

Conflict Public Defender Reorganization

Current System

Under the current Conflict Public Defender system, when the Public Defender's Office cannot legally represent an individual because of a conflict of interest (i.e. two defendants in one case), the court appoints Napa County's full-time contracted attorney (currently Merv Lernhart and Associates) to provide defense services. If this attorney declares a conflict, the court will appoint Napa County's part-time contracted attorney (currently Mike Keely) to provide defense services. If and when the part-time contracted attorney declares a conflict, the court then appoints a private attorney to provide defense representation at the expense of the County. When this occurs, the County has no control over the hourly rate established (typically \$65 to \$100 per hour), the maximum number of attorney hours billed, or the cost of court ordered investigative and expert services. Many times the number of hours billed for a case by a court-appointed attorney exceeds the number of hours worked by the Public Defender or contracted attorney on a similar case. This is particularly costly when conflict defense is needed for a homicide or sexually violent predator case.

This model has become increasingly problematic over the last four fiscal years as the cost of Conflict Public Defense continues to rise. The number of conflicts declared by the County's contracted attorneys continues to rise creating a greater need for court-appointed attorneys. Additionally, according to statistics from the Napa Superior Court, the caseload distribution among the two contracted attorneys has been inequitable. In calendar year 2006, contracted and court-appointed conflict attorneys represented defendants in 274 felony cases and 203 misdemeanor cases. Since court-appointed attorneys are not under contract with the County, there is no incentive to resolve cases as efficiently and effectively as possible, nor negotiate rates for investigative or expert services. The estimated cost of this program in FY2006/2007 is \$959,740. The Napa County Superior Court has expressed the desire to increase the hourly rate paid to court-appointed attorneys, opening the door for increased costs in future fiscal years. The Courts are of the opinion that an increased hourly rate would attract more, perhaps better qualified attorneys to take court-appointed defense cases.

Proposed Reorganization

In conjunction with the Public Defender's Officer, County Counsel, and the Superior Court, the County Executive Office reviewed Conflict Public Defense programs in other counties and proposes a program similar to Yolo County's model. Many of the counties contacted are experiencing issues with Conflict Public Defense and are considering reorganizations. Only Yolo County reported being satisfied with their program and many counties are considering a similar model. Under this model, the County would contract with six part-time attorneys to provide defense services when the Public Defender's Office declares a conflict. Five of these attorneys would be paid \$7,000 monthly

(approximately \$80 per hour) and primarily handle adult felony and misdemeanor cases on a rotating basis and one would be paid \$4,000 monthly and assigned to Juvenile Court. It is estimated that each attorney would receive three to five cases a month. Each contracted attorney would also receive \$50,000 each year for investigative and expert services. One attorney would be selected as the "lead" and be paid an additional sum of money each month to assist the Court in balancing the number and type of cases each attorney has at one time. Offenses will be classified and attorneys assigned to defend more serious cases will be taken out of the rotation for a defined amount of time.

This plan is estimated to cost \$768,000 in FY2007/2008, a savings of \$191,000, partially offset by a \$96,000 increase to the Public Defender's budget to add an attorney to handle Sexually Violent Predator (SVP) cases. This plan allows the County to control rising costs by paying a flat monthly rate as opposed to an hourly rate for an undefined amount of hours. This plan creates six tiers to handle conflict adult cases and seven tiers to handle conflict juvenile cases. This is particularly effective in addressing the conflicts of multi-defendant cases like gang related crimes. The County will have the ability to defend up to six adult individuals without court-appointed counsel. By reducing the number of cases appointed to private counsel, attorneys who currently serve in this capacity will have an incentive to apply for a contract in order to maintain a stable caseload and paycheck. This model will encourage the selected contract attorneys to work together to equitably distribute the work load and negotiate competitive investigative and expert rates. The Superior Court supports this plan.

Next Steps

If approved by the Napa County Board of Supervisors, the current contractors will be sent contract termination notices effective June 30, 2007 and a Request for Qualifications will be released. The two current contractors have discussed the possibility of reorganization with the Public Defender and are expected to apply for two of the five adult felony contracts available. The County Executive Office will partner with County Counsel, the Public Defender and the Superior Court to select the most qualified attorneys. Contracts will begin July 1, 2007. The County will experience a transitional period while the court-appointed attorneys who are not selected for contracts complete their current cases.