

**ATTACHMENT A**  
**SAN MATEO COUNTY PRIVATE DEFENDER PROGRAM EVALUATION**

The undersigned were asked by the County Manager's Office to conduct an evaluation of the San Mateo County Private Defender Program for purposes of comparison with other programs providing representation for indigent criminal defendants to determine whether the PDP remains the most appropriate model for providing indigent defense services in San Mateo County.

**I. BACKGROUND**

The Private Defender Program (PDP) is maintained and operated by the San Mateo County Bar Association (SMCBA) pursuant to a contract with the County and has provided legal representation for indigent criminal defendants in San Mateo County since 1968 through a panel of private attorneys from the SMCBA. Prior to that time counsel for indigent defendants were randomly appointed directly from the bench by the particular judge before whom they were appearing. The PDP stands in contrast to the Public Defender model in that it is not a County department but an entity external to the County, being maintained and administered solely by the SMCBA. The SMCBA and the County agree upon the contractual terms for indigent defense and the County appropriates funds to the SMCBA for this purpose. In that regard the PDP is similar to a "contract" system in which the attorneys representing indigent criminal defendants act in the capacity of independent contractors as opposed to public employees.

The contract system consists of a contractual arrangement between a county and a private law firm to provide indigent defense services and is used by a number of smaller counties.

A Public Defender system is a County Department staffed by county employees (attorneys, investigators, secretarial and administrative staff) similar in structure to a District Attorney's office, and utilized by all the larger California counties.

Public Defenders and contract systems both require utilization of outside private attorneys for conflict and multiple defendant cases.

**II. SCOPE**

This evaluation reviewed the historical and current structure of the PDP and contrasted it with other indigent defense models, focusing on the adequacy of representation, financial accountability, proper utilization of public funds, and the objective characteristics of the program as a business model for the provision of a required publicly funded service. This

evaluation did not undertake a detailed analysis of the quality of representation provided by individual attorneys, nor perform a financial audit to determine how PDP funds were disbursed and utilized. To do so would involve not only an exhaustive examination of hundreds, perhaps thousands, of individual case files but also require waivers in each case of the attorney-client privilege and other constitutional and privacy rights.

### **III. FINDINGS**

The PDP was established in 1968 and operated for some years thereafter with a Chief Defender and a clerical staff of three, later adding an investigator. The Chief Defender made most of the Superior Court master calendar appearances and assigned cases to individual attorneys among the SMCBA who acted in the capacity of independent contractors in representing the accused as though they were privately retained. The current PDP administrative staff has grown substantially over the years, currently consisting of fourteen salaried personnel:

- The Chief Defender
- Assistant Chief Defender
- Managing Attorney for Superior Court
- Managing Attorney for Juvenile Court
- Chief Investigator
- Executive Assistant to the Chief Investigator
- Office Manager
- Case Assignment Secretary
- Administrative Assistant for Superior Court
- Administrative Assistant for Juvenile Court
- Receptionist
- Controller
- Senior Bookkeeper
- Bookkeeper

The PDP is under the overall control of the SMCBA board of directors who select and hire the Chief Defender, his subordinates and staff. The PDP and SMCBA share the same office space in a building owned by the SMCBA; the Chief Defender also serves as Executive Director of the SMCBA and the Assistant Chief Defender supervises the SMCBA staff. The administrative staff do not personally represent indigent defendants. When the court determines that a defendant is indigent the Chief Defender or Assistant Chief Defender assign the defense of that case to a

private attorney on the PDP panel who then operates independently and assumes complete responsibility for and control over the defense as do privately retained attorneys, although the PDP provides investigative and forensic services requested by the assigned panel member. Panel members are reimbursed pursuant to a fee schedule established by the PDP through the Private Defender Committee of the SMCBA. A Special Fee Committee assists in reviewing “special fees” for “extraordinary” cases.<sup>1</sup> Both the Private Defender and Special Fee committees are composed entirely of PDP panel members.

The PDP appears to operate in accordance with the terms of its contractual agreement with the County. There are no state or federal statutory mandates or guidelines governing public or private defender programs. However, the American Bar Association and the State Bar of California have formulated recommendations for the operation of such programs and the PDP appears to be in compliance therewith. In fact, the current Chief Defender was a member of the State Bar committee that drafted the state recommendations. Although there was some criticism of the representation provided by some panel members, the overall assessment of the program gleaned from interviews with current and former judges, prosecutors and criminal defense attorneys indicated that the overall quality of representation is adequate and supporting investigative and forensic assistance is excellent, especially in the more serious cases.<sup>2</sup> PDP support services (investigative, forensic, etc.) are generally recognized as better than that provided by many Public Defenders offices. In short, there is no evidence that a Public Defender would necessarily provide better or more cost effective representation.<sup>3</sup> Further, a Public Defender's office requires developing a new and extensive County department and is not necessary as long as SMCBA criminal lawyers continue to provide adequate service. The PDP also eliminates the need for an alternate defender's office required in all Public Defender and contract system models to deal with multiple defendant cases and conflicts of interest, and a 2012 evaluation of the PDP estimated that not having an alternate defender's office resulted in an annual savings of \$1.5 million.

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<sup>1</sup> See PDP Annual Report to the Board of Supervisors, Section V—Extraordinary Fee Requests.

<sup>2</sup> In 2012 the American Bar Association and the National Legal Aid and Defender Association awarded the Private Defender Program its Harrison Tweed Award for long-term excellence in providing for the defense of the indigent.

<sup>3</sup> With the exception of one recent case the PDP has not had any convictions reversed for ineffective assistance of counsel.

The PDP contract has increased 42.4% over 10 years and comprises approximately 95% of the SMCBA's budget. In FY 2005-06 the PDP contract was \$12.9 million. For FY 2015-16 the contract is \$18.5 million. This increase is comparable with that experienced by other counties of similar size. It is noted that the PDP contract remained static for FY 2009-12 as San Mateo County responded to the national economic recession.

According to the most recent information, the PDP is anticipating a reduction in the total number of cases it handles, and the PDP contract contains a meet and confer clause if case loads fall out of line with expectations. For FY 2013-14 the PDP represented defendants in 20,254 cases. This number is projected to decrease to around 20,000 by FY 2015-16. Another factor to be noted is that in addition to the decrease in cases, the number of cases actually going to trial is also on a downward trend as well as a reduction in the number of death penalty cases, in which two attorneys are appointed for each accused. The PDP's fee schedule has remained static since 2008 and is currently being revised. Considering the cost of living and maintaining a law office in San Mateo County the current fee schedule does not appear unreasonable. It is well below the rates normally charged by private attorneys for similar services.<sup>4</sup> However, the PDP was not created for the purpose of providing a sustainable income for its panel members. The original intent of the program was to spread responsibility for indigent criminal defense among as many qualified bar members as possible who were willing to accept a limited number of PDP cases at the scheduled rates with the understanding that their willingness to do so would not result in their being overburdened with such work. In that regard it is worth noting that several PDP panel members appear to be working nearly full time on PDP matters. This may have a positive effect on overall efficiency, but the concentration of assignments among a limited number of attorneys may also inhibit the growth of expertise that should be developed in newer members of the bar and impede the continuation of qualified panel members.

A Public Defender system for San Mateo County entails the establishment of a new department consisting of a Chief Public Defender and approximately fifty attorneys<sup>5</sup>, administrative staff,

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<sup>4</sup> We are referring here only to the currently established hourly rate and flat rate schedule. For the reasons explained elsewhere in this report we were unable to evaluate the manner in which these rates are actually applied. A copy of the fee schedule is contained in the PDP's annual report to the Board of Supervisors.

<sup>5</sup> The San Mateo County District Attorneys office currently has fifty seven (57) prosecutors. The District Attorney prosecutes all criminal cases whether defense counsel is appointed or retained. The District Attorney also investigates incidents which do not result in criminal charges being filed, but nonetheless requires prosecutorial

clerical staff, and investigators together with all the other incidents of public employment, both material and financial. Space would be required in all three courthouses currently in operation—Redwood City, South San Francisco and Juvenile Court, and a Public Defender still requires an alternate defender or other system to handle conflict and multiple defendant cases.

A contract system, i.e., a contractual arrangement with a private law firm for the provision of indigent defense services, is not feasible for San Mateo County at this time because, *inter alia*, there is no law firm in the county of sufficient size and specialized staff able to provide adequate indigent defense services. In fact, there does not appear to be a firm with these requirements anywhere in the bay area. Even if there were, in dealing with a private law firm the County would not have any control over the selection and training of the specific attorneys handling individual cases and, as with a Public Defender, an alternate system would also be required for conflict or multiple defendant cases.

Recognizing the many positive aspects of the PDP, there was one significant and troubling issue which was repeatedly brought to our attention and which surprised us in the breadth and severity of its criticism. We were advised that the SMCBA Board of Directors is failing in its responsibility to manage and oversee the operation of the PDP. This criticism of the Board came from a very broad cross section of the legal community including Judges, present and former board members, panel members, and other attorneys. Particular concern was raised about the potential for board members who are also panel members to have conflicts of interest. When panel members who sit on the SMCBA's Board of Directors earn significant income from the PDP the potential for serious conflicts of interest are obvious. We were repeatedly told that the board fails to provide any significant oversight of the program to eliminate such conflicts, and that some individual board members can be abusive and engage in self promotion vis-à-vis the PDP. For an organization that is providing a very important public service and entrusted with the management of substantial public funds this is unacceptable.

#### **IV. RECOMMENDATIONS**

For the foregoing reasons it is not recommended that the County transition to a Public Defender or a contract system, but that it maintain the general PDP structure of assigning indigent criminal cases to a panel of qualified private attorneys, albeit with some administrative changes to eliminate inherent conflicts of interest.

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time and resources. In general, the PDP only represents indigent defendants against whom criminal charges have actually been filed, as well as some witnesses whose testimony could expose them to prosecution.

The PDP should be completely severed, both physically and financially, from the SMCBA in order to avoid any possible financial and material conflicts of interest. The County has the ultimate responsibility for providing indigent defense services and insuring the proper use of public resources for that purpose, but the Chief Defender lacks the necessary objective autonomy to protect either the County or the PDP's best interests since he is hired by and also serves as Executive Director of the SMCBA, many of whose members also serve on the PDP panel and derive income therefrom. The Chief Defender has the ultimate responsibility for the assignment of cases and payment of fees to the very persons by whom he is employed and at whose pleasure he serves, while also being under a contractual obligation to the County for the proper utilization and disbursement of the public funds he oversees. The Private Defender and Special Fee Committees, which periodically rotate membership, consist solely of panel members who also benefit financially from the program. By any standard which considers the County's obligations for the use of public funds as well as the interests of the indigent defendants, this creates a potential conflict of interest and cannot be considered a satisfactory business model for the use of public funds. Any program in which a private agency is utilized to provide a service with public funds must not only be fair and free from conflicts of interest, it must also *appear* to be fair and free from conflict and structured to prevent conflicts from arising.

To insure that the PDP's sole function is limited to the provision of indigent defense services, guarantee its independence, and provide financial accountability for the County we recommend that the selection of the Chief Defender be made by the County. If this were done the administration and management of the PDP would be conducted by County personnel, while the attorneys to whom cases were assigned would continue to operate as independent contractors. Since the ultimate responsibility for indigent defense services lies with the County, such an arrangement would provide the County with effective oversight of its public funds and guarantee the PDP's independence. The nature of the current arrangement is such that the County appropriates an agreed upon sum for indigent defense services without any particular knowledge of how that sum is spent. (The PDP does publish an annual report after each fiscal year which includes a line-item budget.) However, the current process for appraising indigent defense costs when renewing the contract is haphazard at best. This issue will become more salient with the continued decline of felony case counts in the wake of Proposition 47 and any future procedural changes. Since providing counsel for indigent defendants is a public function, it requires a greater degree of public oversight than it currently receives under the current PDP system, and an indigent defense program independent from persons or entities benefiting

financially reformed would provide that while retaining the efficacy of assigning cases to private counsel.

However, if the County were to maintain its current contractual relationship with the SMCBA, we recommend the following changes for purposes of fiscal integrity and accountability:

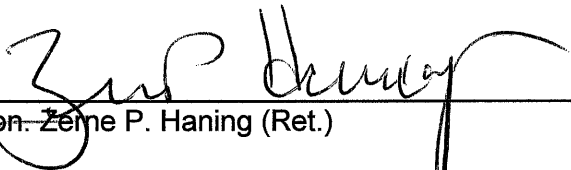
- A periodic, independent review of the PDP's finances should be conducted either by County personnel or an outside auditor to assure that the public moneys allocated for indigent defense are used solely and exclusively for such purposes.
- PDP panel members should not participate in the review and determination of special fees or fees in any cases where there may be a question of the amount of work or the number of hours or time expended.
- The current managing attorney at Juvenile Court acts in a supervisory role only. Some years ago the PDP hired a staff attorney for Juvenile Court who personally handled an active case load which in turn reduced the need for additional panel attorneys and thereby functioned as a more cost effective method for the County. If a supervising attorney is required at juvenile court, it should be someone who also handles an active case load.
- The exclusive use of panel attorneys to cover the master criminal calendar should be discontinued. The master criminal calendar is handled by the criminal presiding judge of the Superior Court. All arraignments, motions, pre-trial and settlement conferences, pleas, sentencings, trial assignments and other matters not involving actual jury trials are conducted in this court. It is the one department where the daily performance of panel attorneys can be regularly observed and critiqued. Using panel members to observe and critique one another on a rotating basis creates the appearance of self-evaluation and cannot be considered an objective method of performing this function. It should be handled by an independent Chief or Assistant Chief Defender.
- The current contract provides for an "officer of the day," a rotating panel member, to handle telephone inquiries including, *inter alia*, complaints about assigned panel attorneys. Again, this self-policing practice of using panel members to field complaints about one another lacks the necessary objectivity required for this function and should be handled internally by a Chief Defender independent of the SMCBA or panel members. The current PDP contractual clause establishing the position of officer of the day should be eliminated.

- We received a number of concerns over the current staffing level of the PDP. The program was originally designed as a conduit for assigning indigent criminal cases to private attorneys who accepted complete responsibility for the defense of the accused. If the PDP is to function in that limited capacity, then compared to the program as originally established the current PDP appears overstaffed, especially when considering the dropping case levels, reduced number of trials and technological advances.
- A recurrent criticism of the PDP panel is that it has been "closed" or limited in numbers, which again runs contrary to its original intent. The panel should be open to all qualified members of the SMCBA. Such qualification should be made objectively based on established written criteria.

We emphasize that our recommendations are premised solely on the current structure of the PDP as a business model, keeping in mind the County's interest in curtailing any unnecessary costs, insuring that public funds allocated for indigent defense services are utilized only for that purpose, and the necessity of eliminating any appearance of conflicts of interest. We do not suggest any deliberate mismanagement by the PDP or the SMCBA or that the parties or individuals involved are not operating other than with the intent to serve the best interests of the accused and the County.

We would like to acknowledge the cooperation of the County and PDP staff during the course of this evaluation.

Dated: December 8, 2016



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Hon. Zerne P. Haning (Ret.)



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Thomas F. Casey, Former San Mateo County Counsel





ATTACHMENT B

**RECEIVED**

**MAY -4 2016**

**COUNTY MANAGER**

April 27, 2016

Honorable Warren Slocum, President  
Honorable Don Horsley, Vice President  
Honorable Carol Groom  
Honorable Adrienne Tissier  
Honorable Dave Pine

San Mateo County Board of Supervisors:

This document is the San Mateo County Bar Association's response to the "San Mateo County Private Defender Program Evaluation", dated December 8, 2016 (sic). This Report, presumably issued over four months ago, was only recently presented to the San Mateo County Bar Association on March 9, 2016. A separate response was prepared by the Private Defender Program and submitted on April 11, 2016.

The County Manager's Office, which negotiates the contract between the County and the SMCBA for the PDP's indigent defense, requested a report for "purposes of comparison with other programs for indigent defendants." This Report concluded that "The PDP appears to operate in accordance with the terms of its contractual agreement with the County." Further, it notes "...The overall assessment of the program indicated that the overall quality of representation is adequate and supporting investigative and forensics assistance is excellent, especially in more serious cases." Hidden within a footnote, the Report states "In 2012 the America Bar Association awarded the Private Defender Program its Harrison Tweed award for long-term excellence in providing for the defense of the indigent."

This "long-term excellence" was achieved entirely while under the oversight of the San Mateo County Bar Association and within the current structure of the PDP and the Bar Association.

According to this December 8, 2016 Report the PDP clearly provides services contracted for, at a cost-effective price, with some services "better than many Public Defenders' offices."

The Report appears to exceed the scope of its own mandate of "comparing programs" by providing an analysis of the structure and inner workings of the PDP and the Board of Directors of the San Mateo County Bar Association. The Report alleges overstaffing, lack of oversight, and conflicts of interest without identifying the entity or party with whom any alleged conflict lies. The PDP Chief Defender has already issued a lengthy and thoughtful response to most, if not all, of these issues.

We feel compelled to address the alleged "conflict of interest" issue as it pertains to allowing some PDP members to sit on the Board of Directors of SMCBA. First, SMCBA has always allowed all members in good standing of the San Mateo County Bar Association to be eligible to serve on its Board. That has not changed in 100 years. That had not changed since 1968 when the County first contracted with SMCBA for PDP services. That has also not changed since the co-author of the County Report presided of the

SMCBA Board and served as its President in 1977. The County has also reviewed the PDP before and has approved the PDP structure and the existing oversight by the SMCBA Board.

Understanding of the conflict allegation requires analysis of who the client is for which conflict of interest (or potential conflict) is alleged. All involved should understand that the only duty that the PDP members owe is to their clients, not to the County. The Chief Defender does owe a contractual duty to the County, which is to provide the services agreed to for the price agreed to. There is no doubt that he has fulfilled this contractual duty. His primary duty, however, is, and always has been, to advocate for indigent individuals that the government is prosecuting, not the government.

As stated, it is unclear to whom the County Report purports to direct the conflict of interest and more importantly to whose interests the conflict pertains. If it is in the County's interest to get the lowest rate possible for the best quality indigent services, then it has succeeded. Even the Report acknowledges the County saves millions of dollars each year through its contract with the SMCBA versus establishing a public defender program. And at this relatively low cost the County receives the services for its indigent citizens from an award winning PDP program.

The SMCBA has always looked for ways in which to improve its structure and administration and it will continue to do so now. In the interests of resolving the County's concerns, the SMCBA Board of Directors at its meeting on April 27, 2016, formally resolved to implement a change, already under contemplation, to separate the Chief Defender and SMCBA Executive Director positions. Further, while the SMCBA Bylaws contain conflict policies for the SMCBA Board members, the SMCBA Board voted to establish Standing Rules that will provide that no PDP member who is on the Board of Directors and who receives any referrals of PDP cases may vote on any matter relating to the Private Defender Program, including but not limited to: (1) The overall PDP budget, (2) The performance of the Chief Defender, (3) The compensation of the Chief Defender, and (4) The policies of the PDP panel. It should be noted that the SMCBA Board does not assign cases, set individual fees for attorneys or select attorneys for the PDP panel.

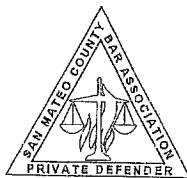
Although we are disappointed in both the content and tone of the County Report, SMCBA hopes that the County understands how fortunate it is to have such a program as the nationally recognized PDP in San Mateo County, as well as the work of the fifteen dedicated, hardworking and conscientious volunteer attorneys who serve on the Board of Directors of the San Mateo County Bar Association.

Sincerely,

A handwritten signature in cursive script, reading "S. D. Narayan".

S. D. Narayan, Esq.  
President  
San Mateo County Bar Association

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**PRIVATE DEFENDER PROGRAM**  
SAN MATEO COUNTY BAR ASSOCIATION

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April 11, 2016

To: Honorable Warren Slocum, President  
Honorable Don Horsley, Vice President  
Honorable Carole Groom  
Honorable Adrienne Tissier  
Honorable Dave Pine

Accompanying this letter is the Private Defender Program's Response to the San Mateo County Private Defender Program (PDP) Evaluation submitted by retired Justice Hon. Zerme P. Haning and former San Mateo County Counsel, Thomas F. Casey. The County Manager's Office requested Justice Haning and Mr. Casey to evaluate the PDP for purposes of "comparison with other indigent defense programs to determine whether the PDP remains the most appropriate model providing indigent defense services in San Mateo County."

It should be noted that a five-member committee appointed by the current County Manager in 2012, which included Supervisor Dave Pine, concluded that the PDP was *"a well-managed program and considered a model throughout the country for providing indigent defense."* The Board of Supervisors, on the recommendation of the current County Manager accepted that Committee's evaluation. The 2014-2015 San Mateo Civil Grand Jury acknowledged that the PDP was regarded as *"well-managed, effective, and economical."* The American Bar Association and National Legal Aid and Defender Association awarded the PDP the Harrison Tweed Award in 2012 for *its long-term excellence in providing legal services* to the indigent of San Mateo.

It is in this context that the County Manager's Office commissioned the report by Justice Haning and Mr. Casey (Haning/Casey report) to evaluate the PDP.

In summary, the San Mateo Private Defender Program unequivocally opposes the "recommendations" made by the County Manager's Office based upon the Haning/Casey report. Two of the recommendations contradict or violate both the American Bar Association Ten Principles of a Public Defense Delivery System and the California State Bar guidelines regarding indigent defense organizations. All of the recommendations will destroy or degrade the high quality indigent defense the PDP has provided in San Mateo County for the last forty-seven years.

Page Two

A review of the recommendations and our response is summarized below:

**Severing PDP from SMCBA and County Appointing Chief Defender**

The Haning/Case reports recommends that the PDP should be financially and physically severed from the San Mateo County Bar Association (SMCBA) and that (1) the County of San Mateo appoint the Chief Defender as a County employee, and (2) that the PDP program be administered by County employees.

This recommendation is based upon what they view as a *potential* conflict created by the fact that some members of the SMCBA Board who appoint the Chief Defender also receive legal work from the PDP. It is undisputed in the Haning/Casey report that the PDP is well-managed, cost-effective, and provides a high quality of representation to indigent defendants. Therefore, this perceived conflict has had absolutely no effect on the quality of legal defense provided by the PDP. However, appointment of the Chief Defender by the County strips the Chief Defender of his ability to *independently negotiate* with the County Manager for funding. The Chief Defender, as an appointment and employee of the County, is placed in a situation where he or she must accept the funding *assigned* by the County or reject the funding level and jeopardize his or her appointment. This is an *actual* conflict between the financial interest of the County and indigent criminal defendants' interest in obtaining sufficient funding for defense.

This *actual* conflict between the County and the PDP as provider of indigent defense conflicts with the American Bar Association Ten Principles of a Public Defense Delivery System (Principle 1) which states "[T]he public defense function, including the selection, funding and payment of defense counsel, is independent," and the California State Bar of California Guidelines on Indigent Defense Services Delivery Systems (2006) which states that a Chief Defender must "avoid any conflict" regarding available defense resources, "without regard to political pressure exerted by County government that may threaten the administrator's livelihood or the continued existence of the organization itself."

It is this *actual* conflict that exists between a County and a Chief Defender who is a County appointment and employee that has hobbled Public Defenders across the country and recently caused the United States Supreme Court to state in Luis v. Kentucky that only 27% of Public Defender's offices in this country are adequately funded. The proposal that the PDP be financially severed from the SMCBA and the Chief Defender be appointed by the County will *destroy* the nationally recognized high quality of representation provided by the PDP to indigent defendants in San Mateo County for the last forty-seven years. The PDP opposes this recommendation.

**Eliminating Chief Defender's Discretion to Limit Number of Program Attorneys**

The Haning/Casey report also proposes that the PDP eliminate the Chief Defender's discretion to limit the number of attorneys in the program and open up the program to all San Mateo County Bar members who meet "objective criteria." This proposal *directly* violates both the American

Bar Association Ten Principles of a Public Defense Delivery System which provides in Principle 1 that "[t]he public defense function, including the *selection*, funding and payment of defense counsel, is independent" and the California State Bar Indigent Defense Guideline which *explicitly requires* that the Chief Defender of an assigned counsel program have discretion to limit attorney participation in the program "in order to ensure the level of skill of [program] attorneys." Eliminating the Chief Defender's discretion to limit the number of attorneys in the program will violate both American Bar Association and California State Bar guidelines and also destroy the nationally recognized high quality of representation provided by the program for the last forty-seven years.

### **Cutting PDP Staffing and Cost Cutting Measures**

Justice Haning and Mr. Casey concede that, given the excellent performance of the PDP as presently constituted over the past forty-seven years, the County may wish to maintain its' current contractual relationship with the San Mateo County Bar Association. However, they propose several cost-cutting measures, including cutting the PDP staff. These proposed cost-cutting measures are consistent with the County's interest of saving money, but are totally inconsistent with maintaining the high quality representation to our clients. These cost-cutting measures, on the heels of the construction of a \$165 million jail to incarcerate predominantly indigent defendants, runs the risk of causing the perception, not unnoticed in San Mateo's underserved communities, that San Mateo favors incarceration over justice, education, and rehabilitation. The proposed cost-cutting measures also demonstrate what will inevitably happen to funding for the PDP if the Chief Defender is made a County appointment/employee.

### **Cutting PDP Staff**

The Haning/Casey report further proposes cutting the PDP support staff. The PDP caseload has gone from approximately 4000 cases annually at the program's inception in 1969 to 20,000 cases currently. In recent years, the PDP was appointed in as many as 25,000 cases. The PDP had four staff members in 1969, nine staff members in 1978 and currently has fourteen staff members, three of whom spend part of their time on SMCBA related tasks. This moderate increase in staff is perfectly consistent with a modern-day administrative office administering a \$19 million budget and a caseload five times greater than the caseload at the program's inception. Cutting the PDP support staff will degrade the level of service and representation provided by the PDP.

### **Managing Attorney on Juvenile Court Level**

Justice Haning and Thomas F. Casey also question the necessity of having a Managing Attorney on the juvenile court level. They also suggest that, should the Juvenile Managing Attorney on the juvenile court level be necessary, the Managing Attorney should carry a caseload in addition to fulfilling his or her responsibilities as Managing Attorney.

The Managing Attorney on the juvenile court level has numerous critical responsibilities. The Juvenile Managing Attorney oversees twenty-eight lawyers, monitoring and evaluating their

performance and sharing with them his experience and expertise, including reviewing the lawyers' requests for using experts and investigation. He reviews all new cases before assigning them to the attorney with the appropriate level of skill and experience. If there is a complaint from a client or family member, he documents and resolves the complaints. In addition to consulting with probation officers, social workers, mental health workers and juvenile court judges on a daily basis, the Managing Attorney also participates in several committees and work groups which are tasked with enhancing and improving the care, health, education and rehabilitation of the youth in Juvenile Hall and also in the community.

Given the foregoing critical responsibilities of the Juvenile Managing Attorney, he or she does not have the necessary time to provide a minor in the juvenile justice system with the effective level of representation that a minor requires and deserves. The Juvenile Managing Attorney position must be maintained as is and remain unencumbered with a caseload that will directly interfere with the Juvenile Managing Attorney's effective performance of his or her critical duties.

#### **Chief Defender Covering Master Calendar**

The Haning/Casey report recommends that the Chief Defender or Assistant Chief Defender handle the daily Master Calendar in the court of the Presiding Criminal Judge. This recommendation is apparently based on their incorrect assumption that the attorneys assigned to the master calendar are there to observe and evaluate the lawyers of the program. That has never been the case. Not only is this categorically wrong but the perspective of the authors is distorted by their additional incorrect assumption that the criminal justice system is exactly the same as it was in 1969.

Given the evolution of criminal law, the PDP's increasing caseload, and the modern-day complexities of administering a \$19 million budget, the Chief Defender or Assistant Defender do not have the time available to handle the Master Calendar. The Chief Defender and Assistant Defenders attend and evaluate program attorneys in court performance at pre-trials, jury trials, and specialty court calendars which are the phases of the criminal justice system that give insight into attorney performance. Program attorneys are also evaluated by the Annual Attorney Survey, which includes a report from the attorney regarding the number of jury trials they have completed and their outcomes, evidentiary hearings they have initiated, pleadings they have prepared and filed, their use of investigators and immigration attorney resources, and their participation in legal continuing education. The recommendation that the Chief Defender or Assistant Defender on the adult level handle the Master Calendar is uninformed and baseless.

#### **Elimination of Officer of the Day**

The Haning/Casey report also recommends that the Officer of the Day position be eliminated. The Attorney of the Day provides a critical link for the public to the PDP that enables clients to have questions answered about their cases, including how to comply with terms of probation, access to County programs and services, and general legal questions. The Attorney of the Day

also provides a direct link to the general public regarding SMCBA legal services available in San Mateo County. The Attorney of the Day position is critical in providing clients and their families' direct access to legal services and general legal information to citizens of San Mateo County and must be maintained.

### Conclusion

In summary, the Private Defender Program repeatedly has been found to be a well-managed and cost-effective provider of quality indigent legal defense services by the 2012 County Manager's Committee, the 2014–2015 San Mateo Civil Grand Jury, the County Manager himself, and the authors of this current evaluation. The American Bar Association and National Legal Aid and Defender Association commended the PDP in 2012 for *its long-term excellence in providing legal services* to the indigent of San Mateo as did the California Western School of Law.

An article from the California Western School of Law Faculty Scholarship Paper: "The California Public Defender: Its Origins, Evolution and Decline" by Laurence A. Benner (2010) discusses the decline of indigent defense organizations throughout the nation as a result of cost-cutting by county governments. The article points to the San Mateo County Private Defender program as the *one program in the nation* that has escaped the destructive influence of a county's direct control over its' indigent defense program.

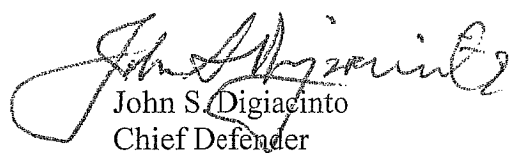
The article states: "Only one county, San Mateo, uses a bar association administered assigned counsel system as the primary provider. The San Mateo system, known as the Private Defender Program, actually functions, however, much like an institutional defender office. It has an investigative staff and employs supervising attorneys who provide training and monitor the performance of assigned counsel panel members."

The proposed radical changes, including co-opting the appointment of the Chief Defender by the County and opening the program to any San Mateo County attorney who belong to the SMCBA and meet certain objective criteria, contradict and/or violate American Bar Association Ten Principles and the California State Bar guidelines and will destroy the high-quality indigent defense the PDP has provided San Mateo County for the last forty-seven years. The cost-cutting measures proposed by the report, including the cutting of the PDP staff, will also degrade the quality of representation and, coming on the heels of the construction of \$165 million jail, will create the perception, not unnoticed in San Mateo's under served communities, that San Mateo County favors incarceration over quality legal representation.


We strongly urge the Board of Supervisors to reject each and every recommendation in the Haning/Casey report and preserve the highly effective, nationally recognized defense organization dedicated to providing indigent individuals with high quality legal representation and provided this vital service the San Mateo County for the last forty-seven years.

Page Six

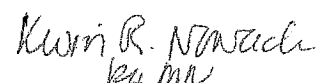
Respectfully submitted,




John S. DiGiorgio  
Chief Defender



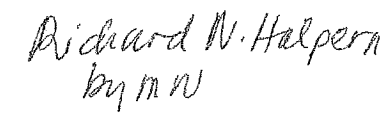
Myra A. Weiher  
Assistant Chief Defender



Kevin R. Nowack  
PDP Panel Attorney



Eric Liberman  
Managing Attorney



Richard N. Halpern  
Managing Attorney





**COUNTY OF SAN MATEO**  
**OFFICE OF THE CONTROLLER**

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Controller


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Assistant Controller

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ATTACHMENT C

DATE: September 1, 2016

TO: John Maltbie, County Manager

FROM: Juan Raigoza, Controller 

SUBJECT: Private Defender Program Financial Review Report

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Please find the attached Private Defender Program Financial Review Report.

We would like to express our gratitude to the San Mateo County Bar Association and County Manager's Office personnel who participated in this review for their time and assistance.

CC: Michael Callagy, Assistant County Manager  
Reyna Farrales, Deputy County Manager  
Shirley Tourel, Assistant Controller  
Jim Saco, Budget Director

County of San Mateo  
Controller's Office

**Private Defender Program  
Financial Review Report**

For the period July 1, 2013 – February 29, 2016



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September 1, 2016

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## EXECUTIVE SUMMARY

The County of San Mateo (County) contracts with the San Mateo County Bar Association (Association) to provide legal services to indigents through its Private Defender Program (PDP). At the request of the County Manager's Office, the Controller's Office Internal Audit Division performed review procedures to understand the PDP's finances, operations, systems, and use of County funds to provide indigent legal services. The review covered the period of July 1, 2013 through February 29, 2016.

While the results of our review indicate that the monies paid by the County to the Association were spent on providing indigent legal services, several issues were identified in the following areas:

- Untimely and incomplete independent audit reports for County's needs.
- Inaccurate and deficient reporting to the County.
- Inadequate monitoring and analyses of case type and cost data.
- Poor internal controls and procedures on paying vouchers (invoices).

If the County chooses to continue its contractual relationship with the Association, then the recommendations made in this report to the County Manager's Office should be implemented. Most of the recommendations require the terms of the County's contract with the Association to be modified. Overall, these recommendations will provide the County with improved financial oversight of the PDP.

The following summarizes the issues and recommendations.

**The PDP's audited financial statement does not include a Statement of Financial Position and Statement of Cash Flows that are necessary to understand financial position and cash activities.** Currently the PDP's audited financial statement only includes the Statements of Activities and Changes In Net Assets. To better assess and understand the financial position and cash activities of the PDP, the audited financial statements should include the Statement of Financial Position and Statement of Cash Flows. Furthermore, in order to be aware of any internal control issues, the auditor's Management Letter issued to the Association's Board of Directors should also be provided to the County.

**The Association has used the same auditors for the past 16 years.** The auditors should be rotated periodically to help ensure objectivity and independence are maintained.

**The audited financial statements are issued more than one year after the year-end.** Delayed financial reporting reduces the relevance and usefulness of the information reported. The Association should provide the audited financial statements to the County no later than December 31 after each fiscal year-end.



**The figures for case count and cost per type of case reported by the Association to the County are not reliable.** The annual contract amount purports to be based in part on the number and cost per type of case handled by the PDP. Accurate data is required to make supported management decisions. The case count report should be periodically reviewed and revised to ensure it displays accurate data. Also, the cost per type of case should be based on actual historical expense amounts.

**The reports on case counts and costs provided by the Association to the County are inadequate for financial management oversight.** Without timely and detailed financial and operational reports, County and Association management cannot adequately assess the PDP's performance and make informed decisions. The Association should periodically (e.g. quarterly) provide the County with summary and detailed reports on case counts and related expenditures that can be easily verified to source documentation upon request.

**A year-end comparison between the amounts paid to the Association and actual PDP expenditures is not performed.** To ensure the annual contract amount is reasonable and supported, the County should require the Association to provide annual detailed reports of actual PDP expenditures.

**The Association does not have key accounting policies and procedures documented.** Accounting policies and procedures should be documented to ensure consistent accounting treatment of financial transactions and accurate financial reports for the PDP. The accounting policies and procedures should be designed to ensure that segregation of duties, proper reviews and approvals, financial analyses, and other internal controls ("checks and balances") are followed. Association management should ensure compliance with these policies and procedures.

**The PDP paid vouchers (invoices) for services despite having errors in fee amounts, billing units, or noncompliance with voucher policies.** Given the PDP's inadequate procedures when reviewing and approving vouchers for payment, there is a risk that unwarranted payments may be issued. Vouchers need to comply with the fee schedule, and be thoroughly reviewed for accuracy and compliance with policies established by the Association in order to be paid. Additionally, the defenderData system should be setup so that vouchers will not be processed by the system unless all required information is entered.

Other recommendations on inadequate internal controls over segregation of duties, cost allocation activities, and information system controls are included in the report. If all the recommendations in this report to the County Manager's Office are not implemented, the County should consider changing the current service delivery model for indigent legal services. A follow up review will be performed after six months of the issuance of this report.



## BACKGROUND

The PDP is managed by the Association under a contract with the County. Since 1968, the PDP has provided legal representation for indigent defendants in the County through a panel of private attorneys. The County Manager's Office (CMO) had an external review conducted on the PDP, resulting in the "San Mateo County Private Defender Program Evaluation" report being issued in December 2015. The evaluation reported concerns over perceived conflicts of interest and attorney panel membership. Thereafter, the CMO requested the Controller's Office to conduct a financial and system review of the PDP.

The number of cases the PDP handles is a key measure used by the County to evaluate the PDP. The Association tracks and reports to the County the legal services provided based on the types of cases (i.e., Type A Superior Court, Type B Municipal Court, Type C Developmental Disability laws, Type D Juvenile Dependency, and Type E Juvenile Court). The Association uses the Microsoft Dynamics (MS Dynamics) system for accounting and the defenderData system for case management.

In FY 2015-16, the County paid the Association \$18,502,766 in two installments (July 2015 and January 2016) of \$9,251,383 each. The current two year contract expires in June 2017. Beginning in December 2014, the total contract amount was increased by \$5,000,000 for legal services related to "Operation Sunny Day" (OSD) cases. Services for the OSD cases are paid to the Association in \$500,000 increments after the County receives detailed expenditure reports on the actual costs incurred.

## OBJECTIVES

The objectives of the review were to evaluate:

- The use of County funds to provide indigent legal services.
- If the case data and associated costs reported to the County are reliable.
- If user access, security, and processing integrity are appropriate and effective for the defenderData and MS Dynamics systems.

## SCOPE AND METHODOLOGY

Unless otherwise indicated, the scope of the PDP review covers July 1, 2013 – February 29, 2016.

The following procedures were performed to meet the objectives.

- Reviewed financial and performance reports, policies, procedures, tax returns, and prior evaluation reports.
- Interviewed key PDP personnel.
- Performed walk-throughs of the voucher (invoice) review and approval process.



- Randomly sampled and reviewed vouchers (i.e. court case, court calendar appearance, and Officer of the Day) for accuracy, approval, and compliance with the Association's policies.
- Reviewed user access policies for the defenderData and MS Dynamics systems.
- Requested Service Organization Control (SOC) Reports for the defenderData and MS Dynamics systems.
- Reviewed and analyzed PDP caseload counts and costs.
- Reviewed how the Association allocated costs between the PDP and non-PDP activities (e.g. salaries and benefits).
- Reviewed all OSD vouchers for January 2016 and April 2016 to determine if fees were computed accurately, and vouchers were reviewed and approved.
- Reviewed the Association's contract with the County, the PDP budget, and caseload reports for FY 2010-11 through FY 2015-16.
- Reviewed PDP Annual Report for FY 2012-13 through FY 2014-15.

The review was performed in accordance with the *International Professional Practices Framework* established by the Institute of Internal Auditors.

## ISSUES AND RECOMMENDATIONS

**Issue 1: The PDP's audited financial statement does not include a Statement of Financial Position and Statement of Cash Flows that are necessary to understand financial position and cash activities.**

Audited financial statements provide information about the annual financial position, financial results, and changes in cash activities, and are collectively used to make financial decisions. The Statement of Financial Position, Statement of Activities and Changes In Net Assets, and Statement of Cash Flows would enable the County and the Association to better assess the financial health of the PDP and make informed operational decisions.

Currently, the PDP audited financial statement only includes the Statements of Activities and Changes In Net Assets and is issued more than one year after the fiscal year-end. Without the Statement of Financial Position, the financial status of the assets and liabilities as of June 30 cannot be evaluated. Without the Statement of Cash Flows, cash flows for operating, investing, and financing activities over the period cannot be determined. These two statements provide insights about the PDP's financial position and cash activities. Without these statements the Association and the County cannot adequately assess the PDP's financial position and take necessary steps to ensure continuity of services to the indigent.

Furthermore, the Management Letter issued by the auditors, which communicates any problems identified in the financial operations of the organization to the Association's Board of Directors has, historically, not been requested by the County. Without the Management Letter, the County would not be aware of any internal control concerns reported by the auditors.



## Recommendation

The County should require the Association to provide audited financial statements that include a Statement of Financial Position, Statements of Activities and Changes In Net Assets, and Statement of Cash Flows. The financial statements and Management Letter should be provided to the County no later than December 31 after the fiscal year-end.

**Issue 2: The Association has used the same auditors for the past 16 years.** Changing the auditors (partner or firm) every five years is considered best practice for most organizations to ensure that objectivity and independence are maintained. The Association has used the same auditors for at least 16 years.

## Recommendation

The County should require the Association to change the PDP's auditors every five years.

**Issue 3: The audited financial statements are issued more than one year after the year-end.**

All accounting transactions for the accounting period need to be recorded so that the annual financial statements can be prepared. After the day-to-day transactions and accrual adjustments are recorded, the records for the accounting period should be closed. Accruals are adjustments for activities (revenues or expenses) that have been incurred but have not yet been received or paid. In order to ensure a timely year-end close process, accrual amounts are typically estimates based on prior reporting periods or are determined by other methodical means.

PDP's books are typically open at least six months after the fiscal year-end. We were informed that this is done so the accrual adjustments can be based on actuals instead of estimates. However, this is not best practice because the benefit of having timely audited financial statements outweighs the benefit of waiting to have actual amounts. Financial statements are prepared and audited after all the accounting entries, including accruals, are recorded. Thus, audited financial statements are being issued more than one year after the fiscal year-end.

Delays in issuing audited financial statements diminish the usefulness of financial information for timely management decisions.

## Recommendation

The County should require the Association to implement accounting procedures so that audited financial statements and the Management Letter can be provided to the County by December 31 after each fiscal year-end.

**Issue 4: The figures for case count and cost per type of case reported by the Association to the County are not reliable.**

The Association reports to the County the number of cases processed by type every month and the cost for each type of case once a year. Both factors are key performance





measures. The overall caseload count for the review period was previously reported to the County as 10,383, while the actual caseload count provided during the review was 10,234, or 2% less. The differences identified in the reported case count by type were even greater (see Table 1 below). The incorrect classification of cases occurred because the data criteria used to generate the report from defenderData is not accurate. Additionally, incomplete and inaccurate data entered into defenderData also contributed to the inaccurate report. The comparison in the table below is based on two sampled months from each fiscal year reviewed.

Table 1 – Caseload Count: Actuals Caseload Count Determined During Review Compared to Caseload Count Reported To The County					
Fiscal Year	Case Type	Actual Caseload (a)	Association Reported (b)	Difference (c) = (a) – (b)	Difference (%) (c) / (a)
November & April of FY 2013-14	A	651	372	279	43%
	B	2,325	2,603	-278	-12%
	C	23	95	-72	-313%
	D	75	72	3	4%
	E	225	228	-3	-1%
November & June of FY 2014-15	A	830	617	213	26%
	B	2,092	2,276	-184	-9%
	C	33	127	-94	-285%
	D	101	93	8	8%
	E	198	198	0	0%
January & February of FY 2015-16	A	1,181	910	271	23%
	B	2,213	2,439	-226	-10%
	C	29	94	-65	-224%
	D	92	92	0	0%
	E	166	167	-1	-1%
Total		10,234	10,383	-149	-2%

Appendix B in the County's contract with the Association provides the estimated cost by type of case. The cost per type of case along with the estimated case count are key factors in determining the contract amount and forecasted expenditures.

In 2008, the cost for each type of case was determined based on the actual expenditures incurred within each case type. Every year thereafter, the cost for each type of case is increased by approximately the same annual percentage increase of the total contract amount. For example, the County's FY 2014-15 contract amount with the Association increased by 1% from the prior year, therefore, the cost for each type of case increased by 1%. An annual analysis of actual expenditures for each type of case is not performed to determine if this is a reasonable methodology.

Based on 197 sample cases reviewed we computed the average cost per case type. Table 2 compares the cost per case type determined during the review to the amounts reported by the Association. This comparison shows the methodology used to determine the cost per type of case is not accurate. To the extent that any forecasting or budgeting is performed based on the reported figures, such planning will also be inaccurate.



Table 2: Cost For Each Case Type: Actual Cost Determined During Review Compared to Cost Reported to County					
Fiscal Year	Case Type	Cost Per Type of Case		Difference (c) = (a) – (b)	Difference (%) (c) / (a)
		Audit Results*(a)	Association Reported (b)		
November & April of FY 2013-14	A	\$1,434	\$1,383	\$51	4%
	B	1,085	606	479	44%
	C	608	681	-73	-12%
	D	1,333	1,013	320	24%
	E	737	298	439	60%
November & June of FY 2014-15	A	585	1,404	-819	-140%
	B	479	615	-136	-28%
	C	614	691	-77	-12%
	D	729	1,028	-299	-41%
	E	569	302	267	47%
January & February of FY 2015-16	A	468	1,474	-1,006	-215%
	B	576	646	-70	-12%
	C	646	726	-80	-12%
	D	2,060	1,079	981	48%
	E	876	317	559	64%
*Cost per type of case was based on 197 sample cases selected for review.					

## Recommendation

The County should require the Association to provide accurate monthly case count reports and ensure that complete case type details are entered into the defenderData system. Additionally, the report criteria should be reviewed and revised to ensure cases are categorized into the correct type. Also, the cost per case type should be computed based on actual historical expenses and reported quarterly to the County.

### Issue 5: The reports on case counts and costs provided by the Association to the County are inadequate for financial management oversight.

The County is required to provide indigent legal services and to ensure monies allocated for this purpose are used as intended. The number of cases processed and the associated costs incurred by the PDP are measures that monitor compliance with these requirements. These measures are also used to make decisions such as budget forecasts.

The only financial reports the Association provides to the County is a comparison of Budget to “Preliminary Actuals” and audited financial statements. The County receives a monthly summary report from the Association on the number of cases handled for each type of case. The Association does not provide an analysis that compares historical and current case count data, along with explanations on significant changes. The costs incurred based on the type of cases are also not provided. Without timely and detailed financial and operational reports, County and Association management cannot adequately assess PDP’s financial performance.



## Recommendation

The County should require the Association to periodically (e.g. quarterly) provide the County with summary and detailed reports on case counts and related costs that can be easily verified to source documentation upon request.

The following summary and detailed reports should be provided:

- a. Expenditures by Attorney
- b. Expenditures per Court Case Number, Case Type and Sub-Type
- c. Expenditures by Fee Type
- d. Expenditures by Administrative Expense Type
- e. Case Count by Type and Sub-Type (with case number details)

The detailed reports should, at a minimum, include the following data fields: case number, case type, sub-type, attorney name(s), investigator name(s), fee type, rate, voucher number, and voucher amount. The summary version of these reports should compare historical data to the current period. These reports along with detailed analyses and explanation for fluctuations should be provided to the County. If further information and analyses is required by the County, the Association should make such information available upon request.

### **Issue 6: A year-end comparison between the amounts paid to the Association and actual PDP expenditures is not performed.**

Currently, the County pays the Association two installments per fiscal year in accordance with the contract. The County does not require detailed supporting reports of actual expenditures. If this analysis is not performed, the County is not able to determine if the amount paid to the Association aligns with PDP's actual cost of providing legal services.

## Recommendation

The County should require the Association to provide detailed reports of actual expenditures incurred for providing indigent legal services to ensure the annual contract amount is reasonable and supported. The County should modify the contract terms to make installment payments quarterly instead of biannually so that the County can earn interest on the cash on hand.

### **Issue 7: The Association does not have key accounting policies and procedures documented.**

The Association does not have documented policies and procedures for accounting activities. This issue has been identified in the auditor's FY 2012-13 and FY 2013-14 Management Letters issued to the Association's Board of Directors. Documented policies and procedures help to ensure consistent and accurate accounting treatment of transactions and accurate financial reports.



## Recommendation

The County should require the Association to develop and document its accounting policies and procedures for the PDP. The accounting policies and procedures should be designed to ensure that segregation of duties, proper reviews and approvals, financial analyses, monitoring by management, and other internal controls are followed. Management should ensure compliance with these policies and procedures.

### **Issue 8: The PDP paid vouchers (invoices) for services despite having errors in fee amounts, billing units, or noncompliance with voucher policies.**

defenderData is the case management system used for case assignments and processing attorney and investigator vouchers. A voucher is as an electronic invoice submitted through the defenderData system by an attorney or investigator for services rendered.

Vouchers need to comply with the fee schedule for services and other related policies established by the Association in order to be paid. Between July 1, 2013 and February 29, 2016, the PDP processed approximately 63,000 cases with 189,000 vouchers (extrapolated from sample cases and vouchers). Often, multiple vouchers are submitted under one case number. 197 sample cases with 593 vouchers were selected for review to determine the following:

- If the amounts paid agreed with the Fee Schedule and other relevant policies.
- The review and approval of the voucher was performed.
- The approval to issue voucher payment was performed.

The vouchers reviewed were Type A through E cases for attorneys, investigators, and experts. Many vouchers were paid with errors in fees and did not comply with policies and procedures.

The following issues were identified during the review:

- a) Two vouchers for civil cases that exceeded the specified threshold of 12 hours were not approved by the Special Fee Committee as required by the PDP Fee Schedule.
- b) Seven vouchers were submitted under the wrong case number.
- c) Seventy-six vouchers were paid at a higher rate for the Dependency Mandatory Disposition Fee than what was allowed per the fee schedule. PDP management indicated they had approved the higher rate, however, PDP management was unable to recall when they approved the change and did not update the Fee Schedule.
- d) Two vouchers had incorrect billing units. The fee for trial preparation must be billed in half day increments (i.e. am or pm) and no more than 2 billing units per day. Our review identified that one voucher was approved with 5 billing units and another voucher with 2.5 billing units for the same day.
- e) Nineteen vouchers were paid that include service dates prior to the date of case assignment.



- f) Nine vouchers were submitted after 90 days of completing the case and were paid. The PDP Fee schedule states “all bills must be submitted within 90 days of completion of the case or they will not be paid.” Contrary to the policy, the vouchers were approved by PDP management and paid.
- g) One voucher for a pretrial conference with a stated service date that fell on a Court holiday was paid.
- h) Thirty vouchers were missing service dates.
- i) One voucher did not include the fee type.

As listed above, a substantial number of vouchers reviewed had errors that resulted in the issuance of incorrect payments. Non-compliance with policies and procedures related to reviewing and paying vouchers poses a risk that unwarranted payments are issued.

## Recommendation

The County should require the Association to thoroughly review vouchers for accuracy and compliance with documented policies, prior to paying the vouchers. The review and approval procedures performed by PDP personnel should be well documented to ensure the rules are consistently applied and monitored by management to verify that they are being followed.

The defenderData system should require the service date, fee type, billing unit, and billing rate information be entered in order to accept the voucher. Periodic review and testing of the system should be conducted to confirm that the requirements, described above, are operating as designed.

## Issue 9: One employee performs multiple tasks in the voucher process resulting in a lack of segregation of duties.

To reduce the risk of errors or inappropriate payments, the person approving vouchers for accuracy should be different than the person approving issuance of payment. This will ensure that proper segregation of duties exists. During the review of vouchers described in Issue 8, we discovered that one employee was authorized to perform the following functions in the defenderData system that should be performed by separate people:

- Add users and define user access privileges.
- Review and approve vouchers for accuracy (except for high dollar vouchers related to special or administrative fees).
- Approve the issuance of voucher payments.

One employee, who is responsible for adding system users and defining access privileges, also approved nine vouchers for accuracy and then approved the issuance of those payments. Best practices suggest that system administrators who add users and grant access rights should not also process transactions. This lack of segregation of duties increases the likelihood for errors or inappropriate payments.



## Recommendation

The County should require the Association to establish policies to ensure that voucher approval duties are segregated from system administration and voucher payment duties. Any deviation from this requirement should be subject to higher level management review and documentation.

### **Issue 10: The salaries and benefits of two executive employees are entirely charged to PDP even though they spend time on activities unrelated to the program.**

During the review period, the salaries and benefits for two executive employees were entirely charged to the PDP. However, both employees spend time on non-PDP related activities such as discussing and making decisions on the Association budget and operations. The time spent on PDP and non-PDP related activities is not tracked for both employees. Charging all of their salaries and benefits to the PDP overstates its expenditures.

## Recommendation

The County should ensure that the Association properly allocates costs to the PDP. The Association should develop a methodology to allocate employees' salaries and benefit expenses between PDP and non-PDP activities. This corrected allocation should then be reflected in updated case costs and other estimates used to determine the annual contract amount.

### **Issue 11: Authorized user access and rights to the defenderData and MS Dynamics systems are not periodically reviewed.**

The PDP uses the defenderData system for case management and MS Dynamics system for financial recordkeeping. User access and rights within the systems should be checked periodically to ensure users have not been provided inappropriate access. This is particularly important due to the confidential information maintained in the defenderData system.

## Recommendation

The County should require the Association to periodically review and document access to critical systems to ensure only authorized users have access and rights that are appropriate to their roles.

### **Issue 12: Service Organization Control (SOC) Reports are not requested and reviewed.**

It is a best practice to request and review SOC reports for cloud-based systems, such as defenderData and MS Dynamics. These reports provide assurance on system reliability and integrity. SOC reports also outline the division of responsibility between the service provider and client for critical areas such as system backup and recovery. PDP management has not requested or reviewed SOC reports for its defenderData or MS Dynamics systems.



## Recommendation

The County should require the Association to request and review SOC reports for the defenderData and MS Dynamics systems. Any applicable required actions outlined in the reports should be implemented.

## CONCLUSION

If the County chooses to continue its contractual relationship, it should work with the Association to improve financial oversight of the PDP.

Implementing the recommendations made in this report will strengthen the Association and the County's abilities to evaluate the PDP's performance and make effective management decisions.

In summary, we recommend that the County require the Association to: provide timely and complete PDP financial and operational reports; prepare caseload count and cost analyses; and improve its internal controls related to reviewing and approving vouchers.

This report is intended to enhance, not substitute, the Association's responsibilities of internal control activities and self-assessment of risk. This report is also intended solely for the information and use by the County Manager's Office. It is not intended for nor should it be used by anyone other than this specified party. This restriction is not intended to limit distribution of this report, which is a matter of public record.



## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
	Client/Former Client	Hard to get a hold of attorney while in jail; if you call the PDP number you're told they're not your attorney's message service; you have to make a collect call to your attorney and most of the time you can only leave a message; my mom/family had to call several times before my attorney finally called me back		
	Client/Former Client	Some attorneys who've been there a while are just going through the motions, don't care, don't want to fight; I want an attorney that wants to win, fight for me, who cares about me		
	Client/Former Client	I'm just a number on the docket and they're trying to clear their docket		
	Client/Former Client	There are some good attorneys, who visited multiple times, actually looked at my case before I showed up in court, hired investigators and talked to witnesses, wanted to win		
	Client/Former Client	I was offered a plea deal, and was lucky my Probation Officer spoke up for me and helped me get into a program		
	Client/Former Client	Most attorneys don't see you until a few minutes before your court appearance, rush through explaining the plea deal and don't give you enough time to understand the consequences;		
	Client/Former Client	My attorney didn't seem to know that I had other options like going into programs, just gave me a plea deal that I felt forced to sign because I didn't have other choices		
	Client/Former Client	We're not asking for a super-attorney, just someone who will look at our case, not have a lot of other cases		



## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
	Client/Former Client	My attorney said not to worry, that we would get through this together; was enthusiastic, positive, I felt supported		
	Client/Former Client	Didn't know you could call the PDP number to complain about your attorney; the Marsden motion isn't explained well and is a difficult process, ended up keeping same attorney through trial		
	Client/Former Client	It doesn't feel good when you go to court and your attorney is talking and laughing with the DA, makes me worried whose side they're on		
County Juvenile Justice Prevention Commission	Other	"They could not be more fierce in defending their clients" "They are looking for the best outcome for their clients" The managing attorney especially in Juvenile can't have a caseload. He needs to know what is going on and be neutral.		
		Superb value for very low cost. Won a national award		

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
Stanford Criminal Defense Clinic	Other	Members of PDP are assigned to mentor students for no pay. Modeling for students. PDP specializes/have expertise in their area of law. PDP has quality control and self-regulating monitoring function. "Any perceived conflict of interest between the Bar Association and the PDP is imagined and does not have any actual negative impact. They aren't getting any more appointments or getting paid any more." The PDP provides a panel of investigators who are licensed and actively providing investigations into cases. Public Defenders do not have this resource.		
PDP	Attorney	There has been only one case reversed which speaks to its quality		
PDP	Attorney	The advantage to the PDP program is that you have the same attorney all the way through your case. There is no ceiling with PDP so if there is caseload growth, the PDP can bring in additional attorneys. PDP has quick access to information. They have a "duty day" to field questions over the phone.		
PDP	Attorney	The law needs to be specialized with no turnover		
PDP	Attorney	PDP provides continuing education over the State requirements.		
		Being able to assign an attorney is important		
		PDP runs volunteer legal programs pro-bono. This is run through the PDP Panel.		
				Better promotion of PDP program

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
PDP	Attorney	<p>Bthe small group of attorneys allows for lots of information sharing and training.</p> <p>PDP program provides quality representation with thorough preparation and lots of interation/involvement with clients.</p>		More training for participating attorneys
	Family Member	<p>PDP program provides resources for those that cannot afford representation.</p> <p>Family was kept informed and involved throughout the proces.</p>		
ACLU North Peninsula	Other			<p>Make sure any contract changes consider affects on the County's criminal justice program.</p> <p>Better specify what "qualifies" an attorney to particpate in the PDP.</p> <p>Complaints to the Officer of the Day should be sent to an independent entity as opposed to a PDP attorney due to conflicts of interest.</p> <p>The program should be continually reviewed for improvements.</p>

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
Criminal Defense Clinic at Stanford Law School	Other	Program functions well and the County should be careful about making wholesale changes.		<p>Make sure there are enough resources allocated to the program to continue to give sufficient attention to all types of cases.</p> <p>There should be a stringent vetting process for anyone wanting to participate as a PDP attorney.</p> <p>Quality training should be offered on an ongoing basis to all participating attorneys.</p> <p>Two attorneys should be present at arraignment (currently one one); would provide more one on one contact with participants right from the beginning.</p> <p>More exploration of perceived conflict of interest between the Bar and PDP to determine what changes, if any, are necessary.</p>
	Family Member	Great that the relationship with Stanford Law exists.		More information on the PDP program and Court process right from the beginning; promote the benefits of representation in even the simplest of matters.
	Other	PDP attorney's are very interested and involved in the clients and their cases.		
PDP	Attorney	PDP is "responsive entity" to choices of DA (ie: Sunny Day filings requiring more resources) Not just any licensed attorney should be eligible for the PDP; The panel offers attorneys flexibility to turn away cases		Add more dedicated administrative staff to track cases, assign clients to attorneys more quickly — should be twice the size

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
ACLU	Other		Attorney of the Day Program-- Concerns that using this as the complaint line creates a conflict b/c the person hearing the complaints about the program are members themselves	PDP structure should allow defense attorneys to weigh in on policy matters & provide an "institutional voice"; third party should staff complaint line; find better ways for attorneys to collaborate
Superior Court	Other	There is no parity with the DA in terms of resources, money; PDP attorney quality is strong and often subbed in hired representation is lower; PDP requires a good administrator with criminal defense experience; report has already brought some change, ie: trustee board changes to prevent recusals due to conflicts	Communication btw PDP attorneys, admin staff	
PDP	Attorney	County oversight will create more overhead for office space, benefits; esp in juvenile dependency, there's a conflict of interest if the County manages bc of the County Counsel very concerned about recommendation to open up the PDP to "just anyone"; the juvenile managing attorney cannot carry his own caseload		
	Client	Very positive experience w/ recent PDP attorney; though prior PDP attorney was in over his head a bit but felt he did best he could; Contacted by PDP attorney in 3 days which felt sufficient; never felt pressured into plea		

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
	Client	Very appreciative of mental health care and Pathways helping her; had been arrested multiple times and had not been connected to PDP before; had bad experiences with private attorneys she hired and didn't know what to do; didn't know the difference between the PDP and hiring private attorneys felt that PDP was heartfelt in helping her get the services she needed and providing her with direction. Also, the PDP keeps important documents for clients so clients don't have to keep them themselves. They also work with immigration attorneys and the Immigrant Legal Resource Center, which is very helpful to clients.	Information taken in custody is not passed on to attorneys.	Inform inmates of their rights. Explain the difference between PDP and private attorneys. Explain to inmates that they can ask for mental health services
PDP	Attorney	PDP is the best indigent criminal defense system in the Country; it is used as a model in other places and has been granted the Harris Award.		
PDP	Attorney	ICD system is always dumped on. There is no lobby effort or support to the system and it is always subject to cuts.		

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
PDP	Attorney	PDP provides quality, high-level representation on all levels. The County should not change anything. PDP provides investigative and expert witness assistance to lawyers that is very helpful. PDP attorneys receive continuing legal education (\$750 per year). There are monthly noon meetings where particular issues are presented. There are required quarterly meetings where there are lectures about particular issues where attorneys can learn from each other. There is a mentoring system for new attorneys. PDP provides free legal nights for the community. PDP is involved with mock trials for students. They do pro-bono work in shelters and provide community forums.		
PDP	Attorney	She was very impressed with the skills, diligence and passion of the lawyers in PDP. She was proud to be in PDP. The lawyers continually talk and learn from each other		
PDP	Attorney	In a Public Defender's Office, the attorneys only care about the group or system. In the Private Defender Program, you have to have godd skills to survive. It is the best representation. The ancillary services are the best/experts in the field. PDP is an equalizer for those who do not have money. The County gets this services at a tremendous discount compared to other counties.	Funding	Give PDP more funding similar to the District Attorney's Office or a Public Defender's Office. PDP should do more self-promotion and education to the public.
PDP				There should be more scrutiny on the DA's Office. More disgression used to not over-file charges (Sunny Day cases)
PDP	Attorney		Sentencing Alternatives	There are not enough sentencing alternative programs

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
PDP	Attorney	Outside attorneys say they are associated with the PDP.	Attorneys not in PDP	
PDP	Other		Traffic Court Fees	Many times low income residents cannot afford to pay traffic court fines/fees, which leads into bigger legal issues. Is there a way to lower the traffic court fees/fines?
PDP	Other		Funding for Interpreters	Interpreters for the PDP are native speakers, which is beneficial to clients in PDP. Many of the Interpreters are in their second careers. They only make \$332 for a whole day and \$156 for a half day. Can the pay rate be increased?
PDP	Attorney	There should be more funding for the PDP to bring it more parity with the District Attorney's Office. Attorneys with the PDP are asked to have more legislative involvement, but there is no funding to pay for this service.	Funding for PDP	
PDP	Attorney	The ancillary services available in the PDP are easy to obtain. This is not the same as in Public Defender's Offices. If these services are cut, this attorney would not continue to be involved with the PDP because it would not be fair to the clients.		
Superior Court		The availability of independent investigation resources helps to minimize wrongful convictions		
PDP	Attorney	Attorneys in PDP have control of the amount of work they take on, while in the Public Defender Program, attorneys have too many cases. The PDP attorneys are able to guarantee they have the time and skills to take on certain cases. The PDP can also hire additional attorneys if necessary.		



## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
PDP	Attorney	PDP attorneys do not have access to Odyssey, only the Adminsitrators do. This limits the amount of information they have access to and puts them at a disadvantage to the District Attorney's Office. Often times clients have multiple cases happening at the same time and this information is not available to the DPD attorney	Access to Odyssey	Give PDP attorneys acces to Odyssey so that they have more access to data.
PDP		The Grand Jury Report suggested that there was too much staffing in the PDP. Do they understand how/what the PDP does? For the In-Custody Pre-trial Hearings, the PDP attorneys do not have a lot of time to prepare. If they had Admin support they would be more prepared. This is opposite of what was written into the report. Also there was a suggestion of getting rid of teh Managing Attorney in the Juvenile Unit. This position works with the PDP attorneys to make sure they have time to take on a case(s). This is a big job. Not sure how the Grand Jury wants this handled in the future. Also suggested was the elimination of the Officer of teh Day postion, which takes calls from families, clients and lawyers and makes recommendations to teh administrators as to whether or not an attorney needed to be replaced. This position is important as it acts as an Ombudsman for the clients.		
PDP	Attorney		Funding for Speedy Trial Cases	Increase the funding

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
	Family Member	The program has given hope to the hopeless and a voice to the voiceless. Mom now has hope with the PDP. The PDP attorney did his homework and was a tenacious advocate. When you get an email at 9:30 pm on Friday or on the WE you know that the attorney is working for you. This is the first honest attorney I have had.		
PDP	Attorney	Represents juveniles. Families in the foster care system and the mentally ill. PDP is a great program because there is autonomy. Each attorney is independently representing the client. It is insulated from politics.		
PDP	Attorney	Response to Hanig/Casey Letter: Times are strict and move fast, these cases require expertise and knowledge of the timeliness and can't just be "handed off" to any attorney in the yellow pages. These cases require specialized attorneys with more training.		
ACLU North Peninsula	other	PDP helped change Sheriff policy about how long they helped undocumented immigrants.	It has been difficult to hear the PDP voice. Prop 47 - didn't hear the PDP voice until ACLU asked. ACLU wanted to hear from PDP and the County about services available.	Want one centralized system to find candidates for Prop 47. Difficult for the PDP to gather information about defendants in one place.
PDP	Attorney	The PDP has been a good deal for the County because it does not pay medical/retirement for attorneys. This is not good for the young attorneys entering the PDP		
PDP	Attorney	Our current private defender stated that it is so much better with current model because he used to work for a SoCal public defender office that had unreasonably high case volumes and no resources to hire experts.		

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
PDP	Attorney	"Officer of the Day" was defended by panel members as a good model. They do not believe it creates a conflict if a defendant criticizes a panel colleague—they chose Officer to handle it; will refer to the Chief Defender if necessary; they handle it professionally.		
	Attorney		The panel attorneys do not handle the "Marsden Procedure" correctly—they have a general unawareness about it.	
	Attorney		ACLU: Their clients report that there are advocacy issues—e.g. the meetings are set up and nothing happens; lack of responsiveness.	
PDP	Attorney		Don't like Chief Defender strategy with County because then County will "have its cake and eat it too" e.g. have control over budget of Chief so will cut budget and at same time save money by not having to hire the rank and file practicing panel lawyers as County employees.	
	Attorney			If County is overseer, this is good because it will reduce the conflict of interest that already exists with the current model.
PDP	Attorney	If the Board of Supervisors picks a 3rd party independent Chief Public Defender would still be bad, would destroy the culture.		
PDP	Attorney	Preserve status quo—stay with the current model because change is only about cost-cutting and has no regard for quality of service.		

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
	Attorney	It's a mistake to hire Local Bar Association with contract due to conflict of interest. Panel workers sit on Bar Board and oversee their boss, the Chief Defender.		
	Attorney	The report addresses issues that are legitimate.		
PDP	Attorney	The Private Defender is a harder sell than the District Attorney who sells public safety. If you bring in-house our budget will be more at risk than the D.A.		
PDP	Attorney	Don't destroy the PDP—it is a wonderful model.		
PDP	Attorney	The management at PDP is not too large, and, in fact, is not big enough.		
PDP	Attorney	PDP has a great support network for its legal professionals.		
PDP	Attorney		Focus resources, have parity between money spent on prosecution cases (including time spent by law enforcement for investigation of cases) and money spent on each case for the defense	
ACLU	Attorney		Have a space/place for clients and their families to submit complaints/feedback about their attorney or the process.	
ACLU	Attorney		Have the attorney handling the "Officer of the Day" phone calls be independent and transparent	
ACLU	Attorney		Agree with the recommendation to open the panel to Qualified attorneys	Have some parameters on what it means to be "qualified" and ensure that all attorneys available for appointment are capable of criminal defense representation

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
	Attorney	Application to be on the panel is not available to an outsider, and process seems to be whether you know someone	Have some transparency regarding the process to become a panel member	Indicate the number of spaces available on the panel; Application online; Transparency of the application process
PDP			The attorney covering the criminal calendar does not need to be a supervisor because it is not the function of the attorney covering the criminal calendar to evaluate other attorneys on the panel	
			Seems to be no client feedback in these sessions on the PDP	
	Attorney	Lack of communication potentially a problem from each attorney handling their individual cases and no central repository of cases or procedures (as there would be in a Public Defender's Office)	Communication to public about the criminal process	Mother of a juvenile who had a PDP representative felt lost in the process, did not know that the attorney was a panel member of the PDP, attorney had the wrong file, but ultimately, the mother felt there was a good outcome in the case
PDP	Attorney		Number of staff versus attorneys does not need to change	Statewide decline in number of trials, not unique to San Mateo County
	Attorney		Juvenile PDP Supervisor should not have a case load as it would detract from his function as a supervisor	Valuable resource as a supervisor, knows who is competent to handle cases
PDP	Attorney	No one PDP panel member benefitted from being on the Bar Board	Chief Defender and Bar Association	SMCBA has already taken steps to separate the chief defender from the Bar Association
PDP	Attorney	John D. was involved in creating the state and federal guidelines so panel members are confident that the state and federal guidelines are currently being followed and are met	County needs to know that this is not just a contract renegotiation, but could have unintended consequences that could affect criminal justice in this county	County should undertake an evaluation of whether the state and federal guidelines are being met when evaluating the program

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
PDP	Attorney		Complaints raised by the report are seen in public defenders offices statewide, but are on a smaller scale here in San Mateo County	
	Attorney		Youth have a lot of positive comments about the quality of representation here in the County	
ACLU		Not in favor of the County overseeing program rather than bar association.	Improve communications between clients and specific attorneys, easier mechanisms to communicate and for clients to motivate attorneys	Eliminate conflicts of interest in program structure (bar association/attorneys)
PDP	Attorney	Proud of program and services provided, interested in improvements that can be made.	Client awareness regarding officer of the day and other opportunities to communicate with PDP	
PDP	Attorney	PDP attorneys do a great job, never heard any real complaints, Program always provides attorneys and clients tools and support requested, single attorney consistency is important	Continue to provide enough attorneys to maintain high level of representation even as case loads grow.	
PDP		Has always seen a high level of service even with growth, officer of the day process effective to resolve complaints, spanish speaking helps clients, participant attorneys are handpicked based on fit and qualities, state of texas came to see program, staff and participant attorneys believe in the program and the clients, pride in how cases are assigned based on matching attorneys and clients needs.		
PDP	Attorney		Mentorship program helps attorneys in new areas of expertise, utilizes experts, specialists and investigators, provides support and freedom, resources and collaborative atmosphere	

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
PDP		PDP has resources not typically available to most public defender programs, which helps pdp work against resources of DA's office; there is an annual report of caseloads, motions written, trials completed, resources used-very transparent, used to support claims to protect resources; evaluations are a required part of the process; vetting process, mentorship, training, checks and balances to make sure attorneys provide quality representation; PDP panel steps in to correct issues if/when they arise; because of the Bar Association oversight, their reputation is on the line so all resources are made available including training and continuing education, mcle courses, that is not otherwise available; PDP budget is strictly to defend clients, all training is volunteer; bar association has worked to eliminate conflicts of interest (perceived and actual), directors do not participate in anything involving PDP; investigators are well respected; ongoing evaluation of attorneys (are they using the resources at their disposal?)	<p>Concerned about County taking oversight:</p> <ul style="list-style-type: none"> <li>-limited autonomy</li> <li>-currently mandated to serve clients, regardless of funding, would be difficult to balance if under County oversight due to different priorities</li> <li>-conflict of interests</li> <li>-Public Defender programs not typically staffed appropriately</li> </ul> <p>Concerns about unqualified/unvetted attorneys working on cases - often falls back to PDP when unqualified private attorneys try to represent client, except the case is behind and the judge is often frustrated, which may encourage inappropriate plea deals</p>	<p>Managing attorney does not currently have a caseload, should remain that way:</p> <ul style="list-style-type: none"> <li>-provides training</li> <li>-provides support</li> <li>-selects best attorneys for each case</li> <li>-complete casework provided</li> <li>-able to support all attorneys</li> <li>-strong administration builds strong staff</li> </ul> <p>Poor website, no one sees the depth of the program, only attorneys coming and going, more promotion/better promotion could help</p>
				Longer period to review PDP report before the Board's public hearing; explain the officer of the day and contact info more prominently displayed in forms and documents provided to clients

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
PDP		Program received an award from the American Bar Association. Received the Law Review example of excellence. PDP provides excellent criminal defense attorney on the panel. These same attorneys represent indigent/well off. PDP has supports to do good legal work including investigators and experts. These supports are generally not available to public defenders offices. Poor people has support as a matter of routine. Keep caseloads optimal. If county goes with a public defender there will be costs such as benefits and pension that may cost more. PDP does specialized work. PDP can hire the best experts in the County. Petitioning the court is not necessary. Case loads - independently run don't get crushed by caseloads. Many PDP attorneys have also been DAs providing a unique perspective of both sides.		
			Don't want to go back to the "bad old days" of unspecialized attorneys.	
		The PDP can hire the best experts in the county. Petitioning the court is not necessary. Case loads - independently run don't get crushed by caseloads Many PDP attorneys have also been DAs provided a unique perspective of both sides.		
				Delay in getting attorney assigned from arraignment to PDP to assignment. There may be gaps there that can be tightened.
				Is there tracking/repository of attorney and number of cases assigned to prevent multiple calls to attorney with case overload.



## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
				Specializations can delay assignments because the attorney is specialized and the case may not be.
Juvenile Court		PDP with Probation resolved an issue where children had an ICE hold and were held in federal detention centers.		
ACLU				PDP has a great public role. Community corrections partnership - not as much participation about adult defendant advocacy by PDP. Example: John Digiacinto (head of PDP on CCP.
PDP		PDP has volunteer attorneys in sheleters to help people with legal problems.		
PDP				This is being proposed because of money. It can be adjusted and do things better. Such as: more politically active, administration, but those issues are not due to structure. You get good value for representation. Keep the system to keep good attorneys.
ACLU				How and where are complaints listed?
Juvenile Court		PDP resolved: Children unlawfully confined in juvenile hall. ACLU hears wonderful things about this with Juveniles, not so much with adults.		
ACLU				County agencies aren't great about publishing procedures and protocols. More transparency when there is a problem with an attorney. What system is in place when there is a problem with an attorney? There needs to be a flowchart and safeguards.

## Summary of Feedback on Private Defender Program

Organization (if specified)	Involvement with Private Defender Program	General Comments	Improvement Areas	Suggestions for Improvement
	Friend of Defendant			Need transparency for support services. What services are available? Families want to know timelines and roles for attorneys, family members.
PDP				AOC has money the PDP has not been able to access. Funding is to enhance representation of the children.
		What works: Competitive budget - compared to other Public Defenders and Private attorneys. Complaints are addressed immediately. Executive staff meets with clients if asked to. Availability to get experts. Funding for investigators. Funding for retesting. Access to independent social worker. Managing attorneys without a caseload. Mentorship program. Excellent staff support. Low turnover among admin staff and attorneys. Supportive leadership. Exec/Admin staff works at efficient level - work hard. Great job screening/vetting attorneys. Attorneys meet with clients after arraignment but before subsequent court dates, especially in-custody clients.		Expand training programs MCLE: more resources to expand program, attend seminars, more money for people to come in. Access to Odyssey. Public outreach - more people to know what we do. Increase budget. Reevaluate budget. Maintain independence from the County. Educate the public on the program and how it is structured. Help clients with DMV problems (need money). Ancillary services: Housing, SSN/SSI benefits, Veterans Services, Immigration, School issues. Client complaints- survys in court and contact "officer of the day".
				Hard to get fees for juvenil cases from reveue services.
				Expand law library hours as it is a great resource.

## ATTACHMENT E – Application Materials for PDP Attorney Candidates

### MEMORANDUM

FROM: MYRA WEIHER, ASSISTANT CHIEF DEFENDER

TO: APPLICANTS TO THE PRIVATE DEFENDER PROGRAM

RE: THE APPLICATION PROCESS

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This memorandum is designed to outline the process by which applications are considered, and to provide a glimpse at some of the factors that affect decisions about adding attorneys to the Panel.

All attorneys on the Private Defender Panel are Independent Contractors and not employees of the Private Defender's Office or the San Mateo County Bar Association.

An applicant must be an active member in good standing of the California State Bar and the San Mateo County Bar Association (as defined in the By-Laws of the Association) for at least one year prior to the submission of the application.

The principal office of the applicant must be in San Mateo County.

The Chief Defender may establish additional criteria for admission to the Private Defender Panel.

Factors which are taken into consideration in the admission of an applicant to the Panel are:

1. The need for additional lawyers based on an analysis of the current caseload and projections for the future;
2. The skill level of the applicant, including special skills such as language abilities;
3. The comments of the references provided by the applicant as well as comments from those not mentioned as references who have had contact with the applicant in the criminal justice community;

4. An evaluation of the applicant's devotion to the representation of the indigent as opposed to a simple desire to supplement his or her income;
5. The likelihood that the applicant will strive to and will achieve a level of excellence that will enable her or him to handle more serious cases in the future;
6. An evaluation of the applicant's ability to work within the San Mateo County criminal justice community;
7. The applicant's reputation for honesty and integrity in all segments of the criminal justice community.
8. Such other and further criteria as may be established by the Chief Defender in his discretion.

If you submit an application, and upon review of that application the Chief Defender determines that there is reason to conduct an inquiry into your background and qualifications and consult your references, you will be notified of that determination. This determination will be in the absolute discretion of the Chief Defender. There is no right to such an inquiry on any application submitted. If an inquiry is deemed to be warranted, the inquiry will go beyond a check with the references listed on the application. It will seek input from other members of the criminal, juvenile, and civil justice communities with whom an applicant may have had contact. The object of this investigation will be to obtain a picture as complete as possible of the applicant as a lawyer. This process will be time consuming.

After the inquiry has been completed, and if the Chief Defender determines, in his discretion, that further examination of your application is warranted, you will be contacted to arrange an interview. At that meeting, your background and experience will be further explored, and the operation of the Program will be more fully explained. The Chief Defender will then make a determination as to whether you will be admitted to the Private Defender Panel.

Skill level, background, experience, and the comments of references are among the factors that will be considered in the Administrator's decision. It is important for you to know, however, that every decision about adding an attorney to the Panel will include an analysis of the need for additional attorneys in light of current and projected caseloads.

We appreciate the interest you have expressed by your application.

SAN MATEO COUNTY BAR ASSOCIATION  
PRIVATE DEFENDER PROGRAM

PANEL ATTORNEY APPLICATION

APPLICANTS: Please note **before** completing the application that there are minimum requirements for admission to the Private Defender Panel. Fulfilling these requirements **does not** ensure that you will be placed on the Panel. Panel members are Independent Contractors.  
The requirements are 1) Principal or main office in San Mateo County; and 2) Membership in the San Mateo County Bar Association for one (1) year or longer.

CONFIDENTIAL:

Personal Data

Name:	California State Bar #:
	Social Security #:
Principal Office Address:	
Office telephone number:	Office fax number:
Cell phone number:	
Check one: Sole Practitioner ___ Firm ____	
Other [identify]: _____	
Home address:	Home phone number:

Professional Data

Law School:	Year graduated:
Year admitted to California Bar:	Year joined San Mateo Bar:
State Bar #:	

Undergraduate school:  
Year graduated:

Major:

Other professional/graduate degrees:

Year completed:

Educational institution:

California State Bar #

Year of admission?

Other states in which you are licensed to practice law:

Are you a State Bar Certified Specialist in any are: Which?

Criminal Law Practice:

Please indicate number of following types of cases handled:

\_\_\_\_\_ murder cases          \_\_\_\_\_ misdemeanor cases          \_\_\_\_\_ trials

\_\_\_\_\_ felony cases          \_\_\_\_\_ mental health proceedings

\_\_\_\_\_ juvenile cases          \_\_\_\_\_ appeals and writs

Years of service as deputy district attorney or public defender: From \_\_\_\_\_ to \_\_\_\_\_

Years in which engaged in criminal law practice: From \_\_\_\_\_ to \_\_\_\_\_:

Percentage of present law practice spent on criminal or related matters:      %

Criminal practice specialties (i.e., narcotics, juvenile, violent felonies, DUI, etc.)

Criminal law training programs or seminars attended [please include dates]:

References:

List names of Private Defender Panel attorneys with whom you have been co-defendant's counsel

List names of San Mateo County Deputy District Attorneys who have been opposing counsel:

List the names of any judges before whom you have appeared:

Please list at least three references who are either attorneys or judges:

Miscellaneous

Please indicate any foreign languages spoken:

Please list anything about your background or experience that you believe would be helpful to you as a member of the Private Defender Program:

Please list anything about your background or experience that you wish to have considered regarding your qualifications to be on the Private Defender Panel:

Please attach any resume or statement that you wish to have considered regarding your qualifications to be on the Private Defender Panel.

By signing and dating this application, I am authorizing the SMCBA to conduct a check on my background and references. Additionally, I am acknowledging that I realize that attorney panel members are independent contractors and have no expectation of a specific caseload or income.

Date:

-----  
Signature