

**COUNTY OF SACRAMENTO
CALIFORNIA**

DATE: June 16, 2008

TO: Members, Board of Supervisors

FROM: Office of the Public Defender

SUBJECT: RESPONSE TO BUDGET HEARING TESTIMONY

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BACKGROUND

It is indisputable that an attorney must ethically and legally provide effective assistance of counsel. Effective assistance of counsel means that the lawyer not only possesses adequate skill and knowledge, but also that he/she has the time and resources to apply his/her skill and knowledge to the task of defending each client. A chief public defender may not countenance excessive caseloads even if it saves the county money (*Young v. County of Marin*, 195 Cal.All.3d §63, 241 Cal.Rptr. 3d 863). Nor is a chief public defender permitted to allow his or her financial interests, personal or professional, to oppose the interests of any client represented by any attorney in the office (*People v. Barboza*, 29 Cal.3d, 173 Cal.Rptr. 458). When the caseload/workload prevents the rendering of effective assistance of counsel, attorneys are duty bound to decline taking any excess cases.

DISCUSSION

Historically, Sacramento County has not funded the Public Defender to handle 100% of the indigent defendant caseload. This was a fact long before 1993 when the present Public Defender was appointed and continues in force to the present. Given this reality, the Public Defender periodically refuses to accept new cases until such time as effective assistance of counsel can be rendered to new clients. This is known as “declaring an overload”.

The caseload/workload of attorneys within the Public Defender’s Office is consistently and closely monitored to insure that effective assistance of counsel is rendered in the most effective and efficient manner. The Public Defender’s organizational structure and system has significantly reduced the overload numbers in the recent past. At present, the Public Defender declares an overload in approximately 500 cases per year. The greater majority of these overloads are declared in felony cases. When an overload is declared, the Court appoints Conflict Criminal Defenders to represent those clients.

National Caseload/Workload Standards

The question to be answered in determining the number of cases that an attorney can handle at any given time is “*Can the attorney provide effective assistance of counsel?*” This is the ethical guideline that sets the ultimate standard for determining when an attorney carries an excessive caseload. Numerical standards also play an important role in putting concerns about excessive caseload in context. The national caseload standard for defense counsel has been established as follows:

Felonies	150 cases per attorney per year
Misdemeanors	400 cases per attorney per year
Juvenile	200 cases per attorney per year
Mental Health	200 cases per attorney per year
Appeals	25 cases per attorney per year

This standard does not take into account administrative or supervisory work, waiting or travel time, or professional development activities. It has not differentiated the amount of time required to work on various types of cases within a case category, e.g., all felonies, whether straightforward burglary charges or complicated child sex abuse charges, are given equal weight.

It is also important to note that without adequate support staff, training, and supervision, a standard will not do much to alleviate case overload.

Office of the Public Defender, Sacramento County - Felony Unit Attorney’s Caseload/Workload

The overwhelming majority of overloads declared by the Public Defender occur in felony cases. The 60 Public Defender attorneys assigned to the Felony Unit handle an average of 236 cases per year per attorney. While this average clearly surpasses the National Standard, we are confident that our organizational structure, system, training, oversight and consistent vigilance assure that each of our clients receive effective assistance of counsel.

Handling of Conflicts & Overloads in Other Jurisdictions

A variety of ways exist in California to handle a Public Defender’s declarations of conflict or overload. In 2002 a survey of eighteen counties showed:

- Three utilized an alternative public defender office
- Six utilized a private attorney association as their primary defense and other private attorney associations as secondary defense
- Five utilized a county public defender as the primary defense and either private attorney associations or individual contracts with private attorneys as secondary defense
- One utilizes a private bar association program for all defender cases

- Three utilized a county Public Defender as primary defense counsel and a conflict program or bar association for secondary defense.

(See Public Protection Agency Board Memo agenda date 2/5/02)

Sacramento County's Indigent Defense Program - Public Defender and Conflict Criminal Defenders

Over the years the efficiency and effectiveness of the County's indigent defense delivery system has been thoroughly studied. The most recent study occurred in 2002 when Countywide Services Agency staff met with the Public Defender, Conflict Criminal Defenders and Sacramento County Bar Association Indigent Defense Panel representatives. The group concluded and the Board of Supervisors approved the finding that the County's dual Public Defender/Conflict Criminal Defender program remained the most efficient and effective way to provide representation.

The effectiveness and efficiency of these two programs has continued to improve as standards, processes, procedures and accountability have been maintained and tightened.

Fixed rates and capped amounts

When contract systems are created for the sole purpose of containing costs, they pose significant risks to the quality of representation and the integrity of the criminal justice system.

Various systems utilize flat fees, flat contracts, and capped fees. Historically these have been found to contribute to deficient systems characterized by ineffective representation, wrongful convictions, and absence of meaningful standards because they place cost containment before quality, create incentives to plead cases out early rather than go to trial, result in lawyers with fewer qualifications and less training doing a greater percentage of the work, offer limited training, accountability, or continuing education, and reward low bids and/or low rates, rather than realistic bids and/or rates. (See U.S. Dept of Justice, Contracting for Indigent Defense Services, A Special Report, April 2000)