

**MANAGEMENT AUDIT OF  
THE OFFICE OF THE PUBLIC DEFENDER  
AND INDIGENT DEFENSE SYSTEM  
OF THE  
COUNTY OF SANTA CLARA**

**Prepared for the  
Board of Supervisors  
of the County of Santa Clara**

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# *Santa Clara County Public Defender Study -*

## **Executive Summary**

A summary of findings and the recommendations from each section of the audit report are presented below. A priority ranking is shown for each recommendation consistent with the audit recommendation priority structure adopted by the Board of Supervisors, as follows:

Priority 1 = Recommendations that: address noncompliance with federal, State and local laws, regulations, ordinances and the County Charter; would result in increases or decreases in expenditures or revenues of \$100,000 or more; or, suggest significant changes in federal, State or local policy.

Priority 2 = Recommendations that: would result in increases or decreases in expenditures or revenues of less than \$100,000; advocate changes in local policy; would revise existing departmental or program policies and procedures for improved service delivery, increased operational efficiency, or greater program effectiveness.

Priority 3 = Recommendations that: address program-related policies and procedures that would not have a significant impact on revenues and expenditures but would result in modest improvements in service delivery and operating efficiency.

### **Section 1: Indigent Defense Delivery Structure**

#### ***Summary of Findings:***

- To comply with United States and California law, Santa Clara County provides indigent defense services through four entities: the County Offices of the Public Defender and the Alternate Defender to initially process cases; private attorneys through the Legal Aid Society for cases where the County offices have a conflict of interest; and a contract firm for all juvenile dependency cases. The Alternate Defender's Office was created in 1996 to process more cases for which the Public Defender's Office has a conflict of interest with County staff, thereby reducing the costs for private attorneys for those cases.
- The full cost savings that could be realized from creation of the Alternate Defender's Office are not being achieved due to the current assignments of the three indigent defense providers, excluding the juvenile dependency contractor. Based on average costs per case, the least costly approach for the County would be to assign all adult and juvenile delinquency cases initially to the Public Defender's Office, then to the Alternate Defender's Office when the Public Defender's Office has a conflict of interest, and, finally, to the Legal Aid Society when the Alternate Defender's Office has a conflict of interest. Instead, the County is using the Alternate Defender instead of the Public Defender to initially process some cases and the Legal Aid Society instead of the Alternate Defender for some Public Defender conflict of interest cases. By following the least costly case flow sequence for all cases and courthouses, the County could reduce its indigent defense costs by an estimated \$282,894 per year.

- Besides cost reduction, the recommended case flow should result in improved case processing time and quality of services. Court data shows that cases assigned to the Legal Aid Society take longer to process than those assigned to either the Public Defender or Alternate Defender. Though responses were limited, a survey of Santa Clara County judges shows that some have very serious concerns about the quality of Legal Aid Society attorneys compared to the attorneys of the Offices of the Public Defender and Alternate Defender.

Based on the above findings, the following is recommended.

The Board of Supervisors should:

- 1.1 Direct the Public Defender to assume the role of first tier adult and juvenile delinquency indigent defense service provider for all County courts. (Priority #1)
- 1.2 Direct the Alternate Defender to assume the role of second tier adult and juvenile delinquency indigent defense service provider for all County courts except for South County and North County (Palo Alto/Sunnyvale) misdemeanor conflict cases. (Priority #1)
- 1.3 Direct the County Executive to work with the Public Defender and Alternate Defender to prepare a transition plan for the proposed new indigent defense system structure including an increased appropriation of approximately \$1,612,974 to cover the salaries, benefits and associated services and supplies cost for 6.5 new attorney and one Legal Clerk positions in the Public Defender and Alternate Defender's Offices and a decreased appropriation for the Legal Aid Society contract of at least \$1,895,868, phased to ensure completion of and payment for case work already underway but not yet billed. (Priority #2)
- 1.4 Direct the County Executive to negotiate with the Legal Aid Society for a reduction in administrative costs based on the anticipated decrease in caseload and to incorporate that in to the County's amended agreement with the Legal Aid Society. (Priority #1)
- 1.5 Require that the County Executive monitor, for at least 6 months, the costs associated with the recommended reorganization to ensure savings are achieved. (Priority #1)
- 1.6 Have the Public Defender provide bi-annual reports to the Board of Supervisors and the County Executive regarding the status of implementation of the proposed reorganization until it is fully implemented. Upon full implementation of reorganization, the Public Defender should continue to provide the Board of Supervisors and the County Executive with bi-annual reports regarding the costs and other management aspects of the indigent delivery system. (Priority #2)

*Note: See first page of Executive Summary for definition of recommendation priorities.*

- 1.7 Direct the Public Defender, Alternate Defender, Legal Aid Society, and Santa Clara Juvenile Defender staff to track their full costs, including indirect administrative costs, by each major case category, and to report these costs to the County Executive at least annually. (Priority #3)
- 1.8 Direct the County Executive to conduct a cost and efficiency analysis of the current contract arrangement for juvenile dependency indigent defense services, in advance of the expiration of the current contract in 2008, to determine if changes to the current arrangement, such as using County staff instead of a contractor, would be of benefit to the County proceedings. (Priority #3)

## **Section 2: Structure and Role of Management**

### ***Summary of Findings:***

- The role of managers at the Public Defender's Office does not include establishment of staff performance and efficiency goals and objectives or responsibility for ensuring that they are accomplished. Without such a focus, staff are receiving inconsistent levels and quality of oversight by their managers and supervisors. The managers' spans of control vary, adding to inconsistent levels of management oversight.
- The four Assistant Public Defenders are responsible for managing all attorney staff and performing a variety of administrative and special project functions, many of which could be performed by less costly, non-attorney staff. By their own estimates, their administrative functions consume 81 percent of their collective time, leaving little time for overseeing staff performance.
- Many of the administrative and special project duties now performed by Assistant Public Defenders could be performed by the Administrative Services division. By transferring such functions, the Assistant Public Defenders could concentrate on legal team management. Further, much needed staff analytical capacity could be increased by converting, through attrition, one Assistant Public Defender position to a Management Analyst at an annual cost savings of approximately \$145,000. Even with this conversion of one management position, more Assistant Public Defender time could be allocated to management activities than is the case at present.
- The ten supervisors who report to the Office's managers provide varying levels and approaches to supervision, with their spans of control ranging from 2.5 to 28 employees supervised and a number reporting to multiple managers. Some of the supervising attorneys process cases themselves; others do not. The majority of staff attorneys responding to the audit survey indicated that their supervisors are generally available and treat them respectfully, but approximately 40 percent of respondents reported that they do not receive useful guidance from their supervisors on how to perform their jobs.

*Note: See first page of Executive Summary for definition of recommendation priorities.*

Based on the above findings, the following is recommended.

The Public Defender should:

- 2.1. To the extent possible, collaborate with the Office's management team to establish Office of the Public Defender short- and long-term performance and efficiency goals and objectives, and performance measures in at least the following areas: quality of service as assessed by clients and County judges; staff productivity; case processing efficiency; case results; and others. (Priority #2)
- 2.2. Direct the Assistant Public Defenders to assume responsibility for monitoring performance and achieving or improving on Office goals and objectives pertinent to their units by monitoring performance and identifying and resolving any problems identified in areas such as staff productivity, case processing efficiency and quality of service. (Priority #2)
- 2.3. Direct the Assistant Public Defenders to monitor and report performance of their teams and organizational units using actual performance data from the Office's SCALES and the County's CJIC computer systems. (Priority #2)
- 2.4. Transfer the information systems and paralegal units and most human resources, budget and statistical compilation functions, to be performed by the recommended Management Analyst position (See Recommendation #2.8), from the Assistant Public Defenders to the Administrative Services division. (Priority #2)
- 2.5. Request funding from the Board of Supervisors for a new Management Analyst position, to report to the Administrative Services Manager III, to be responsible for fiscal analyses, development and analyses of performance measurement reports, human resources administrative and analytical functions and related analyses and special projects and whose cost would be offset through deletion of one Assistant Public Defender. (Priority #1)
- 2.6. Realign legal teams under three Assistant Public Defenders such as the following allocations to allow for more equitable spans of control, better alignment of functional areas and fewer supervisors reporting to multiple Assistant Public Defenders:
  - Assistant Public Defender #1: Juvenile Delinquency; Mental Health; South County courthouse; Research; Sexually Violent Predator unit; and Probation Violations.
  - Assistant Public Defender #2: San Jose Misdemeanor unit; Drug Court; Preliminary Hearing unit; Sunnyvale courthouse; Domestic Violence unit.
  - Assistant Public Defender #3: Felony trial unit; Special Trials Unit.(Priority #2)

*Note: See first page of Executive Summary for definition of recommendation priorities.*

- 2.7 In collaboration with the Office's managers, prepare a description of and standards for supervisors, addressing issues such as whether or not attorney supervisors should process cases and how they should monitor performance of their staff and how their monitoring should be reported to management. (Priority #2)

The Board of Supervisors should:

- 2.8 Add one Management Analyst position to the Salary Ordinance for the Office of the Public Defender at an approximate annual costs of \$104,600 in salaries and benefits and, as allowed by attrition or other opportunities, delete through attrition one of the four positions serving as Assistant Public Defenders in the Public Defender's Office, for an annual savings of approximately \$250,000 in salaries and benefits. (Priority #1)
- 2.9 Adjust the salaries and benefits budget for the Office of the Public Defender to reflect the \$145,000 in net savings in accordance with the increases for the new Management Analyst position and the decrease for the deleted Assistant Public Defender. (Priority #1)

### **Section 3: Information Systems**

#### ***Summary of Findings:***

- The Public Defender and Alternate Defender offices (PDO and ADO) do not fully utilize available information systems to streamline work processes or as a tool for measuring and improving performance. The offices' internal system, SCALES, offers automation of certain staff functions and the potential for producing management reports and information for tracking key performance measures. However, many staff members do not use the system for common work processes and management does not use data available in the system to monitor and analyze performance and productivity such as caseload and cases per attorney.
- The County Criminal Justice Information Control System (CJIC) contains extensive data about all adults currently or previously in the criminal justice system. System data could be used by the PDO and ADO to identify co-defendants, victims and witnesses who represent a conflict of interest and for system-wide performance management reports. Unfortunately, PDO and ADO access to CJIC is restricted by the CJIC Steering Committee, prohibiting many of these potential benefits. CJIC data is not being used by the County to monitor the indigent defense system or to reconcile cases and costs reassigned from the Public Defender to the Alternate Defender and Legal Aid Society are verified and accurate.

*Note: See first page of Executive Summary for definition of recommendation priorities.*

- Use of both systems by the PDO, ADO and County management should be expanded to streamline work processes and to develop better reports for management review and assessment of efficiency measures of each segment of the indigent defense system such as cost per case, cases per attorney, average case processing time and average number of continuances per case. The County Executive's Office should assume an oversight role for the indigent defense system as a whole to ensure caseload and cost accuracy and consistency for the three segments of the system.

Based on the above findings, the following is recommended.

The Public Defender should:

- 3.1 Direct Public Defender's Office Information Systems staff to identify staff problems and issues preventing use of the SCALES system and assist with planning appropriate training to increase its usage and/or make technical changes to the system if possible to improve the ease with which it can be used. (Priority #2)
- 3.2 Direct Information Systems staff to work with PDO and ADO management and design a series of reports from SCALES, or possibly using readily available software, that will allow for regular management analysis of key performance measures (a) case disposition times; (b) number of continuances per case; (c) outcomes by type of case and location; (d) conflict of interest declarations; (e) number of days the case was with the Public Defender until a conflict of interest was declared; (f) investigation time; and, (g) time for special requests, such as preparation of a social history for a Romero Hearing. (Priority #2)
- 3.3 Direct staff in both Defender offices to keep team assignment records indicating every time their team or other assignment is changed so that the offices will have a full accounting of staff time by team or by administrative function at the end of the year. (Priority #2)
- 3.4 Combine staff team assignment records with actual payroll and other cost data to develop the ability for ongoing assessments of cost per case for both the PDO and ADO by team and type of case. (Priority #2)
- 3.5 Work with the Criminal Justice Information Control System (CJIC) Steering Committee, the District Attorney, County Counsel, and the Board of Supervisors to determine what additional controls should be established to allow more full access to the County's Criminal Justice Information Control System (CJIC). (Priority #2)
- 3.6 Work with CJIC Steering Committee to develop protocols for more extensive access to CJIC for determining conflicts of interest earlier on in cases, identifying

*Note: See first page of Executive Summary for definition of recommendation priorities.*

defendants with multiple simultaneous cases and other case streamlining processes. (Priority #2)

The Board of Supervisors should:

- 3.7 Direct PDO Information Systems staff, the County Executive's Office and CJIC technical staff to collaborate on development of new management reports using CJIC data and including cross-system comparisons of consistent measures such as reconciled conflict of interest caseload between the three indigent defense entities, case processing time, number of continuances, case outcomes, cost per case and others for all three tiers of the indigent defense system: the PDO, the ADO and the Legal Aid Society, and to report the results back to the Board of Supervisors within six months and on a regular ongoing basis subsequently. (Priority #2)
- 3.8 Director the Public Defender, County Executive and CJIC to collaborate with the County's Trial Courts to develop protocols so that data is entered in a consistent manner in CJIC to allow for production of comprehensive management reports for all segments of the indigent defense system. (Priority #2)

#### **Section 4: Indigent Defense Financial Screening**

##### *Summary of Findings:*

- State law and the Santa Clara County Code require that the Public Defender provide services to any defendant not able to employ private counsel. Neither specify how eligibility should be determined but case law suggest that careful scrutiny should be applied to a defendant's income, assets, debts, expenses, and other indicators of financial position through a formalized questionnaire.
- In some cases, the Offices of the Public Defender and Alternate Defender conduct financial screenings of all new clients upon intake but the process is minimal, information is provided orally and no external documentation is required. As a result, controls are lacking to ensure that only eligible individuals are being represented by the two Defender offices. In some counties where more thorough financial screening takes place, approximately 10 to 15 percent of all applicants do not meet the eligibility criteria.
- A more reliable financial screening process could be implemented without undue additional work by using a tiered approach with certain documented conditions such as incarceration or receiving public assistance resulting in presumed eligibility and only more unusual conditions being subject to additional review. This process could also benefit the County by more accurately identifying defendants with the ability to contribute to the cost of Public Defender services provided, as ordered by the courts at case disposition.

*Note: See first page of Executive Summary for definition of recommendation priorities.*



- To offset costs associated with intake and financial screening, the County is authorized by State law to impose an upfront registration fee of up to \$25 for those with the ability to pay this amount. Implementation of this fee could generate an estimated \$125,000 in annual revenue, assuming only 25 percent of all clients would be able to pay, and more if the payment rate is higher. If the Board of Supervisors were to advocate for an amendment to State law to allow for an increase in the registration fee established in 1996 from \$25 to \$100, annual revenues could be increased to an estimated \$300,000 to \$500,000 per year if the fee is adopted by the County.

Based on the above findings, the following is recommended.

The Public Defender should:

- 4.1 Revise client financial screening policies and procedures to incorporate principles of “careful inquiry” including: use of the Office’s standardized screening questionnaire for all applicants and required external documentation of assets, debts and expenses in appropriate cases; and, consideration of the nature and seriousness of the case. (Priority #2)
- 4.2 Establish certain verifiable financial circumstances under which client applicants will be presumed eligible, such as incarceration, receiving public assistance, income within a certain percentage of a government-established poverty level for the County, a certain ratio of income to expenses and being involuntarily committed to a mental health institution. (Priority #2)
- 4.3 Establish financial indicators such as ownership of two or more vehicles, real property ownership with a mortgage balance, posting of substantial bail and others that will trigger further financial review by paralegal staff in instances where information provided by client applicants is not consistent or could indicate unreported income or assets. (Priority #2)
- 4.4 Work with the Courts to develop protocols for using financial screenings in determining defendant ability to pay for legal services as part of sentencing. (Priority #2)
- 4.5 Direct staff to begin keeping records of the number of client applicants who are determined to be ineligible for services as a result of more in-depth financial screening and report this quarterly to Public Defender management so that they can determine if the rate of indigent clients is consistent with the experience in other jurisdictions. (Priority #3)

*Note: See first page of Executive Summary for definition of recommendation priorities.*

The Board of Supervisors should:

- 4.6 Adopt a resolution or ordinance permitting the imposition of a \$25 registration fee for all indigent defense applicants to be paid at the time of intake for applicants with the ability to pay the fee at that time. (Priority #1)
- 4.7 Require that the Department of Revenue include the collection of the \$25 registration fee when collecting fees from Public Defender clients in instances when these clients are unable to pay at the time of intake but are able to pay after case disposition. (Priority #1)
- 4.8 Direct the County Executive Officer to develop cash handling procedures for the paralegals who will be collecting this registration fee as part of intake in all cases where the defendant is able to pay. (Priority #3)
- 4.9 Seek a legislative amendment to California Penal Code §987.5(a) and (e) to adjust the maximum registration fee allowed for indigent defense services from the current \$25 to \$100 for those determined to be able to pay. (Priority #1)

## **Section 5: Conflict of Interest Cases**

### ***Summary of Findings:***

- The Public Defender's Conflict of Interest policy requires that supervisors review and approve each staff attorney's conflict of interest declaration before a case is reassigned to alternate counsel. This is an important management function to ensure that the right to declare conflicts is not abused by staff to transfer cases inappropriately.
- Though most staff attorneys reported in a survey that Office conflict of interest policies are clear, the records show that documentation of compliance is not occurring. Though both the SCALES computer system and the Office's standard case file forms include places to record information such as date conflict declared, name of approving supervisor and reason for the conflict of interest, a review of electronic and paper case files found that such information has not been recorded in a substantial number of cases. There was no documentation of supervisor approval, for example, in 2,421, or 48.1 percent, of 5,034 electronic cases reviewed. This leaves management without a documented means of assuring that conflict of interest declarations are not occurring improperly such as to reduce caseload or to transfer disagreeable cases.
- Information about conflict of interest cases should be routinely recorded by staff and compiled from the SCALES system for management review. This would enable managers to identify staff or legal teams for corrective action who might be routinely

*Note: See first page of Executive Summary for definition of recommendation priorities.*

declaring conflicts after they have started processing cases. In addition, such compilations should be used by the County to reconcile Public Defender conflict declarations with the reported caseload of the Alternate Defender and the Legal Aid Society.

- The Public Defender adopted a revised conflict of interest policy in November 2006 that still requires written supervisor approval of staff declarations of conflicts of interest. The policy has been improved by requiring administrative staff to return conflict case files to supervising attorneys if they do not contain a conflict form signed by the supervisor. When this new policy fully implemented, it should result in a higher compliance rate with Office policy.

Based on the above findings, the following is recommended.

The Public Defender should:

- 5.1 Monitor staff adherence to the Office's updated Conflict of Interest policy to ensure that all staff attorneys and their supervisors document declarations of conflicts of interest in the SCALES system, including date and court event when the conflict was declared, reason for the conflict, name of approving supervisor and indigent defense service provider to whom the case was reassigned. (Priority #2)
- 5.2 Request that information systems staff prepare regular reports for management that compiles information about cases declared conflicts of interest to provide assurance that all staff are recording all required information. (Priority #2)
- 5.3 Review the new conflict of interest case compilation report with legal team managers to determine if recurring problems are occurring, such as non-compliance with Office policy or if certain attorneys or teams are regularly declaring conflicts late in their cases and use this information to design interventions to correct such situations. (Priority #3)
- 5.4 Provide the new conflict of interest case compilation report to the County Executive for reconciliation with caseload reported by the Alternate Defender and the Legal Aid Society. (Priority #2)

## **Section 6: Legal Aid Society Cost and Caseload Reporting**

### ***Summary of Findings:***

- The Legal Aid Society of Santa Clara County charged the County approximately \$6.2 million for its indigent defense services in FY 2005-06, or approximately \$560,000 more than the amount budgeted. One of the difficulties in more accurately budgeting

*Note: See first page of Executive Summary for definition of recommendation priorities.*

for this contract is that the organization is not providing all of the cost, caseload and related information to the County as required in their contract. Such data would enable the County to analyze the appropriateness of monthly invoices and annual cost increases and to make more informed decisions about the appropriate level of funding based on the current and projected mix of cases and average costs per case.

- The Conflicts Program contract allowed for approximately \$1 million to be paid to the Legal Aid Society for administrative costs in FY 2005-06. The contract does not include details on these costs and the Legal Aid Society could not provide an itemized budget to support that amount. Further, the organization billed the County for approximately \$398,000 more in administrative costs than the approximately \$1 million allowed in the contract in FY 2005-06 through “miscellaneous cost” charges, a cost category not defined or budgeted for in the contract. The miscellaneous charges paid in FYs 2004-05 and 2005-06 include at least \$211,403 in legal costs for a lawsuit filed against the Society by a panel attorney. Charging the County for these costs appears to violate the indemnification provisions of the contract.
- Determining actual administrative costs is further complicated because they include an estimated \$467,400 for two direct service programs provided by the Legal Aid Society in addition to Conflicts Program Services: child support contempt case defense services; and, the Juvenile Review Project. The costs and caseload for these additional services are not separately identified in the contract, monthly invoices or quarterly and annual reports, making it impossible for the County to evaluate the cost-effectiveness of these services.
- Inaccuracies were found in Legal Aid Society records reviewed including cases billed for which there were no court records in the County’s criminal justice system database and attorneys on the organization’s panel roster who are no longer in private practice. While the Legal Aid Society does review individual attorney bills and finds and records errors, there are no repercussions to these attorneys for such mistakes, in violation of the organization’s own policies and procedures. There is no external check on Legal Aid Society costs or external audits of individual attorney invoices.

Based on the above findings, the following is recommended.

The County Executive should:

- 6.1 Require that the Legal Aid Society provide the County with all contractually required data and reports including monthly reports with separate cost and caseload data for all classifications of adult and juvenile cases, specifically including:
  - (a) Itemized legal and ancillary case costs paid during the previous month and year-to-date to all *contract* attorneys categorized by case classification and courthouse, with a comparison to budgeted amount for the fiscal year;

*Note: See first page of Executive Summary for definition of recommendation priorities.*

- (b) Itemized legal and ancillary case costs paid during the previous month and year-to-date to all *non-contract* attorneys categorized by case classification and courthouse, with a comparison to the budgeted amount for the fiscal year; and,
- (c) Total number of conflict of interest cases assigned to, opened by, and closed by contract and non-contract attorneys during the previous month and total year-to-date, categorized by case classification with a comparison of how the total number of cases relates to the previous year's actual caseload for the same period and the projected total for the current fiscal year.

(Priority #2)

- 6.2 Track and reconcile all Legal Aid Society Conflicts Program caseload information with the number of conflict of interest cases reported by the Public Defender and the Alternate Defender's Office and available through the County Criminal Justice Information Council system (CJIC). (Priority #2)
- 6.3 Require that the Legal Aid Society provide the County with separate detailed budgets and monthly cost and caseload reports for its Order to Show Cause child support case services and the Juvenile Review Project. (Priority #2)
- 6.4 Require that the Legal Aid Society provide the County with concise and clear reports listed in Section 6.A ("Reports to County and Performance Standards") of the Conflict Program's contract with the County, which describes the quarterly and annual reports that the Legal Aid Society is required to provide the County (e.g., number of cases assigned, opened, and closed by Contractor and classification of case; expenditures by Court and case classification, including investigation, expert fees, and other costs in relationship to the budget; etc.). (Priority #2)
- 6.5 Reestablish performance standards in the contract between the County and Legal Aid Society and the requirement that the Society report actual performance monthly in the same areas recommended for measuring and reporting by the Offices of the Public Defender and Alternate Defender in Sections 2 and 3 of this report including average case processing time, number of continuances per case, average cost per case by type of case, quality of services as measured by County judges and clients, and others. (Priority #2)
- 6.6 Require that the Legal Aid Society identify and provide to the County annually an itemized breakdown of all areas of administrative costs related to the Conflicts Program, including:
  - (a) An itemized list of and budget for all Conflicts Program in-house administrative and management staff, including their names, position

*Note: See first page of Executive Summary for definition of recommendation priorities.*

titles, responsibilities, annual salaries and mandatory fringe benefits, and the amount of time spent on Conflicts Program functions versus other Legal Aid Society activities; and

- (b) An itemized list of and budget for all Conflicts Program non-personnel costs, including a justification for and description of each cost item and how each itemized cost was calculated.

(Priority #2)

- 6.8 Require that the Legal Aid Society provide the County each month with itemized actual administrative cost expenditures for the Conflicts Program, broken down by line item and including a comparison to budgeted line item amounts for the relevant fiscal year. (Priority #3)
- 6.9 Begin conducting random checks of the accuracy and validity of all Legal Aid Society Conflicts Program billing information each month as part of its payment process to the Legal Aid Society. This procedure, which can be done by existing County Executive staff, should include verifying a sample of the Legal Aid Society cases that are billed during the month against the attorney records collected by the Legal Aid Society and information from the County's Criminal Justice Information Control System (CJIC). (Priority #3)
- 6.10 Consider requiring that the Legal Aid Society submit an annual financial audit of Conflicts Program's finances, as previously required by the County. The Legal Aid Society should have its annual financial statements relating to the Conflicts Program audited by an independent Certified Public Accountant and provide the County with an internal control or management letter and a copy of these findings along with the annual audit report. (Priority #3)
- 6.11 Consider requiring the Legal Aid Society Conflicts Program submit quarterly updates on ongoing efforts by the Legal Aid Society Conflicts Program to facilitate cost savings for the County and improvements in indigent defense services provided by the Program. (Priority #3)
- 6.12 Direct County Counsel to determine the appropriateness of the \$211,402.89 in legal defense charges that the County has paid for Legal Aid Society costs incurred due to a lawsuit filed by a panel attorney and if those payments should be reimbursed to the County. (Priority #1)

## **Section 7: Legal Aid Society Attorney Contracts**

### ***Summary of Findings:***

- Attorneys working for the Legal Aid Society's Conflicts Program work in either a contract or non-contract capacity. Contract attorneys are supposed to receive a steady

***Note: See first page of Executive Summary for definition of recommendation priorities.***

stream of the higher volume misdemeanor and lower level felony cases in exchange for which they are paid a flat rate per case. As added incentive, contract attorneys receive case fee payments in advance of providing their services, along with stipends of between \$7,500 and \$10,000 per year.

- Non-contract attorneys are supposed to provide representation for the more complex felonies including homicides and death penalty cases. Since the amount of time required for cases such as these can be difficult to determine in advance, contract attorneys are paid fees based on their time and case activities.
- Legal Aid Society records show that contract attorneys are not actually providing representation for most misdemeanors and lower level felonies and that, when they do, their average cost per case is higher than the cost of non-contractors for similar types of cases. In FY 2005-06, non-contractors provided representation in approximately 55 percent of all adult and 65 percent of all juvenile misdemeanors and non-complex felonies. For adult cases, the average contractor cost per case for misdemeanors and non-complex felonies was \$1,103 as compared to \$897 for non-contractors in FY 2005-06. For juvenile cases, the comparable average contractor cost per case was \$1,580 versus \$542 for non-contractors.
- Given that the majority of Legal Aid Society cases are handled by non-contractors, their cost per case is lower and they are paid after their services are provided rather than before, there does not appear to be any benefit to the County for the Legal Aid Society to continue the contractor arrangement with certain attorneys. By eliminating this arrangement and using non-contractors for all cases, the County could reduce its Legal Aid Society costs by an estimated \$449,405 per year.

Based on the above findings, the following is recommended.

The Board of Supervisors should:

- 7.1 Direct the County Executive Officer to amend the County's agreement with the Legal Aid Society to discontinue the contract attorney fee structure and classification for the Conflicts Program. (Priority #1)
- 7.2 Direct the County Executive Officer to prepare an implementation plan with the Legal Aid Society to phase out the contractor status so that all current contractors provide services for the amounts they have already been paid by a certain date, or provide reimbursement to the County for services not provided after that date. (Priority #2)
- 7.3 Direct the County Executive Officer to require that the Legal Aid Society provide the County with an itemized report accounting for all payments made to contract attorneys and cases opened and closed between FY 2003-04 and 2005-06 and all credits to the County for work not completed. (Priority #2)

*Note: See first page of Executive Summary for definition of recommendation priorities.*

- 7.4 Direct the County Executive Officer to require that the Legal Aid Society report all actual costs and cases and average costs per case, by type of case, separately for contractors and non-contractors as long the contractor system is still in place. (Priority #2)
- 7.5 Direct the County Executive Officer to negotiate arrangements with the Legal Aid Society for a transition period during which contract attorneys who have already received prepayment will complete their outstanding case work or the Legal Aid Society will repay the previously paid fees for work not completed. (Priority #2)

## **Section 8: The Legal Aid Society's Child Support Contempt Services**

### ***Summary of Findings:***

- As part of its Conflicts Program agreement with the County, the Legal Aid Society provides defense services to indigent defendants in cases in which a parent has been issued an Order to Show Cause (OSC) and Declaration of Contempt for non-payment of child support. Unlike all other Conflicts Program cases, these are not Public Defender or Alternate Defender cases reassigned to alternate counsel due to a conflict of interest. Instead, the Legal Aid Society is the first and only defense service for these defendants.
- The estimated \$369,983 annual cost for the Legal Aid Society's child support contempt case services is paid for out of its Conflicts Program administrative budget. The cost for this service is not separately identified in the Conflicts Program agreement or monthly invoices to the County nor has it ever been provided by the Legal Aid Society for review and approval by the County and Board of Supervisors.
- The Legal Aid Society opens approximately 700 child support contempt cases per year using three full-time in-house attorneys and one in-house paralegal. The Legal Aid Society developed its own financial eligibility criteria for the program different from that used by the Public Defender for screening potential defendants to determine if they qualify as indigent. Not all counties provide service comparable to what is provided by the Legal Aid Society for OSC cases.
- While the child support case services provided by the Legal Aid Society received praise by other County and court representatives involved in the proceedings, the absence of a separate budget for the program and any formalized County review or approval of the cost, level of service, financial eligibility and outcomes should be corrected. The County should determine and codify its legal obligation for child support contempt cases, then define the level of service and desired outcomes for child support contempt cases. If it chooses to continue the service, it should consider alternative approaches including continuing the existing contract, using a different contractor or providing the services with in-house staff.

Based on the above findings, the following is recommended.

*Note: See first page of Executive Summary for definition of recommendation priorities.*



The Board of Supervisors should:

- 8.1 Direct County Counsel to determine the County's legal obligation for indigent defendants in cases in which a parent has been issued an Order to Show Cause (OSC) and Declaration of Contempt for non-payment of child support. (Priority #2)
- 8.2 Direct the County Executive to propose a level of service, financial eligibility criteria, cost and organization structure, including continuing the contractual arrangement with the Legal Aid Society as one option, to provide services necessary to meet any legal requirements and policy mandates for Order to Show Cause cases. (Priority #2)
- 8.3 Direct County Counsel to determine if the State allowed registration fee of up to \$25 per case for indigent defense services could be applied to OSC defendants who are determined to have the ability to pay, and impose such a fee if allowable. (Priority #2)
- 8.4 Direct the County Executive to work with the Legal Aid Society to identify all costs associated with OSC services and either remove them entirely from the Conflicts Program agreement and create a new agreement or modify the Conflicts Program agreement to separately include OSC case services, estimated caseload and cost. (Priority #2)

The County Executive should:

- 8.5 Direct the entity responsible for OSC cases at the service level defined by the Board of Supervisors to develop and implement policies and procedures pertaining to the OSC program including clear guidelines and protocols for OSC staffing, client screening, minimum qualifications for program attorneys, performance requirements, assignment of cases, attorney training and evaluation, compensation and method of payment, requests for contract modifications, reports and inspections, establishment and maintenance of records, evaluation guidelines, and attorney fees; and financial eligibility screening, consistent with policies adopted by the Board of Supervisors for this program. (Priority #2)

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