officer or agency any power of an elected County officer, or change the method of election of the County Legislature, but not including decennial reapportionment, shall be subject to a permissive referendum.

Except in the instance where a general or special state law would necessitate such, a Charter amendment amending, modifying or repealing the term limit provisions as set forth in Section 2.02 of the County Charter may only be enacted by a local law passed by a unanimous vote of the County Legislature, subject to referendum on petition as provided in the Municipal Home Rule Law.

Section 5. If any provision of this Local Law is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions hereof, but such provision shall be fully severable and this Local Law shall be construed and enforced as if such illegal or invalid provision had never been included.

Section 6. Pursuant to Section 34(5) of the Municipal Home Rule Law, this Local Law shall take effect sixty (60) days after its final enactment and is subject to permissive referendum.

§ 2.02 Term.

A. The County Legislators shall be elected for terms of three (3) years at the general elections hereinafter provided and every three (3) years thereafter as follows:

(1) At the general election held in November of ~~2002~~2026, County Legislators from Legislative Districts Two, Three and Eight shall be elected for said term of three years.

(2) At the general election held in November of ~~2003~~2027, County Legislators from Legislative Districts One, Four and Seven shall be elected for said term of three years.

(3) At the general election held in November of ~~2004~~2025, County Legislators from Legislative Districts Five, Six and Nine shall be elected for said term of three years.

B. The County Legislators shall serve a maximum of four (4) terms, regardless of the fact that a "term" may not have been three (3) years, and whether or not consecutive, in his/her lifetime.

C. For the purposes of this Section, the service of any portion of a term, no matter how small, shall be considered a full term.

D. In no instance may a Legislator serve more than four terms or 12 years, whichever is less.

~~E. Any person serving more than four (4) terms or twelve (12) years as a Legislator at the time of the adoption of this local law, shall be permitted to run for one (1) additional three (3) year term.~~

E. Except in the instance where a general or special state law would otherwise necessitate, amending, modifying or repealing the term limit provisions as set forth in this Section 2.02 may only be accomplished by the enactment of a local law adopted by the County Legislature by a unanimous vote of the whole of its number, subject to referendum on petition as provided in the Municipal Home Rule Law.

§ 3.04-B Executive action on local laws.

(d) Reconsideration. ~~A~~

Except as otherwise set forth in this Section 3.04-B, a vetoed enactment shall be resubmitted to the County Legislature together with the veto message at its next regular or special meeting, and such message shall be entered into its Book of Proceedings. Within thirty (30) days after such receipt and entry, the County Legislature may reconsider the vetoed enactment and pass the same over the County Executive's objections by a favorable vote of two-thirds (2/3) of the whole of its number on a roll-call vote. Only one such reconsideration vote shall be taken on any single vetoed enactment.

Other than the veto of an enactment necessitated by the passage of a general or special state law, a vetoed enactment amending, modifying or repealing the term limit provisions as set forth in Section 2.02 of the County Charter shall be resubmitted to the County Legislature together with the veto message at its next regular or special meeting, and such message shall be entered into its Book of Proceedings. Within thirty (30) days after such receipt and entry, the County Legislature may reconsider the vetoed enactment and pass the same over the County Executive's objections by a unanimous vote of the whole of its number on a roll-call vote. Only one such reconsideration vote shall be taken on any single vetoed enactment.

§ 15.01 Amendment of the Charter.

~~A~~Except as otherwise set forth in this Section 15.01, a Charter amendment may be proposed by a member of the County Legislature, the County Executive or the Legislative bodies of any of the towns or villages of the County. The proposal must then be enacted by a local law passed by a two-thirds (2/3) vote of the County Legislature subject to referendum on petition as provided in the Municipal Home Rule Law. Any proposed amendment which would have the effect of transferring a function or duty of the County or of a town, village, district or other unit of local government of the County shall not become operative unless it is approved by mandatory referendum. Any amendment which would create or abolish an elected office; change the power of an elected County officer during his or her term of office; abolish, curtail or transfer to another County officer or agency any power of an elected County officer, or change the method of election of the County Legislature, but not including decennial reapportionment, shall be subject to a permissive referendum.

Except in the instance where a general or special state law would necessitate such, a Charter amendment amending, modifying or repealing the term limit provisions as set forth in Section 2.02 of the County Charter may only be enacted by a local law passed by a unanimous vote of the County Legislature, subject to referendum on petition as provided in the Municipal Home Rule Law.

THE PUTNAM COUNTY LEGISLATURE

40 Gleneida Avenue
Carmel, New York 10512
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Erin L. Crowley	Dist. 9

MEMORANDUM

DATE: October 3, 2024

TO: Compton Spain
County Attorney

FROM: Toni Addonizio
Chairwoman, Rules, Enactments & Intergovernmental Relations Committee

RE: Litigation Settlement – Krivak v. County of Putnam et al.

The Legislature is in receipt of your request for the Rules, Enactments & Intergovernmental Relations Committee to consider and approve the Krivak v. County of Putnam et al. litigation settlement at its Special Meeting on Tuesday October 8, 2024. Respectfully, I request your attendance at said meeting to address any outstanding questions or concerns the Legislators may have related to this settlement.

The meeting will begin at 6:00pm in room #318 of the County Office Building. Please confirm your availability to attend with the Legislative Office.

Thank you.

Revised - Chairman Jenke
9/30/24

Local
Rules

#1

A LOCAL LAW STRENGTHENING THE TERM LIMIT PROVISIONS FOR THE OFFICE OF PUTNAM COUNTY EXECUTIVE.

Section 1. The Legislature of the County of Putnam, New York hereby makes the following findings and determinations:

(a) that Local Law No. 8 of 2011 (“Local Law No. 8”), enacted by the County Legislature on January 4, 2011, sets forth a term limits regime for the office of County Executive which currently may be amended merely by the favorable vote of two-thirds of all the members of the County Legislature, subject to permissive referendum; and

(b) that a system of governmental term limits engenders transparency in government, promotes the accountability of public officials, and increases public trust, as well as provides for the opportunity for new voices and new ideas to be heard; and

(c) that in order to engender transparency in government, promote accountability, and to increase public trust, this County Legislature is desirous of requiring a unanimous vote of the County Legislature in order to amend, modify or repeal term limits for the office of County Executive; and

(d) that this County Legislature finds and determines that this Local Law changes its voting power and curtails its power relative to the amending, modifying or repealing of the term limits procedures of the County Executive by increasing the number of affirmative votes necessary of the County Legislature in order to amend, modify or repeal the term limits procedures of the office of County Executive, and

(e) that this County Legislature hereby finds and determines that this Local Law embraces only one subject: that of the term of the office of County Executive,

NOW THEREFORE, BE IT ENACTED BY THE LEGISLATURE OF THE COUNTY OF PUTNAM AS FOLLOWS:

Section 2. Article 3, Section 3.01 of the Putnam County Charter is hereby amended to read as follows:

(A) The County Executive shall be elected from the County at large in an even numbered year for a term of four (4) years commencing on the first day of January immediately following his or her election. His or her service as County Executive shall be limited to a maximum of two (2) terms, whether partial or full, and whether consecutive or not. At the time of nomination and election, the County Executive shall be, and he or she shall remain, a qualified elector of Putnam County. He or she shall hold no other elected public or elected political office during his or her term and shall devote his or her full working time to the duties of the office. He or she shall be the highest paid salaried County employee with the exception of those County employees required to be duly licensed to practice medicine in the State of New York as a qualification of employment, the District Attorney or any other employee whose salary is partially or fully set by state law. The compensation of the County Executive shall not be decreased during his or her term of office.

(B) Except in the instance where a general or special state law would otherwise necessitate, amending, modifying or repealing the term limit provisions as set forth in this Section 3.01 may

only be accomplished by the enactment of a local law adopted by the County Legislature by a unanimous vote of the whole of its number, subject to referendum on petition as provided in the Municipal Home Rule Law.

Section 3. Article 3, Section 3.04-B(d) of the Putnam County Charter is hereby amended to read as follows:

(d) Reconsideration.

Except as otherwise set forth in this Section 3.04-B, a vetoed enactment shall be resubmitted to the County Legislature together with the veto message at its next regular or special meeting, and such message shall be entered into its Book of Proceedings. Within thirty (30) days after such receipt and entry, the County Legislature may reconsider the vetoed enactment and pass the same over the County Executive's objections by a favorable vote of two-thirds (2/3) of the whole of its number on a roll-call vote. Only one such reconsideration vote shall be taken on any single vetoed enactment.

Other than the veto of an enactment necessitated by the passage of a general or special state law, a vetoed enactment amending, modifying or repealing the term limit provisions as set forth in Section 3.01 of the County Charter shall be resubmitted to the County Legislature together with the veto message at its next regular or special meeting, and such message shall be entered into its Book of Proceedings. Within thirty (30) days after such receipt and entry, the County Legislature may reconsider the vetoed enactment and pass the same over the County Executive's objections by a unanimous vote of the whole of its number on a roll-call vote. Only one such reconsideration vote shall be taken on any single vetoed enactment.

Section 4. Article 15, Section 15.01 of the Putnam County Charter is hereby amended to read as follows:

Except as otherwise set forth in this Section 15.01, a Charter amendment may be proposed by a member of the County Legislature, the County Executive or the Legislative bodies of any of the towns or villages of the County. The proposal must then be enacted by a local law passed by a two-thirds (2/3) vote of the County Legislature subject to referendum on petition as provided in the Municipal Home Rule Law. Any proposed amendment which would have the effect of transferring a function or duty of the County or of a town, village, district or other unit of local government of the County shall not become operative unless it is approved by mandatory referendum. Any amendment which would create or abolish an elected office; change the power of an elected County officer during his or her term of office; abolish, curtail or transfer to another County officer or agency any power of an elected County officer, or change the method of election of the County Legislature, but not including decennial reapportionment, shall be subject to a permissive referendum.

Except in the instance where a general or special state law would necessitate such, a Charter amendment amending, modifying or repealing the term limit provisions as set forth in Section 3.01 of the County Charter may only be enacted by a local law passed by a unanimous vote of the County Legislature, subject to referendum on petition as provided in the Municipal Home Rule Law.

Section 5. If any provision of this Local Law is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions hereof, but such provision shall be fully severable and this Local Law shall be construed and enforced as if such illegal or invalid provision had never been included.

Section 6. Pursuant to Section 34(5) of the Municipal Home Rule Law, this Local Law shall take effect sixty (60) days after its final enactment and is subject to permissive referendum.

§ 3.01 Chief Executive Officer: election; term; qualifications.

(A) The County Executive shall be elected from the County at large in an even numbered year for a term of four (4) years commencing on the first day of January immediately following his or her election. ~~He or she shall serve~~ His or her service as County Executive shall be limited to a maximum of two (2) consecutive full terms, whether partial or full, and whether consecutive or not. At the time of nomination and election, the County Executive shall be, and he or she shall remain, a qualified elector of Putnam County. He or she shall hold no other elected public or elected political office during his or her term and shall devote his or her full working time to the duties of the office. He or she shall be the highest paid salaried County employee with the exception of those County employees required to be duly licensed to practice medicine in the State of New York as a qualification of employment, the District Attorney or any other employee whose salary is partially or fully set by state law. The compensation of the County Executive shall not be decreased during his or her term of office.

(B) Except in the instance where a general or special state law would otherwise necessitate, amending, modifying or repealing the term limit provisions as set forth in this Section 3.01 may only be accomplished by the enactment of a local law adopted by the County Legislature by a unanimous vote of the whole of its number, subject to referendum on petition as provided in the Municipal Home Rule Law.

§ 3.04-B Executive action on local laws.

(d) Reconsideration. ~~A~~

Except as otherwise set forth in this Section 3.04-B, a vetoed enactment shall be resubmitted to the County Legislature together with the veto message at its next regular or special meeting, and such message shall be entered into its Book of Proceedings. Within thirty (30) days after such receipt and entry, the County Legislature may reconsider the vetoed enactment and pass the same over the County Executive's objections by a favorable vote of two-thirds (2/3) of the whole of its number on a roll-call vote. Only one such reconsideration vote shall be taken on any single vetoed enactment.

Other than the veto of an enactment necessitated by the passage of a general or special state law, a vetoed enactment amending, modifying or repealing the term limit provisions as set forth in Section 3.01 of the County Charter shall be resubmitted to the County Legislature together with the veto message at its next regular or special meeting, and such message shall be entered into its Book of Proceedings. Within thirty (30) days after such receipt and entry, the County Legislature may reconsider the vetoed enactment and pass the same over the County Executive's objections by a unanimous vote of the whole of its number on a roll-call vote. Only one such reconsideration vote shall be taken on any single vetoed enactment.

§ 15.01 Amendment of the Charter.

~~A~~Except as otherwise set forth in this Section 15.01, a Charter amendment may be proposed by a member of the County Legislature, the County Executive or the Legislative bodies of any of the towns or villages of the County. The proposal must then be enacted by a local law passed by a two-thirds (2/3) vote of the County Legislature subject to referendum on petition as provided in the Municipal Home Rule Law. Any proposed amendment which would have the effect of transferring a function or duty of the County or of a town, village, district or other unit of local government of the County shall not become operative unless it is approved by mandatory referendum. Any amendment which would create or abolish an elected office; change the power of an elected County officer during his or her term of office; abolish, curtail or transfer to another County officer or agency any power of an elected County officer, or change the method of election of the County Legislature, but not including decennial reapportionment, shall be subject to a permissive referendum.

Except in the instance where a general or special state law would necessitate such, a Charter amendment amending, modifying or repealing the term limit provisions as set forth in Section 3.01 of the County Charter may only be enacted by a local law passed by a unanimous vote of the County Legislature, subject to referendum on petition as provided in the Municipal Home Rule Law.

cc All
Rules

#5

JOHN B. CHERICO
First Deputy County Attorney

ANNA M. DIAZ
Senior Deputy County Attorney

CONRAD J. PASQUALE
Senior Deputy County Attorney



HEATHER M. ABISSI
Senior Deputy County Attorney

MAT C. BRUNO, SR.
Risk Manager

C. COMPTON SPAIN
County Attorney

DEPARTMENT OF LAW
MEMORANDUM

TO: Putnam County Legislature
FROM: John B. Cherico, First Deputy County Attorney
C. Compton Spain, County Attorney
DATE: October 3, 2024
RE: *Supplement to Settlement Memo re: Krivak v. Putnam County et al.*

2024 OCT - 3 PM 1:15
LEGISLATURE
PUTNAM COUNTY
CARMEL, NY

This memo supplements and updates the information previously provided to the Legislature at the time of our presentation on September 12, 2024 with respect to approval of the proposed settlement in connection with the above-referenced litigation.

When we met on that date with the Legislature in executive session, outside counsel Lewis Silverman, Esq., Risk Manager Mat C. Bruno, Sr. and I presented additional details of the proposed settlement to supplement the Settlement Memorandum prepared by Sr. County Attorney Heather Abissi. Ms. Abissi had been present for and involved in the mediation that led to the settlement and the proposed Resolution provided in support thereof. At that time, we responded to all questions posed by those present. Although the Legislature indicated their overall support for the settlement to minimize exposure to the County, no action was taken pending Attorney Silverman's confirmation that the settlement documents that were in the process of being finalized for circulation amongst counsel had been signed. Since then, we have received confirmation from Attorney Silverman that Plaintiff Krivak has signed the requisite settlement documents. With this having been done, the County and the County's insurance carrier, NYMIR, will do so. It is expected that this will be done expeditiously in order that all can be finalized for filing with the Court.

For this reason, we respectfully request that this matter be placed on the Rules Committee agenda for consideration and final approval on October 8, 2024.

/jbc
Enc.
cc: Michael Lewis, Commissioner of Finance

48 GLENEIDA AVENUE, CARMEL, NEW YORK 10512

Tel. (845) 808-1150 / Fax (845) 808-1903*
**This office will not accept service via facsimile*

RESOLUTION

WHEREAS, following the acquittal of Defendant Andrew Krivak on February 23, 2023 after a second retrial of his initial 1997 conviction for a 1994 rape-homicide in Putnam County Court; and

WHEREAS, Plaintiff Andrew Krivak on or about August 8, 2023, commenced action against the County of Putnam, the Putnam County District Attorney's Office, the Putnam County Sheriff's Office and other named defendants in the United States District Court, Southern District of New York alleging civil rights violations resulting in his wrongful imprisonment, including, *inter alia*, an alleged wrongful arrest and prosecution and denial of a fair trial by fabrication of evidence in violation of his due process rights; and

WHEREAS, Plaintiff sought recovery for compensatory damages in an undetermined amount as well as costs, disbursements, attorney's fees and interest; and

WHEREAS, following protracted litigation and intensive mandatory mediation with Plaintiff's counsel, the Claims Committee for the New York Municipal Insurance Reciprocal (NYMIR), THE County's insurance carrier, recently arrived at a negotiated settlement value for this case of twenty million (\$20,000,000.00) dollars; and

WHEREAS, Plaintiff agreed to a settlement with the County, the Sheriff's Office and District Attorney's Office, subject to the Legislature's approval, in which the County agreed to pay Plaintiff the sum of twenty million (\$20,000,000.00) dollars; and

WHEREAS, the County Attorney, the County's outside counsel, Lewis Silverman, Esq., and NYMIR's claims representative, with the approval of outside counsel for both the Sheriff's Office and District Attorney's Office, have recommended the aforementioned settlement as an alternative to trial; and

WHEREAS, in connection with this settlement the County shall only be responsible only for payment of a combined deductible of two hundred thousand (\$200,000.00) pursuant to the County's insurance policy with NYMIR; and

WHEREAS, counsel for the County of Putnam, with the approval of outside counsel for both the Sheriff's Office and District Attorney's Office, has in fact settled the matter with Plaintiff for the sum of twenty million (\$20,000,000.00) dollars; and Plaintiff shall execute the required General Release and Settlement Agreement which, upon approval by the Legislature, a Stipulation of Discontinuance will be filed with the Court, thereby discontinuing this matter and allowing Plaintiff to receive his settlement payment in the agreed upon amount; and

WHEREAS, the aforementioned settlement is in the public interest and avoids the costs of further litigation, additional attorney's fees and costs and the risk of a high jury verdict; now therefore be it

RESOLVED, that the proposed settlement of this matter for the sum of twenty million (\$20,000,000.00) dollars with the County only being responsible for payment of a combined deductible of two hundred thousand (\$200,000.00) pursuant to the County's insurance policy with NYMIR is hereby approved.

RESOLVED, that the County Executive is hereby authorized to sign any required settlement documents on behalf of the County including a Settlement Agreement and Release with respect thereto.

JOHN B. CHERICO
First Deputy County Attorney

ANNA M. DIAZ
Senior Deputy County Attorney

CONRAD J. PASQUALE
Senior Deputy County Attorney



HEATHER M. ABISSI
Senior Deputy County Attorney

MAT C. BRUNO, SR.
Risk Manager

C. COMPTON SPAIN
County Attorney

DEPARTMENT OF LAW

MEMORANDUM

To: Toni E. Addonizio
Rules, Enactments, Intergovernmental Relations Committee

From: C. Compton Spain, County Attorney
John B. Cherico, First Deputy County Attorney *CAS/JSW*

Date: September 6, 2024

Re:

Krivak v. County of Putnam – Settlement of Litigation

The instant matter involved a §1983 action brought against the County by Andrew Krivak after his acquittal at his second retrial for the alleged rape and murder of a 12-year-old girl. Plaintiff sought to vindicate what he alleged were violations of his civil rights. His claims derived from allegations of a wrongful arrest and prosecution, marked by the purported violation of Krivak's constitutional rights. He makes claims of the withholding of exculpatory evidence and/or the planting of inculpatory evidence, perjury of key witnesses, and various other improprieties in the handling of the investigation and prosecution of his case.

This civil case was brought in the context of the co-defendant's matter having already settled with the County for \$12M after deposition testimony revealed serious credibility and veracity concerns about the sole eyewitness to the homicide. This revelation rendered the propriety and eligibility of allowing her to testify arguable. The decision to have her nevertheless testify at Krivak's retrial we argued was shielded by prosecutorial immunity, but that would be a question of law for the court to decide, and one that may or may not have been rendered in the County's favor.

Additionally, although ultimately it was addressed with the assignment of outside counsel, and arguably could be waived, the case initially proceeded with all parties represented by the same attorney creating a potential conflict of interest. This potential conflict of interest, because not addressed at the inception of the case, was capitalized on by Plaintiff's counsel. Plaintiff brought, and there still are pending, motions to disqualify counsel with extensive institutional knowledge of the case from representing the County Defendants. Based upon review of current case law we believe this motion would be denied, but it poses an additional risk factor to the County.

48 GLENEIDA AVENUE, CARMEL, NEW YORK 10512

Tel. (845) 808-1150 / Fax (845) 808-1903*

**This office will not accept service via facsimile*

Page 2

Toni E. Addonizio, Chair Rules, Enactments, Intergovernmental Relations Committee

Re: *Confidential Attorney-Client Communication*

Andrew Krivak v. The County of Putnam – Settlement Litigation

September 6, 2024

Discovery had been stayed during the determination of the conflict motion, however, were discovery to proceed, the County Defendants would be at a disadvantage on several fronts. First, Plaintiff has had the benefit of all discovery obtained by co-defendant's legal team, through discovery, FOIL, and subpoenas. Thus, Plaintiff is aware of the universe of documents that exist in the matter. This is often used to create fodder for deficiencies in discovery motions to paint the County in an unfavorable light, as though any omission or error is intentional, despite there being no truth to such an allegation. Within this context and despite new counsel coming in, Plaintiff refused to offer any extension on discovery deadlines, leaving County departments in the unenviable position of perfect execution of document collection in a very short time frame, where it would be easy and understandable to miss something, but would be absolutely used against us in this fashion.

There are also unfavorable documents and records that we have good cause to believe would be revealed through the discovery process as decades worth of multiple administrations' internal documents and emails are subject to modern-day scrutiny, as policies from the 90's are subject to the law of 2024. Hindsight is seldom forgiving, even when all due care and diligence is exercised at the time. These items could serve to drive the value of the case up, and make any settlement possibility less favorable.

In light of these perceived risks and weaknesses, the County participated in initial mandatory mediation. It was fruitless. Plaintiff's counsel maintained their \$50M demand, which was more than 4 times the settlement of his co-defendant. The County made an equally unrealistic counteroffer of \$500,000 to send a message that such a demand would not be entertained. This strategy worked.

Indeed, Plaintiff came back to the table and agreed to engage in more realistic settlement discussions on September 4, 2024 with NYMIR, counsel for the Sheriff's Office, the District Attorney, and the County all present and engaged. Settlement negotiations began at 9:30am and spanned the entirety of the day, seemingly, again, going nowhere. The parties began at the County offering \$12M, the same as Plaintiff's co-defendant received, and Plaintiff reduced their demand to \$36M. Until 4pm there was only incremental movement, when bracketed negotiations were undertaken. The County proposed a settlement bracket of \$15M to \$20M, and Krivak proposed a settlement bracket of \$20M to \$26M.

NYMIR took the position that they would not approve over \$19.5M, Plaintiff took the position they would not accept less than \$21M. It appeared that the parties were at an impasse, and just as mediation was set to close at approximately 5pm, Plaintiff returned with an offer of \$20.5M. The representative from NYMIR called and sought approval. NYMIR advised that they would approve a last-best offer of \$20M, but that it had to be taken right then.

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Toni E. Addonizio, Chair Rules, Enactments, Intergovernmental Relations Committee

Re: *Confidential Attorney-Client Communication*

Andrew Krivak v. The County of Putnam – Settlement Litigation

September 6, 2024

The County inquired with NYMIR as to how many policies this proposed disposition would be derived from. We were advised that it would come out of only one policy, subject to final confirmation by NYMIR, with a deductible of only \$100K, or if not, a deductible of \$250K. If the former, this would mean that despite this settlement being greater than the co-defendant's settlement, it actually would cost the County \$150K less than the co-defendant's settlement. Additionally, the \$20M figure represented the top of the County's bracket, and bottom of Plaintiff's bracket, thus, embodying a true middle point of compromise.

Plaintiff, Andrew Krivak accepted the terms proffered by NYMIR by and through Outside Counsel Lew Silverman with the approval of outside counsel for both the Sheriff's Office and District Attorney's Office, and with the express admonition and acknowledged understanding that the settlement is subject to this Legislative Committee's approval, and then the full legislature's approval.

Our office has reviewed the terms of this settlement and finds them favorable. This Office recommends that upon notification that the settlement release has been signed by all parties, that this Committee add the resolution to the agenda of its earliest meeting date prior to the October legislative meeting, or call special session if necessary, to meet prior to that meeting, so that the resolution for this proposed settlement may be approved.

In the interim, our office has asked Outside Counsel, Lew Silverman to appear at the Rules Committee meeting on September 12, 2024 at 6:00pm, and we respectfully request that a litigation update as to this matter be added to that agenda. This will allow Mr. Silverman to fully brief the Committee, answer any questions, and ensure that the finalized release will be acceptable to the Putnam County Legislature.