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# Orange County to pay in jail death

By Jennifer Johnson  
Supervising Editor

After about an hour in closed session Tuesday, Jan. 3, Orange County Commissioners and County Judge Brint Carlton unanimously elected to pay more than \$3 million to the family of a man who died while in custody of the county jail and sheriff's office.

"We did take action to authorize the payment of \$3,175,000 ... there was some change to it ... to be paid on or before Feb. 15," Carlton said of the county's decision.

The payment is to be made pursuant to a jury ruling that found the county liable for the October 2011 death of Robert Montano, who died of acute renal failure after approximately five days of detention in the Orange County Jail's observation cell – nicknamed the "bubble."

"During Montano's detention, he was deprived of food, water and medical care," Montano family attorney Cade Bernsen said. In February 2015, a federal jury awarded Montano's family \$2,421,630, plus attorneys' fees, costs and interest. After hearing the witnesses and seeing the evidence, the jury found Montano's constitutional rights were violated, resulting in his death. The United States Court of Appeals for the Fifth Circuit affirmed the jury's verdict Nov. 29, 2016. Dec. 28, 2016, Orange County's petition for a rehearing by the same court was denied.

According to Montano family attorney records, the exact amount of the award is \$3,175,674.79. Carlton said the county will have to pay the family out of the general fund budget or present what is basically an IOU to be fully funded by Oct. 1.

"Although it hasn't been really divulged or talked about yet, there are several options available to pay the money," Carlton told The Examiner. "We have what is called 'TAN' – tax anticipation notes – or we can pay it out of regular general fund dollars.

"Right now, we're just looking to see how the rest of the year is expected to progress. We had \$5.1 million left over from last year for a fund balance ... and if we can keep an eye on our expenses over the year, we may not need to issue the tax anticipation notes. If we do issue the notes, then we can pay off TANS on Oct. 1 when the next budget starts."

Whatever option the county takes to pay the money, he said, the public functions of the county will still be maintained as the court has made drastic changes to the budgeting process to build up a fund balance for situations such as this.

"There was \$340,000 in the fund balance when I came into office," Carlton said, adding that he has been the county judge for two years and four days as of Wednesday, Jan. 4. "Right now, there is \$7.8 million in reserves. Thankfully, we took those measures and made those difficult decisions.

"We've worked very hard to get our finances in order, restructure the ways we are doing some things. ... The last budget cycles, I've gone through every line item."

Carlton said he hopes the monetary award to the Montano family provides some closure for both parties.

"We are looking forward to Orange County being able to move on, and the Montano family to be able to move on as well," he said. "There's the fact that

this is still ongoing litigation officially at this point – until the release judgment after full payment is received – but it's my intention to have a more in-depth public review of everything that transpired as soon as we're released to do so."

According to the judge, his position is that a complete review of the sheriff's office, county jail, district attorney's office and county budget – from the date of the incident through the present – should be conducted and presented for public inspection.

"I want there to be transparency," he said, "and that's what I'm working toward."

"I hope the county takes a serious look at what the jury found, and what the Court of Appeals for the Fifth Circuit of the United States found," Bernsen said. "It lays out a very, very grim picture of what that jail was like.

"I hope they fix that, so that it doesn't happen again."

Bernsen said that the award made to the family is not the only thing to be taken away from this litigation.

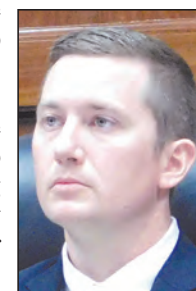
"You now have this scathing report – now a published opinion – that will survive to create precedent as a tool for future civil rights attorneys and victims of civil rights abuses. They will refer to the

Montano case.

"Hopefully it will also serve as an impetus for change, as well. Montano was a mental health patient, and he needed treatment, not detention in a bubble. We need to make sure that our jail staff has the proper training to screen inmates with mental health issues so they can be taken care of properly. There's people who come into jails who need to have proper medical treatment – and in a humane detention process."



Montano



Carlton

## WALKER

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petitions the court for permission to submit a brief in the action with the intent of influencing the court's decision."

According to the SCOTUS docket, the Constitutional Accountability Center, et al; the National Association of Criminal Defense Lawyers, et al; Stuart Banner of the UCLA School of Law; and the Center on the

Administration of Criminal Law all filed amicus briefs with the court on the Walker case.

The filing was distributed for conference Dec. 21, to be discussed among the justices on Friday, Jan. 6. The Jefferson County District Attorney's Office was again asked for a response on Dec. 27, 2016, and was given until Jan. 26 to do so.

If four of the nine justices decide to accept the case and grant Walker's petition for

certiorari, then the case is placed on the docket and both parties will again have the opportunity to file written pleadings of their positions. However, according to SCOTUS statistics, very few cases make it past the judicial conference.

Only about 2 percent of all cases submitted for review are ever heard before the court.

"In fact," according to SCOTUS information, "the court accepts 100-150 of the more than 7,000 cases that it is asked to review each year. Typically, the court hears cases that have been decided in either an appropriate U.S. Court of Appeals or the highest Court in a given state (if the state court decided a Constitutional issue)."

