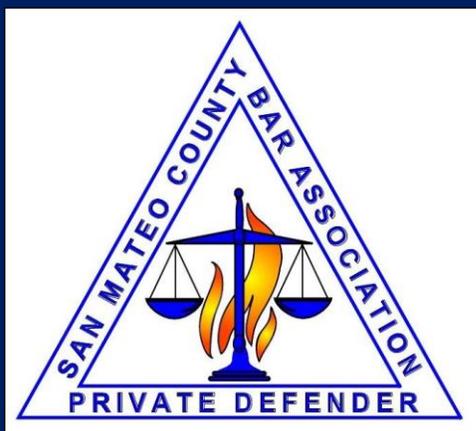


# **SAN MATEO COUNTY BAR ASSOCIATION PRIVATE DEFENDER PROGRAM**

**ANNUAL REPORT  
FISCAL YEAR 2019-2020**



**LISA M. MAGUIRE  
CHIEF DEFENDER**

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## GREETINGS FROM THE CHIEF DEFENDER

I am honored to provide my first Annual Report to the County detailing the outstanding work of the Private Defender Program for the Fiscal Year ending June 30, 2020. It was an exciting and challenging year. With the retirement of former Chief Defender Myra Weiher, we lost a leader with decades of experience defending the indigent. I am excited to continue the tireless efforts of my predecessor and explore the many possibilities for expanding our services as we move forward.

This year the call from the community for equal justice was loud and clear. Peaceful protests throughout the country, state, and county reflected a new focus on the inequities of the justice system. Those who once doubted the stories of unequal treatment within the system saw the evidence and called for action. We witnessed a growing recognition that our criminal justice system has failed in many ways. With this realization comes the opportunity for growth and a better understanding of the many ways in which we, the Private Defender Program, can provide our clients with more of the support that is necessary for their success.

The Private Defender Program is committed to providing lawyers who are dedicated to fighting to protect their clients from unlawful intrusions into their lives and securing best outcomes in their cases. With the shift towards more holistic representation, our lawyers have additional opportunities to work with their clients not only to vigorously defend them against their charges, but also explore root causes for certain behaviors such as substance abuse and mental health issues and explore alternatives to convictions and incarcerations.

We have long faced the realization that the deck was stacked against our clients, sometimes just by virtue of the fact they are poor. However, we are seeing positive changes in the law with increasing opportunities for more thoughtful approaches to handling cases and we are committed to proactively seeking all options available. We stand as the last line of defense within the criminal justice system and we are committed to doing everything possible to ensure equal justice for all of our clients.

I am encouraged by the opportunities to continue to collaborate with our justice partners and local community organizations to seek meaningful change within our own local system of justice. I am confident that together, through our combined talents and resources, we can drive the movement further towards equal justice for all.

*Lisa M. Maguire*

Lisa M. Maguire, Chief Defender

## INTRODUCTION

On June 25, 2019, the County of San Mateo and the San Mateo County Bar Association entered into a two-year agreement to provide legal representation through the Private Defender Program to indigent persons entitled to the appointment of counsel at public expense, continuing a more than 50 year-long arrangement. The most recent Agreement is attached as Appendix 1. Pursuant to the terms of the Agreement, this report provides detailed information about the operations of the Program. Included you will also find highlights of the year with details of the work being performed by both the lawyers and investigators of our Program.

## THE PRIVATE DEFENDER PROGRAM'S HISTORY

In 1963 the United States Supreme Court's landmark decision in *Gideon v. Wainwright*<sup>1</sup> established that any person accused of a crime who is too poor to employ an attorney has a constitutional right to the appointment of counsel at public expense.<sup>2</sup> In so ruling, the Supreme Court recognized the right to appointed counsel as a fundamental guarantee of the Bill of Rights.

The Supreme Court's decision in *Gideon* compelled state courts and county governments across America to move quickly to comply with its mandate to provide indigent criminal defense. The San Mateo County courts initially used what could best be described as an *ad hoc* system for appointing counsel with judges making individual appointments from a list or based on which attorney happened to be in the courtroom that day. Little consideration was given to the type of case or the qualifications of the attorneys appointed.

In December of 1968, the County of San Mateo and the San Mateo County Bar Association entered into an agreement to provide indigent defense representation. Under the agreement, the Bar Association would contract with attorneys dedicated to the practice of criminal defense law to represent indigent defendants, including youth appearing in juvenile court and those appearing on mental health calendars.

For the past 52 years, PDP lawyers have brought a wide range of experience and skill to a variety of cases, ranging from low-level misdemeanors to capital murder cases. Our representation has also included the representation of abused and neglected children, people with serious mental illnesses, and elderly people who can no longer tend to their affairs. In addition, we have provided appellate specialists to file extraordinary writs in the Court of Appeal where appropriate to safeguard the clients' pre-trial rights. While the number of criminal cases filed and the complexity of criminal law have both increased substantially since the first Private Defender Program Annual Report was submitted in 1970, the PDP has maintained its rigorous performance values and standards.

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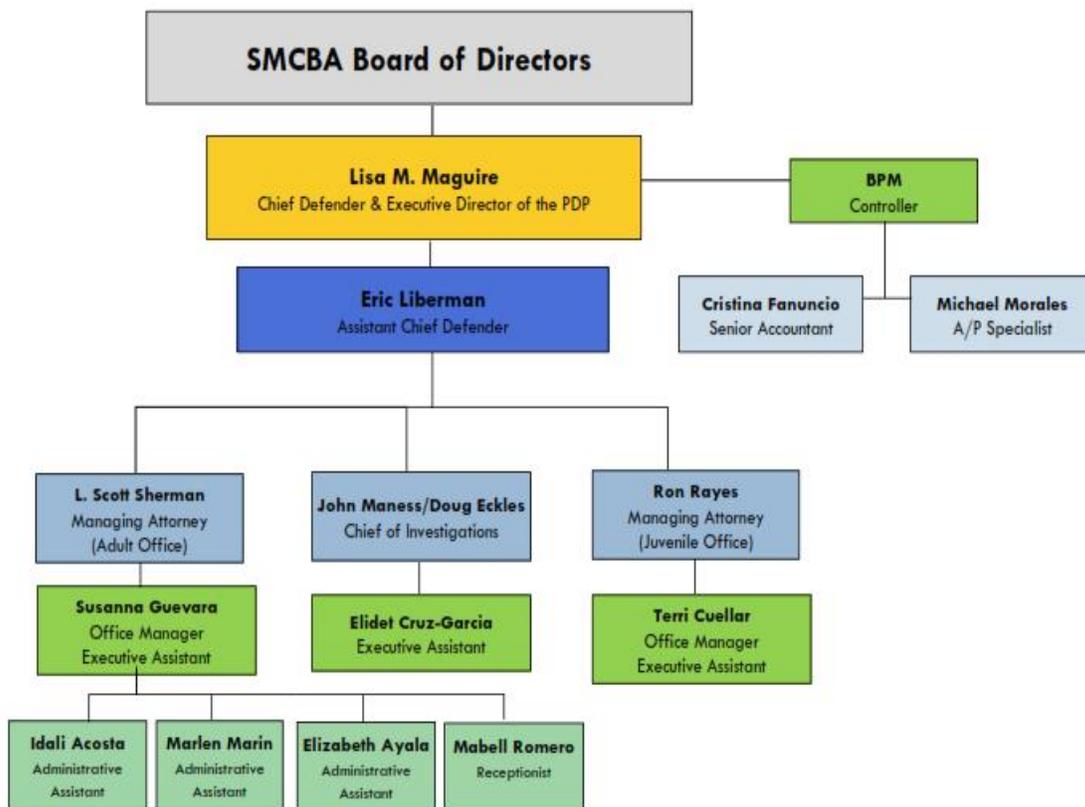
<sup>1</sup> *Gideon v. Wainwright* (1963) 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799.

<sup>2</sup> *Gideon* established the right to counsel in felony cases. Cases that followed *Gideon* extended the right to appointed counsel for indigents to direct appeals – *Douglas v. California* (1963) 372 U.S. 353; to custodial interrogation – *Miranda v. Arizona* (1966) 384 U.S.436; to juvenile proceedings that can result in confinement – *In re Gault* (1967) 387 U.S. 1; to critical stages of criminal proceedings, i.e., preliminary hearings – *Coleman v. Alabama* (1970) 399 U.S. 1; to misdemeanors involving possible imprisonment – *Argersinger v. Hamlin* (1972) 407 U.S. 25; and to misdemeanors that involve suspended sentences – *Shelton v. Alabama* (2002) 535 U.S. 654.

# ADMINISTRATION AND STRUCTURE

The Private Defender Program’s administration during this past fiscal year consisted of a total of 14 employees, headed by the Chief Defender, Assistant Chief Defender, two Managing Attorneys, for the adult and juvenile panels, and a Chief of Investigations. The Program maintains a robust administrative team (7 positions) and accounting team(2 positions), as illustrated in the organizational chart below.

## PRIVATE DEFENDER PROGRAM ORGANIZATION CHART



FY 2019-2020



## 2020: BUILDING A TEAM IN THE TIME OF COVID-19

The first order of business as we began the year 2020 was assembling a management team to lead the Program into the future. Eric Liberman, with 38 years of total experience both as a PDP panel attorney and Managing Attorney-Adult Division, assumed the role of Assistant Chief Defender. With Ron Rayes securely in place as the Managing Attorney-Juvenile Division, we added Scott Sherman to the team in the role of Managing Attorney-Adult Division. Scott's first day was March 2, 2020.

As a management team we were barely able to get our feet wet before the Covid-19 tsunami hit. By March 16, 2020, the San Mateo County Public Health officer, in recognition of the pandemic, issued a directive that County residents must shelter-in-place and may leave their homes only for essential work. As essential workers, we at the PDP quickly began doubling efforts to ensure that equal access to justice for our clients would remain the top priority.

As stories spread of inmates around the state being infected with the virus and dying while in custody, PDP management encouraged lawyers to file motions for early release while we advocated for a new bail schedule and negotiated with the District Attorney and Sheriff to release those inmates most vulnerable to the virus and those nearly done serving their sentences.

To ensure uninterrupted communications between lawyers and clients who remained in custody, we advocated for new protocols that allowed increased access by inmates to their lawyers for privileged communications. We also arranged for a dedicated laptop to be available in each housing unit of the two County jails to allow our lawyers to meet with their clients via Zoom.

While work schedules within the office were modified to allow for maximum social distancing, we saw our lawyers continue to attend court hearings and make visits to the jails to keep clients well-informed. Based on individual risk factors, some lawyers were forced to shelter-in-place, and others decided it was the right time to retire.

Based on the loss, we recruited some new lawyers and adjusted to new ways of training and mentoring. At no point did the Program waiver in its commitment to fighting for the rights of our clients and supporting our lawyers and investigators in every way possible.

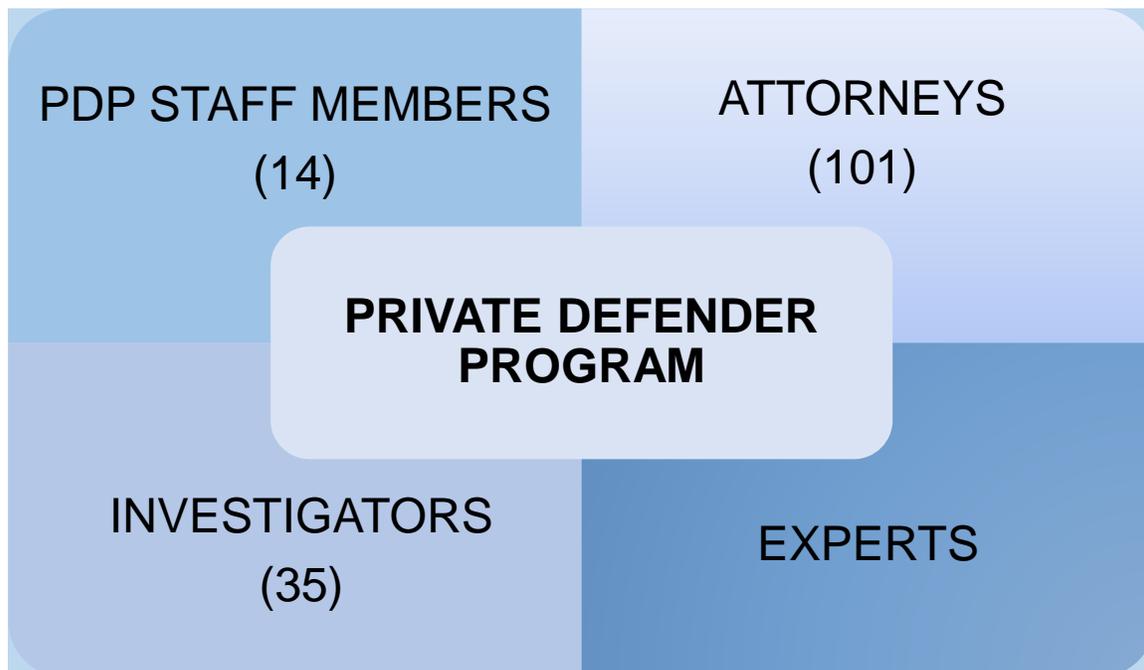
Thankfully, all have stayed healthy so far and we look forward to a time when we can all be together again.

## WHO ARE THE LAWYERS OF THE PRIVATE DEFENDER PROGRAM PANEL?

The PDP panel is comprised of a talented, experienced group of attorneys dedicated to the pursuit of justice within the criminal justice system. All of the PDP lawyers to whom cases are assigned are in private practice in San Mateo County. Presently, there are 101 lawyers on the PDP panel. Each was accepted to the PDP only after a thorough application process was completed.

Attorneys who seek admission to the PDP must submit an application that details their background and experience and must provide references. The Managing Attorney for the division performs a detailed background check of the applicant. The check involves not only contacting the references provided by the applicant, but also seeking out and consulting other people within the criminal and/or juvenile justice community with whom the applicant could be expected to have had contact. The Managing Attorney then conducts a thorough interview and makes a recommendation to the Assistant Chief Defender and the Chief Defender concerning admission. If that recommendation is positive, the applicant will then be interviewed by the Assistant Chief and/or the Chief Defender, who will make a final decision and inform the applicant.

All admission decisions, of course, are preceded by an assessment of the need of the Program to add attorneys based on an analysis of current caseloads and projections for the future.



Experience Level of Criminal/Juvenile Attorneys	Number of Attorneys	Percent of Total Panel
0 - 5	7	6.9%
6 - 10 Years	8	7.9%
11 - 15 Years	15	14.9%
16 + Years	71	70.3%
<b>Total:</b>	101	100.00%

**THIS YEAR, THE PDP WELCOMED SEVEN IMPRESSIVE NEW PANEL ATTORNEYS:**

**Matt Sullivan** began his career as a Deputy Public Defender in Marin County. Matt comes to the PDP after years in private practice where he has represented people charged with serious and violent offenses. He has demonstrated an unwavering commitment to representing his clients during his time with the PDP.

**Rosie Rivera** is a recent law school graduate and native of San Mateo who is starting her criminal practice in San Mateo and Santa Clara Counties. Rosie is active in her community and committed to being a strong advocate for her clients.

**Shaneil Sharma** has been practicing civil and family law for the last 10 years, including time as a child support analyst for the County of San Mateo. Read more about him further on in this report.

**Rick Hullinger** has been practicing criminal law for seven years, the last four in private practice. Rick has extensive criminal litigation experience in both state and Federal Courts. Through the CJA panel Rick has worked on RICO and other complex Federal criminal cases.

**Negad Zaky** began his legal career as a Public Defender, most recently working in the Santa Clara Public Defender’s Office before going out on his own. Negad brings his experience, compassion and talent to the adult panel.

**Caleb Lin** began his career as a public defender in Colorado and more recently in Santa Clara County. Caleb has published numerous articles on criminal law and procedure. He is an aggressive advocate for his clients.

**Joe Goethals** comes to the PDP after more than a decade and a half as a prosecutor in Alameda and San Mateo Counties. Joe has hung out his shingle and is taking cases on the adult panel. We look forward to seeing Joe apply his advocacy skills to the advantage of his PDP clients.

## BUILDING STRONGER CASES THROUGH TEAMWORK

### INVESTIGATORS AND SYSTEM CHANGE BY LANA KREIDIE



They say it takes a village to raise a child. Private Defender Investigators Cheryl Simone and Mike Klingler were integral parts of this village for two of our youth in juvenile delinquency court. In our juvenile delinquency system, the defense team is tasked with more than defending against the charges, we are also tasked with advocating for the youth's expressed interests. In that capacity, we can serve as guides and advocates to the youth in the development and implementation of the youth's rehabilitation case plan. Cheryl Simone and Mike Klingler not only worked as a part of these youths' village, they also contributed to the implementation of Continuum of Care reforms in San Mateo County.

At the time when my case with Ms. Simone went forward, the Juvenile Probation Department did not involve the Child and Family Team Meeting structure contemplated in the Code. But Investigator Simone and I needed to change that for our client. We needed to convene the village on his behalf because there was a recommendation for his removal from his home. Investigator Simone was a key partner in documenting the youth's needs and the family's involvement in their son's rehabilitation, including the quality community services his family had set up for his unique and complex needs.

But our work did not stop there. Recognizing that the law provided a venue for productive information sharing amongst members of the youth's village, we then worked together to facilitate crucial conversations with counterparts at the Probation Department to begin the process for system change. While the youth was ordered removed from his home over our objections, an eventual meeting with probation resulted in their office asking the Court to revise the removal order and allow him to return home on a community-based treatment program.

As for the removal order without a CFT, an appeal was filed and an unpublished decision issued recognizing that CFTs are statutorily required and indicating that counsel should ask the Court to order that they be held. Not only did Cheryl's investigative work provide me with the witnesses and data I needed, her relationship building approach complemented our holistic advocacy and facilitated change.

Investigator Mike Klingler and I encountered a similar situation with another client who wanted to receive services at home. Probation was recommending removal to a placement for this youth, but the youth wanted to receive intensive services at home. We advocated for the Court to order a CFT prior to the disposition trial. Mike Klingler gathered the data needed to help determine a meaningful case plan and attended the CFT with me. He engaged in thought provoking discussion and asked critical questions that pushed the participants to develop an effective community-based case plan for our client.

## **INVESTIGATORS AND SYSTEM CHANGE (continued)**

But Probation decided on removal; to them, community-based alternatives were not an item for consideration at this CFT. At the trial challenging the removal recommendation, Investigator Klingler testified along with other community members about the programming that is available in the community before removal, and the Court decided to give the minor one last chance in the community before removal.

This represented a true moment of justice for a youth that needed immediate delivery of intensive community-based programming tailored to his complex needs. Mr. Klingler's work was critical to achieving this moment of justice for this youth. And most importantly, the CFT meeting galvanized a village to support this youth into his future.

While there is more to do to develop community-based alternatives and implement Continuum of Care reforms in our County, along with our justice partners, we have made great progress. These stories demonstrate that system change is made possible in part by exceptional investigative work. And our advocacy as attorneys just isn't enough without the dedicated and visionary work of our investigators. Hats off to them!

## **MITIGATION BY PETER ARIAN**

Defending people against criminal charges is as much about knowing the client as it is about knowing the facts of the case. To really know the client and the whys and hows of their story takes someone who specializes in the investigation of the client, not just the facts of their case. Far more than the majority of cases, especially felony cases, result in a settlement rather than a trial. When a judge considers the decision between probation and prison or 5 years versus 10, they need as much information about the client as possible. Mitigation specialists are investigators who are trained to investigate the personal history of the client and write reports telling the judge why mercy, in each particular case, is justice. Oftentimes this includes a history of trauma, neglect, abuse, mental health issues, intellectual disabilities, addiction, etc. This gives the client a counter-narrative to what they always hear from the prosecution and what they usually hear from probation: that the client is the worst of the worst. The program has invested resources in hiring investigators with training in mitigation, such as Lindsay Page, a former Habeas Corpus Resource Center investigator. The program has also started training investigators and lawyers to begin the process of sentencing mitigation in every felony case. This is part of the wrap-around services that are now the norm in criminal defense.

## EXPERTS

In addition to the excellent investigators that are such an important part of the defense team, PDP attorneys have available to them, upon request, the services of special forensic experts. The range of forensic experts called upon to assist PDP lawyers in the defense of their cases is limited only by the rules of evidence. Examples of such experts include:

- **Forensic Psychiatrists and Neurologists**
- **Psychologists**
- **Physicians**
- **Serologists**
- **Toxicologists**
- **Accident Re-Constructionists**
- **Social Workers**
- **Weapons, Tool Mark and Ballistics Specialists**
- **Crime Scene Investigators**
- **Fingerprint and Handwriting Analysts**
- **DNA Experts**

In order to effectively represent each client, PDP attorneys have access to a complete library of legal research materials through a contract with LexisNexis, their subscriptions to which the PDP partially subsidizes. Finally, many of our clients have immigration status issues which complicate the attorneys' representation of their clients and aggravate the potential outcome of the cases. To assist the attorneys, the PDP has a contract with the Immigrant Legal Resource Center to provide PDP attorneys with legal advice regarding the benefits and risks of the resolution of cases. PDP attorneys take full advantage of all of these resources as necessary to secure best outcomes.

## PURSuing ALTERNATIVE OUTCOMES

Mental Health Diversion (Pen. Code, §1001.36), which was effective in June 2018, is another new area in which it is important to investigate a client's background and gather a broad range of facts to present to the court. Panel attorney Mitri Hanania had such a case, and his PDP client was able to benefit from a robust team which included an investigator, Japanese interpreter, appellate specialist, and mental health experts. The story of his path to securing Mental Health Diversion for his client is below:

### CHISATO C. BY MITRI HANANIA



Chisato C., a Japanese immigrant, was arrested due to a suicide attempt in which she walked into the ocean along with her youngest son, who she mistakenly believed would be disabled for the rest of his life. Fortunately, Chisato did not succeed in killing herself or her son. Investigation revealed that her acts were the product of a serious long-standing depression which was exacerbated by a postpartum depression she suffered with the birth of her second son. The first time I went to see Chisato at the jail, she was wearing a suicide prevention gown because she was depressed and suicidal. She was unable to see, having lost her glasses prior to her arrest, and she struggled to communicate in English.

For 18 months, I visited her every week at the jail. Along with my investigator, Bill Divita, a wonderful Japanese Interpreter, Eri Minoura, and an outstanding jail clinician, Dr. Alexa Carbajal, we helped Chisato to understand and cope with her mental illness. The time we spent with her paid off.

While I fought the case, the main concern for Chisato was being convicted of a crime that would lead to her deportation from the U.S. since she was not a U.S. citizen. Many attempts to work out an immigration-safe plea failed. Then a lifeline came along. A new statute had passed: Mental Health Diversion. This statute granted a second chance to a person such as Chisato: someone who committed a crime due to her mental illness and who did not pose an unreasonable risk to the community while in mental health treatment as an outpatient. With Mental Health Diversion, a defendant would be diverted out of the criminal justice system and would get treatment and not incarceration. Successful completion of an outpatient mental health program would result in dismissal of the criminal case. This became Chisato's primary goal in her case. (continued on next page)

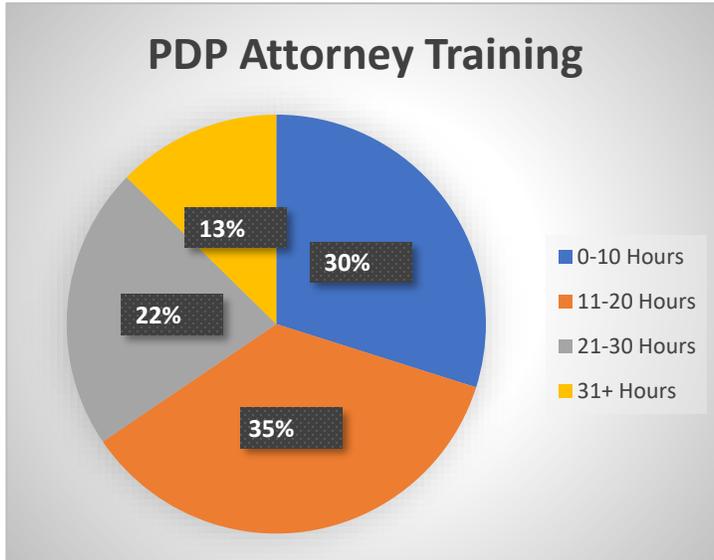
## **CHISATO C. (continued)**

The process of finding a suitable program for Chisato was extremely difficult. We found only two residential programs for women. Further, it was a challenge to have her assessed by the program while she was in jail and during the pandemic. We also had to manage her transportation to a program. However, with the defense team's hard work, we found the program and the PDP granted approval for an expert to review her case for mental health diversion.

Initially, the application for mental health diversion was denied by the superior court. Undeterred, with the assistance of Attorney Marsanne Weese, we filed a Petition for Writ of Mandate in the Court of Appeal, challenging the court's denial. Most writs are denied but not this one. The Court of Appeal ordered the superior court to either grant mental health diversion or to explain why it would not. In response to the Court of Appeal's order, the superior court vacated its order of denial. After another hearing, Judge Ayob found Chisato suitable and ordered her released to a program in Southern California.

Today, Chisato is in a mental health program and she is doing great. She is enrolled in online college courses, she maintains contact with her husband, and she is working on reunifying with her sons. Without the assistance of the PDP, Chisato would have been sent to prison and then forcibly deported from the U.S. where she would be torn apart from her husband and two sons. A result that would have devastated her and her family.

## PARAGRAPH 4.d.1: ATTORNEY TRAINING



### Formal Training:

The contract with the County requires that PDP panel attorneys meet the minimum continuing legal education (MCLE) requirements established by the California State Bar Association, which is 25 hours of MCLE credit every three years. In practice, many panel attorneys completed far more hours than strictly required by the State Bar, as shown in the chart.

The high number of hours spent in training during FY 2019 – 2020 is all the more impressive because MCLE trainings largely ceased in March, 2020 as the primary training providers, including the PDP, complied with the shelter-in-place orders due to the pandemic.

The Private Defender Program presented a total of 21 hours of PDP-sponsored continuing legal education in the 2019-2020 Fiscal Year, free of charge. These programs are accredited to provide both general and specific MCLE credits and are geared to both the adult and juvenile panels. The PDP tracks attendance at these events, requiring verification of attendance. These programs were well-attended by the PDP panel attorneys: Of the 88 attorneys responding on the Annual Survey, all but five attended one or more PDP program. Further, of those five, all but one attended multiple programs offered by the California Attorneys for Criminal Justice or the California Public Defender's Association. As noted, the shelter-in-place orders which were enacted in March, 2020 interrupted the presentation of further training programs during the 2019-2020 fiscal year, however the PDP is now presenting its training programs via Zoom and utilizing recognized means of verifying remote attendance with the use of key words.

The PDP provided the following attorney training during the past fiscal year, all of which qualified for MCLE credits. Programs marked with an asterisk are Juvenile-specific trainings.

## PDP Training Seminars

Date	Topic	Presenter(s)
7/18/2019	Using Investigators and Investigation Request and PC 1367	Connie O'Brien, Esq. Eric Liberman, Esq.
7/25/2019	Specialty Courts	Laura Torres, Esq.
8/1/2019	Filing Motions and In Limine Motions	Connie O'Brien, Esq. Eric Liberman, Esq.
8/7/2019	Preliminary Hearing Preparation	L. Scott Sherman, Esq.
8/29/2019	Update on Immigration Law and Use of the ILRC	Katherine Brady, Esq.
9/11/2019	E-filing for Criminal Cases in San Mateo Superior Court	Jeff Rolston, Sara Afu and Elizabeth Evans
9/26/2019	Juvenile Panel Training: Investigation and Re-Entry Programs	John Maness, Chief Investigator PDP Kate Hiester, FLY San Mateo
10/2/2019	Choices and Other Treatment Options for Addiction and Mental Health	Diane Stanton Senior Community Program Specialist
10/15/2019	San Mateo County Continuous Alcohol Monitoring Program and How it is Used in MDUI Court	Hon. Donald Ayoob Steve Boyle Domenica Cardenas
11/6/2019	CAMI and 1370 Specialty Courts: Supporting Clients with Severe Mental Illness and Competency	Carol Clancy Cassidy Brooking-Lang
11/7/2019	Challenging Probation Conditions After Ricardo P. & Swarm Litigation	Richard Braucher, Staff Attorney First Division Appellate Project
11/21/2019	Mitigation	Peter Arian, Esq. Dek Ketchum, Esq.
12/4/2019	Preserving the Record in the Trial Court for Appeals and Writs	Paul DeMeester, Esq.
1/9/2020	Treating Addiction in the Juvenile Justice and Dependency Systems	Dr. Carol Clancy
1/16/2020	Just Mercy	Movie Showing
2/5/2020	Writs: How and When to File	Emily Andrews, Esq. L. Scott Sherman, Esq.
3/5/2020	New Laws 2020	Garrick Byers, Esq.

In addition to the trainings provided by the PDP, an education fund of \$750 is available annually for each PDP lawyer. These funds may be spent on education and training programs that are directly related to the types of cases the attorney is handling for PDP clients and on memberships in professional organizations such as the California Attorneys for Criminal Justice (CACJ) and the National Association of Criminal Defense Lawyers (NACDL). In addition, the Private Defender Program pays for all panel attorneys' membership in the California Public Defender's Association (CPDA). CPDA, CACJ and NACDL provide excellent legal education programs, presented by talented and devoted criminal and juvenile practitioners. PDP attorneys are able to take advantage of these programs through their education funds, and many attended programs which exceeded their education funds.

There are numerous other resources that are available to PDP Juvenile panelists. The juvenile panel attorneys consult and work with the following organizations on juvenile justice law and policies: the Youth Law Center, the Pacific Juvenile Defense Center (PJDC), Youth Justice Initiatives and the Youth and Education Law Project (YELP). In addition, juvenile panelists obtain specialized trainings pertinent to the juvenile practice from the PJDC, Care Foundation (MAT) <https://www.chcf.org/>, YELP, and Fresh Lifelines for Youth (FLY).

Managing Attorney Ron Rayes serves on the advisory board for PJDC, as well as being a member of the San Mateo County Commercial Sexual Exploitation of Children Steering Committee, a member of the Juvenile Justice Coordinating Council and a monthly presenter at the Juvenile Justice and Delinquency Prevention Commission.

## MENTORING

The PDP mentoring program is designed to ensure high quality representation by assigning experienced attorneys to provide support and guidance to less experienced PDP attorneys. All attorneys recently admitted to the Program are assigned a mentor, regardless of experience. The mentor/mentee relationships allow for attorneys to grow and improve their level of practice. At the same time, the mentor assists PDP management with oversight and quality control by providing information about the mentee's performance as an attorney.

The Chief Defender selects mentor attorneys who have extensive experience in all phases of criminal and/or juvenile defense and who are best suited to provide assistance to the mentee attorney based on the mentee's current experience and practice level. For instance a mentor assigned to an attorney who is new to the practice of criminal law who is handling misdemeanors, and a mentor assigned to an attorney who is looking to move from low-level felonies to high-level complex felonies will have different needs of their mentor. Thus, it is important for the PDP to assign the right mentor for the right situation.

It is the goal of the PDP for the training and continuing legal education to work hand in hand with the mentoring program and to foster a team approach to defending criminal cases. New PDP attorney Shaneil Sharma describes this experience first-hand:

## **THE NEW KID IN TOWN BY SHANEIL SHARMA**

I graduated from law school in 2010, at a time that the economy was in slump due to the market crash of 2009. I began by working for small, private, civil law firms in the real estate industry. When I eventually moved to the Bay Area, I could not find work as an attorney and I worked as a Child Support Analyst with the San Mateo County Department of Child Support.

After six years assisting the families of San Mateo County, I felt it was time to move on. Nancy Ruiz, an attorney on the Private Defender Panel, suggested I apply to be one of the panel attorneys for the Private Defender Program. Nancy explained that even though I did not have the typical criminal experience of the PDP attorneys, I would be well-supported.

Once I was accepted to the Panel, the PDP made it very clear that they were vested in my success and wanted me to be a great private defender. They advised me that I would have all the tools necessary to zealously advocate for my clients; I just had to know how to utilize those tools. In fact, the day Chief Defender Lisa Maguire accepted me onto the panel, she handed me a resource that is affectionately known as “the Bible” – CEB’s California Criminal Law Procedure and Practice.

Scott Sherman has led the way in my training in terms of learning the basics. Due to COVID, he sets time aside to have Zoom conferences with me and others. We have had several training sessions and each one is vital to our success. From “The Theory of the Case” to “Voor Dire,” Scott’s training has set a foundation for me in criminal law. Eric Liberman also sets time aside for me and has joined in several of our trainings, bringing his experience and expertise to the table. We also have MCLE trainings presented by other experienced PDP members that Scott and Eric encourage me to attend.

All of the attorneys on the Panel have been warm and welcoming. Each one has been ready to provide their knowledge and experience, but most importantly, their time. To top it off, I was assigned a mentor, Mick Vasquez. Mick and I connected right away. Although he was more experienced than me, he never made me feel inadequate. By giving me that same level of respect and courtesy as his peers, Mick has instilled a confidence in me that allows me to excel at my duties. This is important because this is half the battle: confidence.

The key to any good relationship is effective communication. Mick communicates with me on daily basis, going above and beyond the phone call check-ins. We regularly communicate to review my cases, going over the DA’s version of the facts, my client’s version of the facts, the discovery before us, the discovery needed, whether we should file any motions, whether we need an investigator, any defenses we could use, and anything else relevant to a particular case (such as immigration and mental health). For the first several months, Mick accompanied me to every hearing, every pre-trial conference, and every probation violation hearing. However, due to his knowledge, expertise, and training, he no longer accompanies me, though I know he is still available if I should need the help.

Six months in the program, I have been assigned over 70 cases. The Private Defender Panel gave me wings. Mick gave me the confidence to fly.

## PARAGRAPH 4.d.2: ATTORNEY EVALUATIONS

Paragraph 4.d.2 of the Agreement between the County and the Association requires annual evaluations of “the professional performance of each Private Defender Program Attorney.” The Annual Report requires a summary of the “number of evaluations conducted and the results thereof” without breaching the confidentiality of the evaluations. A copy of the Annual Survey form that each PDP attorney was required to complete is set forth in Appendix 4.

## 2019-2020: RESULTS OF THE EVALUATIONS

This year the Chief Defender, Assistant Chief Defender, and Managing Attorneys met over several days to evaluate the performance of each PDP attorney over 2019-2020 fiscal year. Using the Annual Survey, writing sample, personal observations by management and all other information available, the PDP management team conducted a thorough discussion of each attorney. Some attorneys were excused, because they had recently joined the panel prior to the end of the fiscal year and had not done enough work for the panel to make an evaluation worthwhile, or they did not have a traditional caseload. In the Juvenile Division all attorneys are met with annually by the Managing Attorney. In the Adult Division, which has a larger number of attorneys, certain attorneys were selected to have a meeting with the Managing Attorney. The reasons for meeting with the Managing Attorney of the Adult Division include:

- Encouraging the attorneys to seek additional training opportunities
- Encouraging additional use of investigators
- Encouraging additional use of experts
- Encouraging the attorneys to have more jury trials in appropriate cases
- Addressing any shortcomings in attorney performance
- Addressing expectations of each attorney going forward
- Seeking feedback from the attorneys about the PDP

Evaluations by PDP Management include:

- 101 Total Attorneys Discussed
- 88 Annual Surveys received and reviewed<sup>3</sup>
- 88 Writing samples received and reviewed
- 32 Attorneys in the Adult Division selected to meet with the Managing Attorney
- 18 Attorneys in the Juvenile Division have an annual meeting with the Managing Attorney

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<sup>3</sup> 13 Attorneys were excused from submitting an Annual Survey

# ADDITIONAL EVALUATION STANDARDS

In addition to the information collected through the Annual Surveys, there are many other ways in which PDP management regularly evaluate the performance of the PDP lawyers. The attorneys of the PDP are a wide-ranging group, from death penalty qualified lawyers with more than 40 years of experience to younger lawyers recently admitted to practice. The diversity of experience is one of the greatest strengths of the PDP, and any meaningful evaluation must be tailored to the particular lawyer whose performance is being evaluated. Attached as Appendix 3 is a set of Evaluation Standards used to generally evaluate attorney performance throughout the year. Listed below are a number of measures and methods utilized to conduct such evaluations.

## How Performance is Evaluated

### I – Caseload Monitoring

The PDP uses case management software to assign cases to PDP members. Attorneys and investigators use this case management software for billing. The PDP is able to monitor attorney caseloads in order to ensure attorneys are not taking on too much work. Caseloads are monitored regularly and there is a quarterly meeting dedicated to formally reviewing the number of case assignments and caseloads for each panel attorney, which is discussed below.

### II - Motions Practice

All motions that are filed in a case must be submitted through the case management system for review by management. If the motion is not submitted, the lawyer will not be paid for that motion. This affords the PDP the opportunity to review the attorney's written work product on a regular basis throughout the year.

Each attorney must submit a motion or brief that represents the attorney's original work as part of the Annual Survey. The survey also tracks the filing of motions on significant substantive issues such as:

- Motions to Suppress Evidence (Penal Code Section 1538.5)
- Motions to Dismiss (Penal Code Section 995)
- Motions for Impeachment Evidence (*Pitchess* Motions).

### III - In-Court Observations

Managing Attorneys regularly attend court calendars and trials to personally assess the courtroom skills of PDP lawyers. These administrators observe PDP lawyers in jury trials, court trials, hearings on motions, superior court reviews, and pretrial conferences with or without advance notice.

The Chief Defender and Assistant Chief Defender are notified each week about which cases and lawyers are scheduled to appear on the following Monday's trial calendar. Most PDP lawyers handling misdemeanor and felony cases, and all of the lawyers handling juvenile court cases, were thus observed. Toward the end of the fiscal year, in-court observation was limited due to the Covid-19 orders limiting public access to the courts. However, management observations resumed by means of Zoom once that system was established.

Additionally, PDP management periodically receives feedback from the judiciary concerning the in-court performance of PDP panel attorneys.

#### **IV – In-Person Contact**

The PDP fosters a collaborative environment with its lawyers. The Chief Defender, Assistant Chief Defender, and the Managing Attorneys are all knowledgeable, accomplished and experienced trial attorneys whose doors are always open to PDP lawyers to come and discuss case tactics and strategies. These discussions are beneficial to the attorney and their client, and they also provide an evaluation opportunity for the PDP management.

To secure the assistance of an expert in a case, the assigned lawyer must contact the Chief Defender, Assistant Chief Defender, or Managing Attorneys and explain why the specific case requires the assistance of an expert. This presents a good opportunity for administrators to acquaint themselves with the manner in which the attorney is preparing the defense of his or her case in the context of the facts presented by the prosecution and those gathered by defense investigation.

In addition, management meets regularly with assigned mentors, who provide a valuable insight into the skill level and progress of new panel attorneys

#### **When Performance is Evaluated**

##### **I – Quarterly Caseload Reviews**

The Chief Defender, Assistant Chief Defender, and Managing Attorneys meet quarterly to discuss caseloads and performance of all panel attorneys based upon the factors above as well as trials held over the last quarter. PDP management reviews the types and numbers of cases each lawyer is being assigned by analyzing the DefenderData case management system. This enables the PDP to monitor individual caseloads and ensure that the right case is assigned to the right attorney, i.e. an attorney with the right skill set and time and ability to take on the case. PDP staff is also consulted at the quarterly meetings for input on the professionalism of the attorneys.

##### **II – Annual Surveys**

As discussed above, an Annual Survey yields significant factual data which the PDP uses to verify and track attorney use of training resources, investigators, and experts, as well as the degree of significant litigation and motion practice and the results thereof. The analysis of this data allows the PDP to closely monitor the individual panel attorneys, and to identify any problem areas.

The Chief Defender, Assistant Chief Defender and Managing Attorneys meet and go over each and every annual survey. The parties then discuss which attorneys are candidates to move up to more advanced cases, which attorneys need improvement, and which attorneys need to be called in for a meeting to discuss the results of the annual survey.

## PARAGRAPH 4.d.3 CLIENT COMPLAINTS

While an Officer of the Day (OD) is available every business day to receive complaints pursuant to the Agreement, the role of the OD is far more expansive and the OD is an excellent resource for the entire community. In addition to answering inquiries by our clients, the OD spends many hours each week simply answering questions, calming fears, and giving advice to members of the general public who call for help. ODs, as a group, average between 50 to 100 inquiries from the general public each week through telephone calls and drop-in visits to the PDP office. The ODs are happy to answer any questions of the public that relate to criminal law – their area of expertise.

The PDP administration uses a centralized system to record and document all complaints received, whether they come in by phone, letter or an in-person visit. All complaints, along with a description of the issue and resolution, are entered into the DefenderData Prime system designed specifically to track complaints. The system allows the PDP administration to search all entries to better track an individual client's complaint history, as well as whether numerous complaints are being made against a specific attorney. The DefenderData system is used to create case assignments and it also serves as the PDP billing system. The PDP uses this companion system to record complaints by individuals, attaching those complaints to their specific cases. Everyone who handles complaints or complaint resolution in the PDP office uses this centralized system to obtain the same information, track the history of the case and determine if previous complaints have been made. The entire staff has received special training on using DefenderData for this purpose to ensure there will be uniformity.

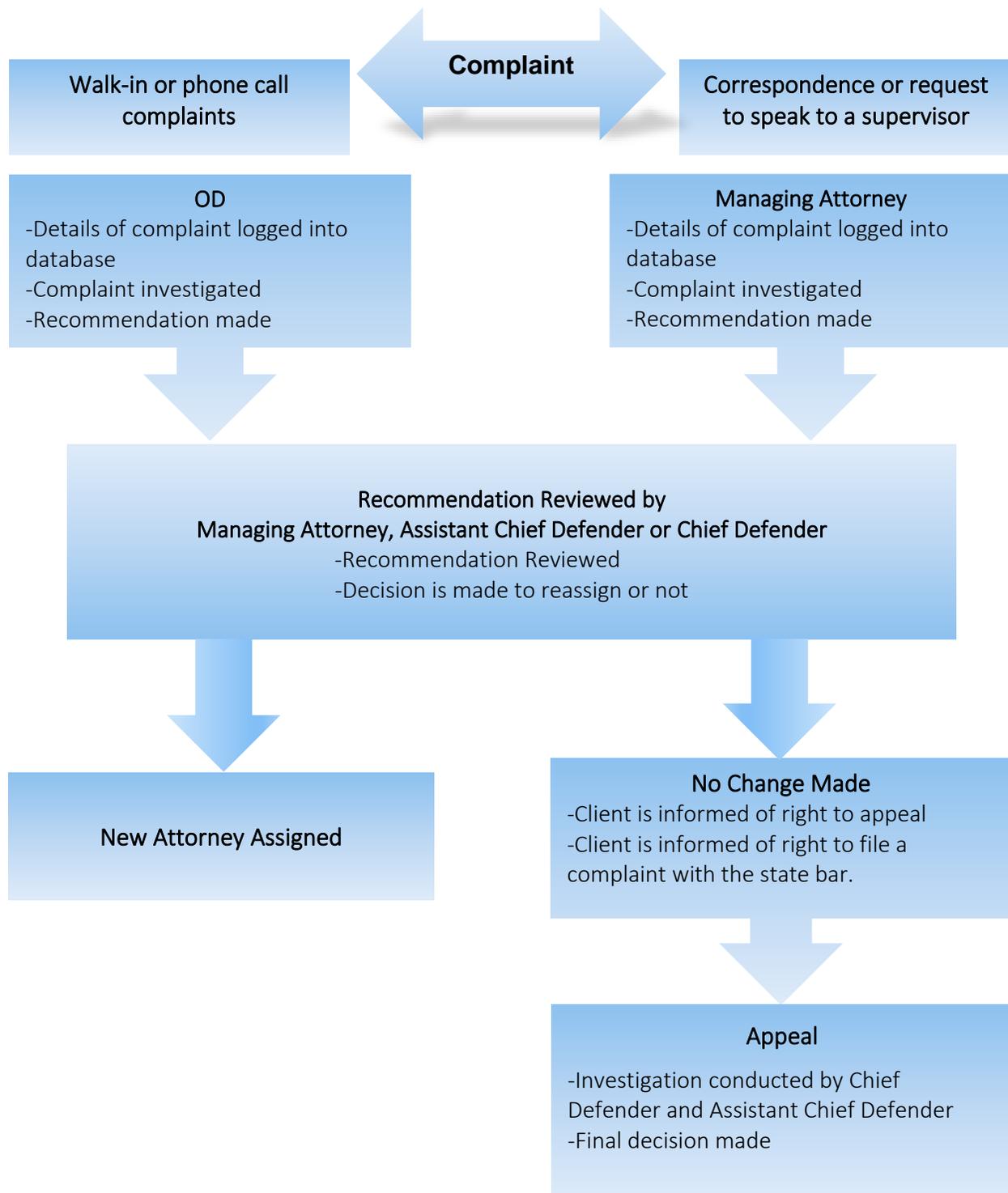
When clients have complaints, their first point of contact is usually the Officer of the Day. The OD will discuss and review any complaints with the clients and attempt to resolve any issues, if possible. Many complaints can be resolved with an open discussion or a simple phone call to the appointed lawyer. A request to speak with the OD's supervisor, if made, is always honored and the Managing Attorney will meet with the client.

When issues cannot be readily resolved, at times, clients will ask for a different attorney to handle their case going forward. The OD reviews the request and provides a recommendation to management. If the OD recommends a new lawyer be appointed, that recommendation is almost always followed and a replacement attorney will be appointed. If the OD does not believe a different attorney is warranted, then that decision will be reviewed by one of the Managing Attorneys. If the Managing Attorney believes a new attorney is appropriate, then a new lawyer will be assigned to handle the case. If the Managing Attorney does not believe a new attorney should be appointed, then that decision will be reviewed by either the Assistant Chief Defender or the Chief Defender.

Clients are also informed of their right to seek a *Marsden* hearing in order to have a judge determine whether different counsel should be assigned to their cases. The PDP will always abide by a ruling of the superior court. Further, clients are informed of their right to file a complaint with the California State Bar if they feel such a complaint is warranted.

The County Agreement, in section 4.d.3, sets forth the complaint procedure. A flowchart describing the client complaint process was disseminated to all staff and panel attorneys. The flowchart is found on the next page.

# CLIENT COMPLAINT PROCEDURES



If the Assistant Chief Defender or Chief Defender declines to reassign, client will be informed about Marsden motion remedies and the right to pursue a complaint to the California State Bar. Complaint forms will be distributed upon request. The ODs are trained to inform clients that they always have a right to request a Marsden motion at any stage of the proceedings, and clients are uniformly told about the right to a Marsden motion at every stage of the complaint process.

In the fiscal year ended June 30, 2020, there were 949 calls to the OD, which fell into the following categories:

**INQUIRIES: 853**

*General Inquiries (examples from this fiscal year include):*

- “Is San Mateo releasing people early because of the coronavirus?”
- “Does anybody know when the courts will reopen?”
- “What happens at a sentencing hearing?”
- “Can probation be terminated early?”

*Specific Inquires (examples from this fiscal year include):*

- “Can I serve my sentence on work furlough?”
- “I missed my court date. What do I do to get my warrant recalled?”
- “How can I get my record sealed? I hear there is a new law.”

**COMPLAINTS: 96** total, divided into two broad categories, as follows:

**Relationship Issues: 53 (examples from this fiscal year include):**

- “We keep going to court. . . three times already. I don’t know why.”
- “My attorney doesn’t return my phone calls and the voicemail is always full.”
- “I don’t really want a lawyer. I want to represent myself.”

**Performance Issues: 43 (examples from this fiscal year include):**

- “My lawyer has a conflict of interest. I want a new one.”
- “My lawyer doesn’t listen to a word I say. She promises to visit and then doesn’t show up.”
- “I want to withdraw my plea. I feel my lawyer coerced me.”

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The Assistant Chief Defender and/or the Managing Attorneys reviewed documentation of each and every inquiry or complaint prepared by the ODs. In each instance of a client complaint to the OD, the attorney involved was notified and asked about the client’s complaint. The OD also reviewed the available court records and PDP client information to determine the appropriate disposition of the complaint.

There were eight *Marsden* motions granted by the Court during the year based on the Judge’s assesment that irreconcilable differences existed between the lawyer and client. No *Marsden* motions were granted based on allegations of ineffective assistance of counsel.

The complaints received by the Officer of the Day that raised perceived performance issues represent .24 percent of the cases in which the Private Defender was appointed this year. Put another way, a complaint based on attorney performance was received in one of every 408 cases in which the PDP was appointed this year.

Finally, several of the 949 received phone calls from clients to the OD included praise and thanks for their court-appointed attorney or thanks for the assistance of the OD.

## PARAGRAPH 4.d.4: ATTORNEY CASELOADS

Paragraph 4.d.4 of the Agreement between the County and the Association requires a report on the caseloads of PDP lawyers. It states:

The Association and County agree that the number and type of cases for which a lawyer is responsible may impact the quality of representation individual clients receive. While there are many variables to consider, including the seriousness or complexity of each case and the skill and experience of the individual lawyer, useful information might be gathered from an evaluation of the caseloads of Private Defender Program attorneys. To this end, the Private Defender Program shall include the caseloads of each Private Defender Program attorney by types of cases, as well as the average caseloads for the Private Defender Program as a whole in the annual report. . .

Under the Association's Agreement with the County, the PDP is obligated to represent all indigent persons entitled to appointed counsel at public expense. Such representation is not limited to criminal and juvenile cases. The broader range of representation for which the PDP is responsible is described in detail in the Agreement attached as Appendix 1 and below.

Cases are assigned to attorneys based on their ability, training and experience, their availability to appear on the dates set for a particular case, and an assessment of the attorney's current caseload, which is determined from the Program's case management software, as well as discussions with the attorneys. The Office Manager and her staff assign routine adult cases, while the Chief Defender or Assistant Chief Defender reviews each non-routine case to assess the level of seriousness and complexity and makes the assignment to a qualified attorney.

All of the cases that come to the Private Defender Program Juvenile Office are reviewed by the Managing Attorney, who then assigns them to the individual attorneys. These assignments are based on complexity of the case, the seriousness of the allegations in the petition and the caseload of the attorneys. Great emphasis is given on maintaining continuity of attorney where possible.

Attached as Appendix 5 is a document entitled "Private Defender Program Case Counts for the Year Ended June 30, 2020."

Attached as Appendix 6 is a chart reflecting the number and types of cases that each attorney on the Private Defendant Panel was assigned during the fiscal year ending June 30, 2020. The case type corresponds to the case types defined in Section 2 of the Agreement, which is attached as Appendix 1.

A summary of the case types precedes the figures in Appendix 6. Appendix 6 includes information in columns and rows in addition to the Types A, B, C, and E. Specifically, the last column labeled “Type X” reflects services Private Defender Program attorneys provide and for which they are compensated, but which are not individual cases. A complete description of the services set forth in the column labeled “Type X” is in Paragraph 1 of the Agreement, attached as Appendix 1, labeled “Services.”

Also included is a row labeled “Attorney Unassigned,” which encompasses a wide variety of cases. For example, it applies to cases in which an attorney is assigned and the defendant thereafter fails to appear. If the client returns to court within sixty (60) days of the failure to appear, then the previously assigned attorney is expected to resume representation of the client and no additional case fee may be billed. The category also includes cases that were arraigned and for which the Private Defender Program had been appointed, but which had not been assigned to an attorney or which were in the process of being re-assigned to an attorney as of June 30, 2020. The “Ancillary Services” row of Appendix 6 corresponds to Paragraph 12 of the Agreement (attached as Appendix 1) and encompasses cases in which the court appoints the PDP to provide services, such as investigation and expert consultation, to defendants who are represented by private counsel but do not have sufficient funds for the ancillary services.

Even with the inclusion of these additional categories, Appendix 6 underrepresents the quantity of work that the Private Defender Program provides to the indigent community: the chart reflects only those cases that were arraigned during the fiscal year of July 1, 2019 to June 30, 2020, and does not include continuing cases which were arraigned before July 1, 2019.

### **STANFORD UNIVERSITY SCHOOL OF LAW CRIMINAL DEFENSE CLINIC**

In 2010, the Private Defender Program entered into a relationship with the Stanford University School of Law Criminal Defense Clinic in which second and third year law students represent Private Defender clients in misdemeanor cases from the arraignment to the end of the case. The PDP does this during two quarters of the academic year, with two different groups of students. The students are all certified by the State Bar of California and are allowed to appear in court and represent the clients under the supervision of their faculty, Associate Professor of Law, Ronald Tyler and Clinical Supervising Attorney, Suzanne Luban. In addition to their academic supervision, the students are assigned mentors in the Private Defender Program who have extensive knowledge of local criminal practice, and who meet with the students to consult with them on issues in their cases and assist them in navigating the local courts.

## PARAGRAPH 4.d.5: INITIAL CLIENT MEETINGS

Both the County and the Private Defender Program recognize that meeting with a client early in his or her case is important “in order to obtain information necessary to provide quality representation in the early stages of the case and to provide the client with information concerning the lawyer’s representation and the course criminal cases take in the San Mateo County Superior Court.” (Agreement, paragraph 4.D.5.). In light of this recognition, Paragraph 4.d.5 of the Agreement with the County requires a report annually on the subject of attorneys’ initial meetings with their clients. Initial visits with in-custody clients after appointment and before the next court appearance are a requirement specifically set forth in the Practice and Procedure Manual of the Private Defender Program.

The Agreement requires a report regarding the annual results derived from the system by which the Private Defender Program “monitors the occurrence of early interviews of incarcerated clients, taking into account the factors that affect the ability of Private Defender Program lawyers to make early jail visits, including but not limited to the number of days between arraignment and the next court appearance and the speed of assignment of cases to individual lawyers.”

The PDP administration employs a variety of methods to monitor whether and how far in advance of the first post-arraignment court appearance PDP attorneys are visiting their in-custody clients. These include reviewing the billing records of special fee cases, observation of attorneys at court appearances, court complaints, client complaints, and information the attorneys provide on their responses to the Annual Survey, a copy of which is provided in Appendix 4. The PDP administration is working to develop a more automated crosscheck through its software system for all cases, including non-special fee cases.

In this fiscal year, **99%** of the PDP attorneys representing in-custody clients reported meeting with their clients before the initial substantive court appearance an average of **98.10%** of the time or more. PDP attorneys also reported that they attempted to contact their non-custodial clients via letter to the address supplied on the criminal complaint, or by telephone at the number provided by the client to the arraignment calendar attorney. In addition, the attorneys tried to return calls to the number provided by clients to the PDP administration when those clients called to get the name of the attorney assigned to their case(s).

## **PARAGRAPH 4.d.6: COMMUNITY OUTREACH**

In recognition and acknowledgment of “the significant impact that the criminal justice system has on our community,” Paragraph 4.d.6 of the Agreement between the County and the Association calls for a report on the Community Outreach efforts of the Private Defender Program during the fiscal year. Both the juvenile and adult panels participated in significant community outreach this fiscal year, across a broad range of areas. For example, PDP attorneys appeared at Voices of Recovery, Project We Hope, Homeless Connect Court, and Veterans events. PDP participation in Juvenile Justice Committees, LifeMoves and events with Community Legal Services of East Palo Alto (CLSEPA) are set forth in more detail below.

### **JUVENILE JUSTICE COMMITTEES**

The lawyers on the Juvenile Panel are actively involved in community outreach, particularly through their participation on various committees that impact youth in the juvenile court system. These activities include working with the Probation Department concerning the Girl’s Empowerment Program and the Girl’s Camp. Panel attorneys also participate through other panel and board memberships, including the Practitioner Panel of the Center on the Developing Child at Harvard University, the Children’s Rights Litigation Committee of the American Bar Association, CASA, Pacific Juvenile Defender Center, and the Home and Hope program for families.

### **LEGAL CLINICS AT LIFEMOVES**

LifeMoves is an organization that combats homelessness in San Mateo County through comprehensive and coordinated programming, including monthly and bi-monthly Legal Nights staffed by local attorneys at three shelters: Maple Street Shelter in Redwood City, Redwood Family House in Redwood City, and First Step for Families Shelter in San Mateo. The most common legal issues faced by shelter residents are in the areas of criminal law, immigration, family law, government benefits, employment and housing. Follow-up is sometimes necessary if the client’s legal issue cannot be resolved in one evening. At all three shelters, the clients may also be referred to workshops, self-help centers, or a nonprofit or service organization to assist them with their issues. The Legal Nights have been cancelled indefinitely since the onset of the Covid-19 pandemic.

### **LIVESCAN AND RECORD CLEARANCE EVENTS WITH CLSEPA**

As part of the PDP’s commitment to helping our clients through all stages of the criminal law process, the PDP assists clients in understanding what is on their criminal record and what, if anything, they can do to have prior convictions reduced or expunged. In addition, the PDP has teamed up with local community organization Community Legal Services of East Palo Alto (CLSEPA) to conduct Live Scan events. Live Scan is the process one must complete in order to get a complete copy of all criminal history for a person from the Department of Justice.

PDP attorneys participated in seven Livescan and record clearance events through CLSEPA this past fiscal year. These included events at Project We Hope, the Veterans Administration in Menlo Park, and the Private Defender Program Offices.

## PARAGRAPH 4.D.7: CLIENT SURVEYS

In a further attempt to monitor client relations, and at the request of the Board of Supervisors, the PDP administration began sending out client surveys in November of 2013. The clients who receive the surveys are selected at random from recently closed cases. The surveys are mailed, in Spanish and English, along with self-addressed stamped envelopes, in the hopes of facilitating a prompt return of the surveys. The surveys are also available on the PDP website, in Spanish and English, and are available at the PDP Offices in the lobby.

The survey asks seven questions and invites expanded explanations of answers, as well as seeks any additional comments that the clients may wish to offer. The questions are crafted to determine if the clients felt that they had adequate opportunity to communicate meaningfully with their lawyers, and to determine if the clients believed that they received quality representation.

The questions that address whether or not there was sufficient opportunity to communicate with counsel include:

- “Did your attorney return phone calls?”
- “Did you have a chance to meet with the attorney before the first court appearance?”
- “Did you have enough time with your attorney to discuss your case?”
- “Did your attorney explain sufficiently what was going on with your case?”

The questions that address adequacy of representation include:

- “Did your attorney appear to be prepared in court?”
- “Was your attorney on time for meetings with you?”
- “Were you satisfied with the overall representation of your attorney?”

Surveys are also available in the Juvenile Court lobby. Each survey has a stamped envelope, addressed to the PDP Office, to facilitate the return of responses. Note that client surveys are not mailed directly to juvenile clients in light of the confidentiality issues and the restrictions set forth in Welfare & Institutions Code, section 827 related to that client base.

The PDP administration sent out a total of 397 surveys during the fiscal year ending June 30, 2020, receiving 22 replies, 20 of which were positive. We continue to hope for a greater response to the surveys and we are examining whether or not other methods can be used in the future to increase the response rate beyond approximately 6%. A continuing issue with the surveys sent out in the mail is related to the transient nature of our client base. We are, however, pleased to report that of the responses received, 91% of the clients were happy with the performance of their attorney.

## NOTABLE SUCCESSES: PEOPLE V. LI AND BAYAT

The PDP has a high rate of success on its cases, whether in terms of an outright acquittal or a conviction on lesser charges. Every year, the Annual Report describes one or more of these, to give the flavor of the level of accomplishment of its panel attorneys, with the benefit of the investigators and experts that are made available. Panel Attorney John May describes the trial of Bayat and Li below.

### **THE PEOPLE VS. TIFFANY LI AND KAVEH BAYAT: REFLECTIONS OF A PRIVATE DEFENDER BY JOHN K. MAY**

It was a November afternoon in 2018 when I received an unexpected phone call from the veteran and venerated PDP attorney Jim Thompson. He was asking me if I would come on board to help him with a homicide case from 2016 which involved the Millbrae Pancake House; an estranged boyfriend who had been found dead along a lonely dirt road in Sonoma County; a Chinese heiress who shared children with the decedent; a newish, and seriously tattooed, boyfriend, who had moved into the heiress' Hillsborough home; and a mysterious martial arts expert who went by several names and had confessed to driving the, he said, lifeless body of Keith Green to the Healdsburg location and dumping it the night Mr. Green went missing. To an outside observer, it was the stuff of a true crime novel! I accepted the challenge immediately.

The homicide case of People vs. Tiffany Li and Kaveh Bayat had been through many twists and turns up to that point. Ms. Li was being represented by a team of lawyers headed up by Geoff Carr. Though he was retained by Ms. Li's family in this case, Mr. Carr has been a long-time member of the PDP, with a successful career representing the poor and oppressed in the courtroom. Mr. Carr's team had doggedly been preparing a defense for their client since the day Ms. Li was charged in 2016. The DA's Office had by then engaged dozens of law enforcement witnesses and experts. By contrast, the PDP, and Thompson, had been appointed a year into the case, and it was deemed appropriate to assign another defense attorney given the complexity of the issues.

After taking the appointment, I met with the client, gained his confidence, then dove into the voluminous discovery which had been produced over the preceding 30 months, as well as transcripts and records of previous court hearings in the case. I also met with the several investigators and experts the Private Defender Program had already assigned to the case.

(continued on next page)

## THE PEOPLE VS. TIFFANY LI AND KAVEH BAYAT: REFLECTIONS OF A PRIVATE DEFENDER (continued)

Once I determined that Ms. Li's and Mr. Bayat's defenses were best unified, we took full advantage of Mr. Carr's generous offer to share all of what he and his team had developed. To my mind, the case turned on Olivier Adella, the confessed body-dumper, who had failed the District Attorney's polygraph test, *twice*, on the question of whether he shot Keith Green to death. Mr. Adella had been offered a sweetheart deal in exchange for his testimony against Li and Bayat. It was an unfortunate decision on the DA's part: Mr. Adella turned out to be a liar of extraordinary magnitude, and this became the primary focus of the defense. We conducted significant investigation and pre-trial litigation on numerous topics related to Mr. Adella's credibility as a prosecution witness. This defense work yielded fruit, and as Mr. Adella's liabilities became increasingly evident, the DA's Office was compelled to abandon him as a witness and to try the case based wholly upon circumstantial evidence.

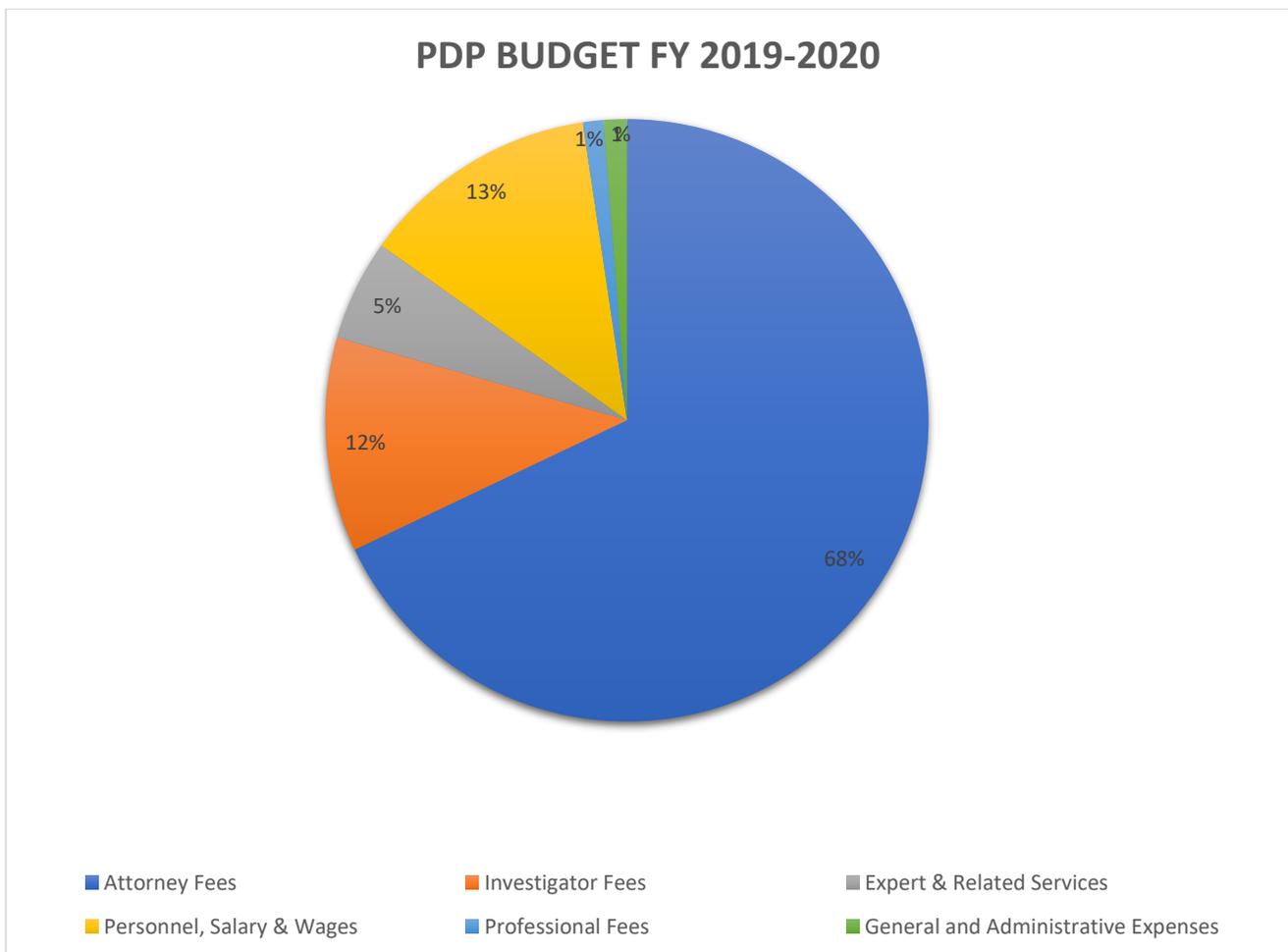
The trial lasted two and a half months, and involved not only the courtroom battles, but also the daily media circus in the Hall of Justice Plaza. The jury deliberated for a seemingly interminable three-plus weeks. When the verdicts were finally announced in a dead silent courtroom, it was a firm Not Guilty for Ms. Li and a hung jury, split 6-6, as concerned Mr. Bayat. To its credit, ultimately the DA's Office dismissed the case against Mr. Bayat. It was the right call. Mr. Bayat was not guilty, and I had great confidence that he would ultimately be acquitted upon retrial.

The PDP exists to take the fight up for persons in the most difficult and crowd displeasing circumstances. The media and the public had "convicted" Ms. Li and Mr. Bayat from the day they were arrested. The PDP provided the resources necessary to turn the perception of guilt around and to help set free an innocent soul. It is the highest honor to be associated with this program. Without it, many otherwise innocent folks would be behind bars, and many others would be serving long, unjust sentences.

## PARAGRAPH 4.d.8: ANNUAL BUDGET

Paragraph 4.d.8 of the Agreement requires that the Annual Report “include the annual budget of the program, setting forth the costs of the operation of the program for the year, including fees for attorney’s services, investigation and other ancillary defense services as well as the cost of administration.”

Appendix 7 presents the Private Defender Program budget including an agreement with the Superior Court County of San Mateo for the fiscal year ending June 30, 2020. The PDP, pursuant to the agreement with San Mateo County, managed a budget of \$19,115,556.72, broken down as shown in the chart below



## A LION IS GONE BY STEVE SCHAIMAN

Gordon Rockhill, a preeminent attorney who did a considerable amount of work for the PDP from its inception more than 50 years ago, died this past fiscal year. I had the privilege of working with him for nearly 30 of those years as his law partner and fellow PDP panelist, from 1972 until his retirement in 2000. Attorney Geoff Carr, who joined our practice in 1979, has said Gordon was “probably the finest criminal defense lawyer this county has ever seen,” an opinion that has been expressed to me repeatedly over the years, with, as I hope to show, good reason.

Gordon hired me in 1972, right out of law school and bar passage. I knew very little about trying a case and he was incredibly patient, spending hours telling me how to approach my cases. Before my first trial, I asked him for a couple of tips in giving an opening statement. I was all ears as he began to speak, advising me, “Keep your hands out of your pockets and make sure your zipper is up.” After discussing the misdemeanor case for a couple of hours, I was incredibly prepared and a whole lot less anxious about my chosen profession.

Gordon was known to be a master of jury selection, opening and closing statements, and cross-examination. Often, when word got out that he was giving a closing statement, lawyers would sit in the back of the courtroom and observe the maestro in action. His presence in the courtroom was commanding and magical but the magic he performed was due not to illusions or trickery, but rather to his painstaking preparation of his cases, and to his exquisite and withering cross examination. Dozens of times I saw him sit for hours, well into the evening, reading police reports and other relevant documents and figuring out his game plan. This was done at the preliminary hearing stage as well as the actual trial. He seemed always to know what he needed to establish to achieve success and developed a strategy as to how to get there. It was as though a trial was like a maze and he could usually determine which route to take, and which to avoid, so that a favorable result might be obtained.

He viewed every trial as a chess master would do, in that he planned his moves well in advance and he anticipated responses and planned other moves. In this fashion, he was never surprised. He usually knew what facts the case would hinge upon and focused on establishing such facts, or destroying the adverse witness, as Gordon always knew where he needed to end up. He called this the fulcrum of the case, “Do not spend time on establishing facts which don't fit the theory of your defense as it is a waste of time and you will risk losing the jury if you do.”

Gordon's cross examination of law enforcement personnel could be merciless and he was almost universally disliked, to put it mildly, in that community. However, I was told often by law enforcement officers that if they got into any legal difficulties, the lawyer they would want to hire Gordon Rockhill.

In the early 1980's one of Gordon's more noteworthy cases involved his representation of a young man charged with killing his parents, an accomplished artist and an orthodontist. A huge amount of publicity was involved and the trial remained in San Mateo County despite a request for a change of venue. Gordon was, as always, well prepared. The trial took a few weeks and the jury was unable to reach a verdict. By the time of the retrial, Jim Fox had been elected the District Attorney and he decided that he would personally try the case. Venue was moved to Sonoma County. For me, watching Gordon and Jim doing battles was the equivalent of watching a heavy weight championship fight between Muhammad Ali and Joe Frazier. The result was an outright acquittal, the only trial that Jim Fox ever lost.

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## A LION IS GONE BY STEVE SCHAIMAN (continued)

Gordon had high standards of course, and I remember one of my felony acquittals about 42 years ago, when I came back to the office with a bounce in my step to tell Gordon that the jury was out for three hours and I got an acquittal. His response was, "How come it took so long?" We then had a beer or two....

Gordon was a Renaissance kind of guy – he also worked with jewelry, painted, played the piano and was nationally known as a master wood worker, turning exquisite wooden bowls from burl on his lathe. Gordon was a true legal lion, a credit to the PDP, and we have lost a giant of the profession.

## BLACK LIVES MATTER

On June 8, 2020, public defenders throughout the Bay Area marched to their respective courthouses as part of a nationwide day of solidarity with the Black Lives Matter movement. The PDP joined this protest, walking to the County Center and then to Courthouse Square. As during all of the public defender Bay Area demonstrations, the PDP participants knelt in silence for 8 minute and 46 seconds in honor of George Floyd.



## THE WOODMAN AWARD

### Gina Jett

Each year at the San Mateo County Bar Association's Installation of Officers event, the PDP specially recognizes one of its own members with the Dennis L. Woodman Memorial award, which is presented to a PDP lawyer who "heedless of opposition and with ceaseless determination fights for those whose liberty or lives are in peril." Nominations are sought from the PDP panel attorneys and the PDP Committee then selects the award recipient. The value of the award is all the greater because it is chosen by one's peers. Members of the PDP committee and the PDP staff are ineligible for the award. This year Chief Defender Lisa Maguire presented the award to Gina Jett.

During the presentation of the award, Gina's dedication to the representation of abused and neglected children was highlighted. While Gina decided it was time for her to retire this past year, she has continued to stay involved in monitoring changes in the law and sharing her thoughts with other lawyers handling similar cases. Gina will be greatly missed but her continuing input is highly valued.



Pictured: Gina Jett, Joan Tillman, Lisa Maguire

## CONCLUSION

This past fiscal year, with the changes brought by the global pandemic, has been a challenge for all of society, and not the least our indigent clients who are navigating the criminal justice system. The justice system is moving towards a more holistic approach, and we look forward to working with the County to expand the terms of our contract in order to meet the growing needs of our indigent clients.

Thanks to Renee Berenson and Elidet Cruz-Garcia for editing and helping with the assembly of this Annual Report, Eric Liberman (Assistant Chief Defender), L. Scott Sherman (Managing Attorney) and Ron Rayes (Managing Attorney) for their help in collecting information and for drafting parts of this report.

Thank you to the SMCBA Board of Directors, as well as the County of San Mateo for their continuing support of our program.

Respectfully submitted,

*Lisa M. Maguire*

Lisa Maguire  
Chief Defender  
October 22, 2020



**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE San Mateo  
COUNTY BAR ASSOCIATION**

THIS AGREEMENT, made and entered into this 25 day of June 2019, by and between the COUNTY OF SAN MATEO, a political subdivision of the State of California, (hereinafter "County") and the SAN MATEO COUNTY BAR ASSOCIATION, a corporation, (hereinafter, "Association");

WHEREAS, it is the desire of both the County and the Association (collectively, the "Parties") to continue to provide appropriate and competent legal services to financially eligible persons accused of crime in San Mateo County, to those who are subject to the delinquency laws of the Juvenile Court, and to all those entitled to the services of court-appointed counsel in other proceedings;

WHEREAS, the Association is qualified to provide such legal services and representation through its Private Defender Program, subject to the authority of the courts to appoint counsel in certain cases;

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, the Association agrees to furnish such legal services through its Private Defender Program ("PDP"), and the County agrees to pay to the Association certain sums therefore upon the following terms and conditions:

**1. SERVICES**

The Association will provide qualified attorneys for acceptance of appointment as counsel for all financially eligible persons entitled to court-appointed counsel as a matter of law in the Superior Court of San Mateo County. The Association will provide such representation in criminal cases, juvenile delinquency cases, mental health cases, civil and miscellaneous cases as more fully described in Section 2 of this Agreement and Fee Schedule detail in **APPENDIX B**. As part of such representation, the Association shall provide attorneys to appear at all arraignment calendars, all specialty courts, juvenile court detention calendars, review calendars, '602' placement calendars, and as requested by the Superior Court of San Mateo County. As to the cases described in Section 2 of this Agreement, and Fee Schedule detail in **APPENDIX B**, the Association will provide necessary and appropriate ancillary services such as investigators, experts and other forensic services, the expense of which is not otherwise provided for by law. The Association shall also employ appropriate staff as may be required to fulfill its obligations under this Agreement.

The Association agrees and understands that the services performed under this Agreement, whether by the Association, investigators or the attorneys providing the representation described herein, are performed as an independent contractor and not as an employee of the County, and that neither the Association nor any members, investigators or attorneys performing hereunder acquires any of the rights, privileges, powers, or advantages of County employees.

## 2. CASE TYPES

For the purposes of this Agreement, a “case” shall be defined as follows: The representation of one person on one accusatory pleading. Multiple charges against a defendant in one accusatory pleading shall not prevent designation of a matter as a single case. If a single defendant is accused in more than one accusatory pleading, each separate pleading shall constitute a separate case. If multiple defendants are charged in a single accusatory pleading, it shall be considered that there are as many cases as there are defendants. Matters involving trial competency pursuant to Penal Code section 1367 *et seq.*, certified from the Municipal Court to the Superior Court, shall be deemed a separate case in each court. Any other proceeding instituted after sentence, or after the Private Defender Program has been relieved by the Court, and requiring appointment of counsel, shall be treated as one additional case.

- a. **“TYPE A” CASE** is generally described as a single Superior Court matter involving one accusatory pleading including an indictment, information, or certification under Penal Code section 859(a). It also includes the matters described in greater detail in **APPENDIX A**, attached hereto and incorporated by reference as though fully set forth herein.
- b. **“TYPE B” CASE** is generally described as a single Municipal Court matter involving one complaint or accusatory pleading, alleging a misdemeanor or a felony, and shall further be defined as a single court matter involving a petition, certification, or other Municipal or Superior Court proceeding, including but not limited to the matters described in greater detail in **APPENDIX A**, attached hereto and incorporated by reference as though fully set forth herein.
- c. **“TYPE C” CASE** is generally described as any case initiated pursuant to the Lanterman-Petris-Short Act or the Developmental Disability laws set forth in the California Welfare and Institutions Code.
- d. **“TYPE E” CASE** is defined as any matter in the Juvenile Court brought pursuant to the juvenile delinquency statutes of the State of California, including but not limited to those set forth in Welfare and Institutions Code section 602 *et seq.*

If, during the term of this Agreement, the Legislature enacts any law, or a court decision is rendered which has the effect of changing the definition of a “Type” as defined in this Section above, the County and the Association agree to continue to define the case as set forth in this Agreement.

## 3. COMPENSATION

The Compensation pursuant to this Agreement covers fixed-quarterly payments for two years, through June 30, 2021, and is renewable for an additional period of two years if

the parties mutually agree, subject to the parties' Termination and Transition Services obligations as set forth in Section 6 herein. Both the County and the Association acknowledge uncertainty about the effect that significant increases or decreases in case appointments, the number and nature of murder and other Special Litigation (defined below in this Section below) case appointments, legislation, court decisions, or actions of other agencies could have on the ability of the parties to perform under the terms of the Agreement. The County and the Association agree to meet, at the request of either party, to discuss any such concern at the earliest possible time so as to determine whether changes in the terms of the Agreement are necessary. The Parties estimated the amount of the funds, as set forth below, and the Parties acknowledged the uncertainty of increases and/or decreases of case appointments that may affect the amount actually spent within the requirements of this Agreement. To that end, in the event that any funds advanced to the Association for the performance of Services remains unspent at the end of each fiscal year, the Association shall notify the County with an estimate of unspent balance within forty (40) days of the close of the fiscal year, and with a final amount of unspent balance within 120 days of the close of the fiscal year. The parties agree that the Association shall make a good faith effort to maintain a reserve fund. The parties acknowledge that a minimum reserve level of 10 percent (10%) should be maintained by the Association for a program of this size and complexity. When the Association notifies the County of any unspent funds, the Association shall identify the amount the Association retains as reserve. The Association agrees that any unspent balance, not including a mutually agreed upon amount for reserves, will either be (1) returned to the County, or (2) applied to the remaining fixed payments as set forth below, at the County's sole election; however, in all cases any unspent funds will be applied to remaining payments set forth below until there is an agreement on compensation as outlined in (c) below.

In consideration for the Association's performance of the obligations set forth herein, and subject to the Association's satisfaction of its financial reporting obligations as set forth in Section 4, below, the County agrees to pay the Association the following:

- a. Costs will be based upon the actual amount paid by the Association for representation of PDP clients on all types of cases and services provided pursuant to this Agreement based upon the Fee Schedule which is attached hereto as **APPENDIX B**, plus any actual administrative overhead costs incurred that are not included in **APPENDIX B**. In no event shall the total amount paid to the Association exceed the total sum of \$18,720,000 for services provided during fiscal year 2019-2020, or \$19,468,800 for services provided during fiscal year 2020-2021.
- b. Except as specified in this Section below, the above-stated amount of compensation shall include all services for court appointments defined under Section 2, **CASE TYPES**, and for **SPECIAL LITIGATION CASES**, defined in this Section below, made during the period of the Agreement. An appointment shall be deemed made within the meaning of this Agreement on the date on which the Private Defender Program is first appointed.

- c. The Association shall be responsible for the complete representation of all persons for whom appointment was made under Section 2 during the period of this Agreement. Complete representation shall include provision of all services under the terms of this Agreement until a new appointment is authorized by the terms of Section 2.
- d. **A SPECIAL LITIGATION CASE** is a case involving multiple charges, unusually complex issues of law or facts, novel issues of law requiring complex motions or writs, or which requires extraordinary demands upon an attorney's time and efforts and skill. Special Litigation cases are primarily cases involving a homicide, attempted homicide, or cases providing for a sentence of life imprisonment. They also include proceedings pursuant to the Sexually Violent Predators Act (California Welfare and Institutions Code section 6600 *et seq.*), proceedings to extend the commitments of Mentally Disordered Offenders (California Penal Code section 2962 *et seq.*), and proceedings to extend the commitments of persons found Not Guilty by reason of Insanity (California Penal Code section 1026.5). Private Defender Program lawyers are compensated on an hourly basis for such cases, at the rates set forth in the Fee Schedule established by the Association.
- e. The payments set forth in this Section above, are based on a calculation of the anticipated caseload for each type of case. The rates for each type of case, for the term of this Agreement, are set forth in detail in APPENDIX B, attached hereto and incorporated by reference as though fully set forth herein.
- f. **Exclusion for Certain Cases.** Any case that is prosecuted by the Office of the Attorney General of California, or any case in which an attorney is appointed pursuant to the provisions of *Harris v. Superior Court* (1977) 19 Cal.3d 786, 140 Cal.Rptr. 318, shall not be included within the terms of this Agreement, but may at the County's option, be the subject of a separate agreement for representation. Notice of any known Motion pursuant to *Harris* above, shall be immediately forwarded to the County by the Private Defender Program. Any case in which a privately retained attorney seeks court appointment through the Private Defender Program, shall not be included within the terms of this Agreement unless the Chief Defender of the Private Defender Program shall approve. In the event that the Chief Defender intends not to approve, he or she shall notify the County immediately. Without the Chief Defender's approval, the County has no obligation to compensate the Association for such cases, nor does the Association have an obligation to compensate such attorneys. Such attorneys must apply directly to the appointing court for compensation pursuant to Sections 987.2(a) and 987.3 of the California Penal Code.
- g. **Exclusion for Penal Code 987.9.** In the event that Section 987.9 of the California Penal Code (concerning funds for investigators, experts, and other ancillary services in death penalty cases) is modified, repealed or superseded during the term of this Agreement, any case expense currently reimbursable by

the State of California which is transferred to the County due to such Section 987.9 being modified, repealed or superseded is not included in the terms of this Agreement, and shall be reimbursed separately and in addition thereto.

**4. ADDITIONAL OBLIGATIONS**

In addition to the Services set forth in Section 1 herein, the Association and the County expressly agree to the following duties and obligations:

**a. PDP POLICIES AND PROCEDURES**

1. The Association shall maintain and document accounting policies and procedures for the PDP, which shall be designed to ensure that segregation of duties, proper reviews and approvals, financial analyses, monitoring by management, and other internal controls are followed. The Association's management shall ensure compliance with these policies and procedures.
2. The Association shall thoroughly review vouchers for accuracy and compliance with documented policies, prior to paying the vouchers. The review and approval procedures performed by PDP personnel shall be documented to ensure the rules are consistently applied and monitored by management to verify that they are being followed.
3. The Association shall maintain and implement policies to ensure that voucher approval duties are segregated from system administration and voucher payment duties. Any deviation from this requirement shall be subject to higher level management review and documentation by the Association.
4. The Association shall properly allocate costs to the PDP. The Association shall develop a methodology to allocate employees' salaries and benefit expenses between PDP and non-PDP activities, which should then be reflected in updated case costs and other estimates used to determine the annual contract amount.
5. The Association shall have the sole responsibility for determining the fees and rates paid to Private Defender Program attorneys for work performed under the terms of this Agreement. The Association shall provide to the County a copy of the current Fee Schedule, setting forth such fees and rates, and shall provide to the County a copy of any modifications to the Fee Schedule within 30 days of adoption by the Association.
6. The Association shall furnish to the County, within 60 days of the end of each quarter of this Agreement, the names of all attorneys who were paid to represent Private Defender Program clients during that quarter.

**b. FINANCIAL REPORTING OBLIGATIONS**

1. The Association shall provide to the County 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 following the fiscal year-end. The Association shall change auditors at least once every five years.
2. The Association agrees to provide detailed reports of actual expenditures incurred for providing indigent legal services to the County no later than December 31 following the fiscal year-end to ensure the annual contract amount is reasonable and supported.
3. Fifteen days (15) after the end of each quarter, the Association shall provide the County with summary and detailed reports on case counts and related costs for the quarterly period immediately preceding the payment date that can be easily verified to source documentation upon request. The following summary and detailed reports shall be provided:
  - Expenditures by Attorney
  - Expenditures per Court Case Number, Case Type and Sub-Type
  - Expenditures by Fee Type
  - Expenditures by Administrative Expense Type
  - Case Count by Type and Sub-Type (with case number details)
  - All fees and costs which are, or may be, subject to reimbursement by the State or Federal governments, or which may be eligible for other than San Mateo County funding
4. The Association understands and agrees that: (1) the County may withhold the next quarterly payment to the Association pursuant to Section 3 above if the Association fails to deliver to the County the financial reports identified in Section 4, or if the financial reports are materially deficient or incomplete; and (2) any delay by the County in making the quarterly payment to the Association pursuant to Section 3 above and 3.f resulting from the Association's failure to timely deliver the reports to the County as required by Section 4 shall not relieve the Association of any of its obligations under this Agreement, including—without limitation—its obligation to provide Services pursuant to Section 1 herein.

c. RECORDS AND AUDITS

1. The Association shall maintain records and accounts during the term of this Agreement and for four years thereafter, and shall observe accepted accounting practices. The Association shall make all statistical and financial records and data relevant to the provisions of this Agreement that are not confidential and are not protected by the attorney-client or work-product privileges, available for inspection and audit by authorized representatives of the County at any reasonable time.

Except as otherwise authorized by California Government Code sections 27707 *et seq.*, nothing herein shall be construed to permit the County to examine the files of assigned counsel pertaining to actual representation of accused persons, and the laws defining the attorney-client privilege and attorney work-product will be strictly construed and observed to protect client confidentiality.

2. The Association shall furnish to the County, within 20 days of the end of each month of each year of this Agreement, a statistical breakdown of the number of cases in each of the categories defined and described in Section 2 herein, to enable the County to evaluate the performance of services under this Agreement.
3. The County shall maintain complete records of all reimbursement to the County, from whatever source, for services provided by the Association pursuant to the terms of this Agreement. The County shall furnish to the Association, upon request, information regarding the amount and source of reimbursement received by the County.

d. PERFORMANCE BENCHMARKS

1. Attorney Training. The Association recognizes that ongoing legal training is a requirement for all attorneys who are actively practicing law in California. The Association shall make sure that attorneys who perform work under this Agreement have satisfied that requirement by completing the number of hours of Continuing Legal Education required by The State Bar of California.
2. Attorney Evaluation. The Chief Defender of the Private Defender Program, and/or his/her designee, shall evaluate the professional performance of each Private Defender Program attorney annually. The Association shall make available to the County the standards by which performance was measured, and evidence that such evaluations were conducted, although all evaluations are to be confidential between the Private Defender Program and the attorneys. The number of evaluations conducted and the results thereof shall be included in summary form in the annual report of the Private Defender Program to the County as described in Section 4.d.8. below.
3. Client Complaints. The Private Defender Program will have a felony-qualified lawyer with at least five years of felony experience on the PDP attorney panel, on duty each business day at the Private Defender Program offices during regular business hours to speak to and to answer the questions of or to receive complaints directly from PDP clients or others on behalf of the PDP client. Such attorneys, known as “Officers of the Day” (or “OD”), will follow a written procedure for handling of client complaints, which is attached hereto as APPENDIX C and incorporated herein by reference. The

complaints or questions may be related to an ongoing criminal case, a yet to be filed case, or a case already adjudicated. The person may be on the phone or may come to the PDP Office to meet with the OD. The PDP will maintain a list of the assigned ODs, as well as Alternate ODs. If the OD has a personal or professional relationship with the attorney who is the subject of the complaint to such an extent that would cause the OD to be unable to exercise his professional judgment, the OD will refer the complainant to the Alternate OD or the Assistant Chief Defender. The Private Defender Program has developed and circulated to all staff and private defenders a flowchart setting forth this complaint procedure, which includes information that clients may appeal to the Chief Defender if they are unsatisfied with the response to their complaint. If clients express an interest in appealing the matter further, the OD shall advise clients of their right to appeal to the Chief Defender and provide contact information for that purpose. The OD will also advise clients that they may make a complaint with the State Bar of California, and include information of where to locate the State Bar's complaint form for that purpose. The OD will further advise the complainant that any client who indicates dissatisfaction with the decision of the Officer of the Day will be informed of his/her right to bring the complaint to the attention of the Court in the form of a *Marsden* hearing<sup>1</sup>, since the adequacy of the performance of counsel in court-appointed cases is ultimately for the Court to determine.<sup>2</sup> The number and nature of such complaints as well as their disposition shall be included in summary form, in the annual report of the Private Defender Program to the County, as described in Section 4.d.8. below.

4. Attorney Caseloads. The Association and the County agree that the number and type of cases for which a lawyer is responsible may impact the quality of representation individual clients receive. While there are many variables to consider, including the seriousness or complexity of each case and the skill and experience of the individual lawyer, useful information might be gathered from an evaluation of the caseloads of Private Defender Program attorneys. To this end, the Private Defender Program shall include the caseloads of each Private Defender Program attorney by types of cases, as well as the average caseloads for the Private Defender Program as a whole in the annual report of the Private Defender Program to the County, as described in Section 4.d.8. below.<sup>3</sup>
5. Initial Client Meetings. The Association and the County agree that attorneys should conduct a client interview as soon as practicable after being appointed by the Court, in order to obtain information necessary to provide

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118; 84 Cal.Rptr. 156.

<sup>2</sup> *Phillips v. Seely* (1974) 43 Cal.App.3d 104,115.

<sup>3</sup> The parties acknowledge that caseload averages are not appropriate for measuring the quality of representation provided by any individual attorney; rather they are tools for evaluating staffing needs for the Private Defender Program as a whole. The Spangenberg Group, "Weighted Caseload Study for the Colorado State Public Defender", November 1996, pg.67.

quality representation in the early stages of the case and to provide the client with information concerning the lawyer's representation and the course criminal cases take in the San Mateo County Superior Court. Such meetings may also serve to foster a relationship of trust and understanding that will ultimately inure to the client's benefit. Consequently, the Private Defender Program will devise a system to monitor the occurrence of early interviews of incarcerated clients, taking into account the factors that affect the ability of Private Defender Program lawyers to make early jail visits, including but not limited to the number of days between arraignment and the next court appearance and the speed of assignment of cases to individual lawyers. The results shall be included in the annual report of the Private Defender Program to the County, as described below in Section 4.d.8. The client will also be provided information, both verbal and written, explaining the Private Defender Program as well as a brief description of the process of a criminal case. The Private Defender Program has developed a brochure for this purpose, for both felony and misdemeanor cases. This brochure provides information to clients about the complaint process and shall be presented to each client at the initial arraignment on the case. A copy is attached hereto within APPENDIX C

6. Community Outreach. The Association and the County recognize and acknowledge the significant impact that the criminal justice system has on our community, particularly in portions of our community that have been affected by crime to an extent disproportionate to population. The Association recognizes that the privilege of practicing law in this community also provides the lawyers of the Private Defender Program an opportunity to share their knowledge and experience with those whose lives are most likely to be disrupted by entanglement in the criminal justice system. The Association, independently and/or in conjunction with community outreach programs of the San Mateo County Superior Court and other community agencies, will undertake to communicate to the public the mission of the Private Defender Program and its role in the criminal and juvenile justice systems. Community outreach efforts will be included in the annual report of the Private Defender Program to the County, as described in Section 4.d.8. below.
7. Client Survey. The Association will create a survey instrument and process to seek client views on the representation they received from the Private Defender Program. The results of such survey will be included in the Annual Report of the Chief Defender beginning with the Report for the FY 2016-2017.
8. Annual Report of the Chief Defender. Subject to the exception articulated in Section 10 hereunder, within ninety (90) days of the end of each fiscal year during the term of this Agreement, the Chief Defender of the Private Defender Program shall submit a written report to the Board of Supervisors detailing the Program's performance with respect to the items described in

Sections 4.d.1, 4.d.2, 4.d.3, 4.d.4, 4.d.5, 4.d.6 and 4.d.7. The annual report will also include the annual budget of the program, setting forth the costs of the operation of the program for the year, including fees for attorney's services, investigation and other ancillary defense services as well as the cost of administration. The Chief Defender may request an additional 30 days within which to submit said report, and upon receipt of said written request, the County may consent to said 30 day extension, which consent shall not be unreasonably withheld.

## **5. NON-DISCRIMINATION**

- a. No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, citizenship status, medical condition (including cancer), physical or mental disability, genetic information, sex, sexual orientation, pregnancy, childbirth or related medical condition, marital status, military or veteran status, status as a victim of domestic violence, assault, or stalking or political affiliation be denied any benefits or subject to discrimination, including the receipt of non-discriminatory services, under this Agreement. The Association shall ensure full compliance with federal, state or local laws, directives and executive orders regarding non-discrimination for all service providers, employees and subcontractors under this Agreement.
- b. The Association shall comply with section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- c. The Association shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. The Association's equal employment policies shall be made available to the County upon request.
- d. With respect to the provision of employee benefits, the Association shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- e. The Association shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

- f. The Association shall comply with the San Mateo County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the Association, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the Association or that the Association deduct from the employees regular pay the fees received for jury service.
- g. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Association to penalties, to be determined by the County Manager, including but not limited to
  - i. termination of this Agreement;
  - ii. disqualification of the Association from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii. liquidated damages of \$2,500 per violation;
  - iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.
- h. To effectuate the provisions of this paragraph, the County Manager shall have the authority to
  - i. examine the Association's employment records with respect to compliance with this Section 5;
  - ii. set off all or any portion of the amount described in this Section 5 against amounts due to the Association under the Agreement or any other contractor between the Association and the County.
- i. With regard to performance and services provided pursuant to this agreement, the Association shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified the Association that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. The Association shall provide the County with a copy of the response to the Complaint when filed.

**6. TERMINATION AND TRANSITION SERVICES**

- a. Termination upon 24 Months' Written Notice. If either of the Parties wishes to terminate this Agreement, the terminating party must deliver Notice to the other Party, in writing, of said intent to terminate the Agreement with an effective date of termination that is no earlier than twenty-four (24) months' later from the date of the Notice. In the event of

termination by Notice pursuant to this Section, the County shall be responsible for any actual direct and indirect costs incurred by the Association during the Notice period of twenty-four (24) months. The Association will invoice the actual costs of representation pursuant to this Agreement to the County without any added charges, and the County will reimburse the Association for approved actual costs reference in Appendix B within 45 days' receipt of an invoice.

- b. Termination for Default. Either the County or the Association may terminate this Agreement if the other party defaults in the observance or performance of its material covenants or agreements in this Agreement (other than a default in a payment obligation) and such default continues uncured for sixty (60) Business Days after written notice is given to such party failing to perform its covenants or agreements under this Agreement.
- c. Effect of Termination. Upon the effective date of the termination of this Agreement and after the expiration of the 24 month Notice period: (i) the Association may immediately cease providing new Services hereunder; and (ii) any and all payment obligations of the County under this agreement will become due immediately. Upon such termination, and upon request of the County, the Association shall reasonably cooperate with the County to ensure a prompt and efficient transfer of all data, documents and other materials to a new service provider in a manner such as to minimize the impact of expiration or termination on the individuals receiving Services pursuant to this Agreement. The County agrees to pay the Association compensation for Services performed in connection with such transfer, to the extent not contemplated in the Agreement.
- d. Transition At Time Of Termination
  - i. In the event of termination of this Agreement, in whole or in part, the Association shall take reasonable steps to ensure the orderly and effective transition of the Services to the County and/or a successor contractor ("Transition Assistance").
  - ii. All references in this Section to termination shall include partial and complete termination, cancellation or cessation unless the context otherwise requires.
  - iii. In relation to any partial termination, the provisions of this Transition Schedule shall apply only to those parts of the Services subject to such partial termination or expiry.
  - iv. Each reference to an obligation of the Association under this Section shall be deemed to include an obligation on the Association, to the extent possible, to secure compliance by all relevant sub-contractors with such obligation.
- e. Transition Assistance Period. The Transition Assistance Period shall mean as follows:

- i. In the case either party serves notice to terminate this Agreement pursuant to Section 6.a., the Transition Assistance Period shall mean a period of such duration as is determined by the County, but is limited to a maximum of eighteen (18) months, commencing eighteen (18) months prior to the effective date of the termination;
  - ii. In the case of a termination by default pursuant to Section 6.b, the Transition Assistance Period shall mean a period of eighteen (18) months commencing sixty (60) Business Days after written notice is given to such party failing to perform its covenants or agreements under this Agreement; or
  - iii. In the case of a repudiatory breach of this Agreement, the Transition Assistance Period shall mean a period of eighteen (18) months commencing on the date upon which the non-defaulting party accepts such repudiatory breach as terminating this Agreement. The parties understand and agree that a repudiatory breach is a breach so fundamental that it permits the distressed party to terminate performance of the contract, in addition to entitling that party to sue for damages.
  
- f. Transition Assistance Election. During the Transition Assistance Period, the Services will be discontinued or transitioned to a Successor Contractor at the County's sole discretion and such transition shall then be performed in accordance with the Transition Assistance Plan. From the commencement of the Transition Assistance Period and continuing until a date pre-agreed or such provided to the Association by the County with a minimum of thirty (30) days' notice, all the terms and conditions of this Agreement will remain unchanged during the Transition Assistance Period.
  
- g. Transition Assistance Plan. The Association shall develop, with reasonable assistance from the County, a written transition assistance plan specifying in detail all activities, and the corresponding timing of such activities, necessary to facilitate an orderly and effective transition of the Services to be provided during the Transition Assistance Period ("Transition Assistance Plan"), and shall deliver the Transition Assistance Plan to the County as follows:
  - i. In the case either party serves notice to terminate this Agreement pursuant to Section 6.a., within six (6) months of the service of notice to terminate this Agreement;
  - ii. In the case of a termination by default pursuant to Section 6.b, within fourteen (14) days of the commencement of the Transition Assistance Period as set forth in Section 6e.ii.; or
  - iii. In the case of a repudiatory breach of this Agreement, within fourteen (14) days of the commencement of the Transition Assistance Period as set forth in Section 6e.iii.
  
- h. Contract Materials. At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, reports,

photographs, time entries, and other written materials (collectively referred to as “contract materials”) provided by the County to the Association under this Agreement shall remain the property of the County and shall be promptly returned to the County. Upon termination, the Association may make and retain a copy of such contract materials if permitted by law.

**7. INDEMNIFICATION**

Each party shall defend, indemnify and hold the other party, its officers, employees and agents harmless from and against any and all liability, loss, expense including reasonable attorneys’ fees, or claims arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys’ fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the indemnifying party, its officers, agents, or employees. The parties expressly understand and agree that the attorneys, investigators and others providing services pursuant to this Agreement are not employees of the County for any purpose and the County is not responsible for any claims, liability or expenses relating to their status as independent contractors. This obligation to hold harmless, defend and indemnify shall continue beyond the term of this Agreement or any extension of this Agreement.

**8. INSURANCE**

- a. **Liability insurance.** The Association shall take out and maintain during the life of this Agreement such Comprehensive General Liability, Motor Vehicle Liability and Professional Liability Insurance as shall protect the Association while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from the Association operations under this Agreement, whether such operations be by the Association or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability..... \$1,000,000
- (b) Motor Vehicle Liability Insurance..... \$1,000,000
- (c) Professional Liability..... \$1,000,000

After one year from the date this Agreement is first executed, the County may, at its sole discretion, require an increase in the amount of liability insurance to the level then customary in similar county agreements by giving sixty (60) days' notice to the Association. The County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

- b. **Worker's Compensation Insurance.** The Association shall have in effect, during the entire life of the Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, the Association certifies awareness of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provision of the Code, and certifies compliance with such provisions before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.

## 9. MEDIATION

Any dispute between the parties arising out of this Agreement, or any of the APPENDICES attached hereto, that the parties have been unable to resolve shall be referred to mediation. The parties will agree upon a mediator from a list of available mediators within five (5) days of being provided with a list of mediators by a Service Provider. If the parties cannot agree on a mediator within such period, then a list of three available mediators will be sent by the Service Provider to the parties. Each party may strike one name by delivering written notice to the Service Provider within five (5) days after delivery of the list of mediators. The remaining name will be the Mediator; provided that if two names are left, the Service Provider shall select which of the two shall serve as Mediator. The parties shall use their reasonable efforts to resolve this dispute during the Mediation. Mediation shall continue until the dispute is resolved or the parties decide to abandon mediation. In the event that the dispute has not been resolved within sixty (60) days after the dispute has been referred to mediation, either party shall have the right to proceed to litigation with respect to such dispute.

It is agreed by the parties that the cost of the Mediator and any associated costs resulting from mediation shall be shared equally between the parties.

It is agreed by the parties that unless otherwise expressly waived by them, any action brought to enforce any of the provisions of the Agreement for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of San Mateo, State of California.

#### **10. EVALUATION**

The County and the Association recognize and acknowledge that evaluation of the performance under the terms of this Agreement is a function that necessarily includes the participation of the San Mateo County Superior Court. As noted in *Phillips v. Seely* (1974) 43 Cal.App.3d 104,115:

“The availability of a reasonable sum of money to reasonably compensate assigned counsel where required by law is the responsibility of the board of supervisors; whether indigent persons entitled to counsel at public expense are being adequately represented by reasonably compensated counsel is for the court to determine.”

The County may form a committee to evaluate ongoing performance under the terms of this Agreement, at any time during the period of this Agreement and no less than every 5 years, that shall include members of the judiciary, members of the Association who are not actively participating as Private Defender Program attorneys, and may include other interested persons as determined by the County, to make such reports and recommendations as may be appropriate and of assistance to the parties hereto.

In any year in which such a performance review is conducted it will be in lieu of the requirement of the Annual Report described in Section 4.d.8.

The County and the Association agree that, upon the submission of any report and/or recommendation by the Committee, either party may require the other party to meet and confer regarding any changes to the Private Defender Program or amendments to this Agreement that may be warranted based on such report or recommendations.

#### **11. WITNESS, INTERPRETER AND TRANSLATOR FEES.**

Payment of witness fees shall be governed by the provisions of Sections 1329 and 1334.3 of the Penal Code, by Sections 68093 and 68098 of the Government Code, and such other statutory provisions as may be applicable; and the payment of interpreter and translator fees shall be governed by Section 68092 of the Government Code and Sections 731 and 752 of the Evidence Code.

#### **12. COURT-REQUESTED INVESTIGATIVE SERVICES.**

Upon request of the Court and with the Association's acceptance, investigative and ancillary defense services shall be provided on behalf of a party before the court in a proceeding where such party has not received appointed counsel. Any expense incurred for services rendered under the provisions of this paragraph during the period of this Agreement may be accounted for as a Special Litigation case, and is included within the total compensation paid by the County to the Association.

**13. TERM OF AGREEMENT.**

The term of this Agreement shall cover an initial period of July 1, 2019 through June 30, 2021, subject to the parties' Termination and Transition Services obligations as set forth in Section 6 herein. This Agreement may be renewed for an additional period of two (2) years by mutual agreement of the parties, also subject to the parties' Termination and Transition Services obligations as set forth in Section 6 herein.

**14. PRIOR AGREEMENT**

This Agreement supersedes and replaces the prior agreement between the County and the Association for the Association to provide legal services to financially eligible persons in San Mateo County in effect until June 30, 2019.

**15. USE OF CONTRACT REVENUES.**

The Association agrees that all funds provided to it hereunder will be used only to enable the Association to meet its responsibilities as herein defined.

**16. SUCCESSION PLANNING.**

The Association shall appoint a Chief Defender of the Private Defender Program. The position of Chief Defender is filled by Myra A. Weiher. Should the Chief Defender retire, resign, become incapacitated or otherwise leave her current post as the Chief Defender, the Association agrees to notify the County of such change immediately. The Association shall further meet and confer with the County regarding the selection process for the position of Chief Defender.

**17. TIME OF THE ESSENCE**

Both the County and the Association expressly agree that time is of the essence under this Agreement.

**18. ENTIRE CONTRACT.**

This is the entire contract between the Parties, and no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by both the Association and the County. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

**19. AUTHORIZED AGENT; NOTICES.**

The County Manager's Office shall be County's agent for the purpose of this Agreement. All notices provided for hereunder shall be addressed and delivered to the County Manager's Office for the County of San Mateo.

\* \* \* \* \*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement for the provision of services in connection with the Private Defender Program, effective as of June 25, 2019.

COUNTY OF SAN MATEO

BY Carole Snow  
President, Board of Supervisors

ATTEST:

[Signature]  
Clerk of said Board

SAN MATEO COUNTY BAR ASSOCIATION

By [Signature] 0/10/19  
Vice President Kathleen A. Durran

# AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION

*FY 2019-2021*

## **APPENDIX A**

**“TYPE A” CASES** also include appeals to the Appellate Department of the Superior Court of San Mateo County; writs filed on behalf of defendants (specifically excluding writs of *habeas corpus* filed on behalf of prisoners of the State of California pursuant to the provisions of California Penal Code section 4750); and all quasi-criminal and civil proceedings in either the Municipal or Superior Court which are not specifically mentioned in subsections 2b, 2c, 2d, or 2e herein, but which are proceedings in which the law requires that counsel be provided at public expense, including but not limited to contempt proceedings (California Code of Civil Procedure sections 1209 *et seq.*); proceedings to terminate parental rights (California Family Code sections 7802, 7860-7864 *et seq.*); probate conservatorship proceedings pursuant to California Probate Code sections 1471 and 1852; paternity, support, and adoption proceedings, proceedings pursuant to the provisions of the Service members Civil Relief Act, and proceedings pursuant to the Sexually Violent Predators Act (California Welfare and Institutions Code section 6600 *et seq.*).

**“TYPE B” CASES** also include proceedings to revoke or modify probation, parole or post-release community supervision; matters involving competency and insanity pleas certified from the Municipal Court to the Superior Court; matters arising after the suspension of criminal proceedings pursuant to the provisions of the Welfare and Institutions Code, or after commitment to the California Rehabilitation Center; representation at lineups; representation of witnesses; post-conviction record clearance in Adult and Juvenile cases; petitions for resentencing under SB-1437; and any other appearances or representations by assigned attorneys specifically requested or ratified by a Judge of the Superior Court of San Mateo County, and not included in any other provisions of this AGREEMENT, where the law requires that counsel be provided at public expense, whether or not such matter is filed in court.

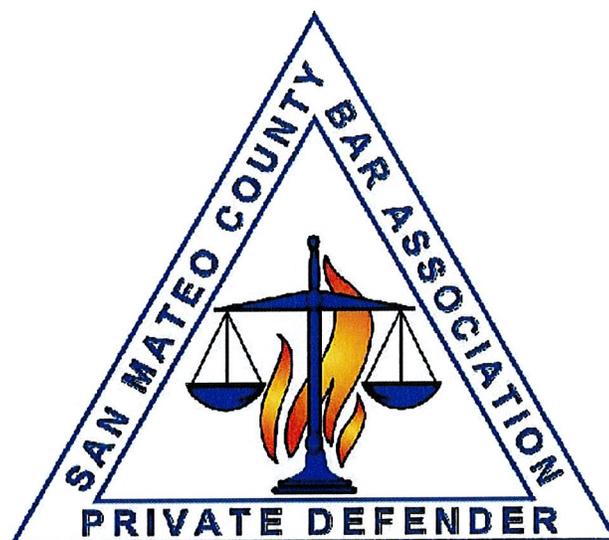
**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO  
COUNTY BAR ASSOCIATION**

**FY 2019-2021**

**APPENDIX B**

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**San Mateo County Bar Association  
Private Defender Program**



**FEE SCHEDULE**

**Effective 07/01/2019**

## **SECTION I – MISDEMEANOR/FELONY CRIMINAL -ADULT**

### **1. Misdemeanor- General non DV charges**

A. Case Fee	\$260
B. Pre-trial Conference	\$85
C. Probation Violation – unconsolidated case fee	\$200
D. Probation Violation – consolidated case fee	\$105
E. Probation Violation – unconsolidated – pre-trial conference fee	\$85
F. Probation Report and Sentencing	\$105
G. Contested Hearings on Probation Violations, sentencing, restitution, etc.	\$100/hour

### **2. Misdemeanor- Domestic Violence**

A. Case Fee	\$270
B. Pre-trial Conference	\$120
C. DV Probation Violation – unconsolidated case fee	\$200
D. DV Probation Violation – consolidated case fee	\$105
E. DV Probation Violation – unconsolidated – pre-trial conference fee	\$120
F. Probation Report and Sentencing	\$105
G. Contested Hearings on Probation Violations, sentencing, restitution, etc.	\$100/hour

### **3. Felony- Original Filing in Court of Limited Jurisdiction (prior to “Superior Court”)**

Case Fee depends on what happens with the case. This is a total fee and there are no separate SCR fees.

A. PRELIMINARY HEARING IS HELD when there is <b>NO SCR</b>	
1. First Session (a.m. or p.m.)	\$660
2. Additional sessions – per hour	\$80/hour
B. PRELIMINARY HEARING IS HELD when there <b>IS an SCR</b>	
1. First Session (a.m. or p.m.)	\$575
2. Additional Sessions – per hour	\$80/hour

When the Preliminary Hearing IS HELD and after the prelim the Court or DA reduces the entire case to a misdemeanor, the case is dismissed, the client pleads or the case is simply certified, then the fee is the same as above. If case is reduced to a misdemeanor after preliminary Hearing but not completely resolved, you should bill misdemeanor case fee and Pre-trial fee as appropriate.

**C. NO PRELIMINARY HEARING IS HELD AND:**

1. Client WAIVES preliminary hearing	\$270
2. Client fails to appear and attorney withdraws at SCR	\$225
3. Client fails to appear and attorney withdraws at Preliminary hearing	\$280
4. Retained counsel substituted in at SCR	\$225
5. Retained counsel substituted in at Preliminary Hearing	\$280
6. Client pleads to a felony or misdemeanor and is fully sentenced	\$400
7. Client pleads to a felony or misdemeanor and is put over for sentencing or restitution report	\$270
8. Probation report and sentencing (859a or felony reduced to a misdemeanor)	\$250
9. Restitution determination – Felony or felony reduced to a misd.	\$240
10. Contested Hearings on Sentencing Issues	\$100/hour
11. Case is totally dismissed at SCR	\$345
12. Case is totally dismissed at Preliminary Hearing	\$400
13. Client pleads and is sentenced to DEJ	\$400
14. Case is reduced to misdemeanor before Preliminary Hearing is held. (If this occurs at any time without client immediately entering a plea, you should create new billing entries for misdemeanor case fee, pre-trial and jury trial fee as appropriate.)	\$190
15. If a doubt is declared at any time before certification to Superior Court (See also Fee Schedule 10. A.)	\$250
16. Contested hearings on restitution or sentencing issues.	\$100/hour

**4. SUPERIOR COURT CASES**

A. Felony Case fee	\$700
B. Superior Court pre-trial conference	\$120

**5. POST CONVICTION CASES**

A. Felony Probation Violation Unconsolidated- Case Fee	\$225
B. Felony Probation Violation Consolidated-Case Fee	\$105
C. PRCS Violation Unconsolidated- Case Fee	\$235
D. PRCS Violation Consolidated- Case Fee	\$105
E. Parole Violation Unconsolidated -Case Fee	\$235
F. Parole Violation Consolidated -Case Fee	\$105
G. Pre-Trial Conference for Probation, Parole and PRCS Violations if Unconsolidated	\$120
H. Hearings on Probation, Parole, PRCS Violations	\$100/hour

**6. TRIAL FEES – Misdemeanor and Felony (in addition to case fees)**

**A. Jury Trial**

- 1. Trial Fees - Per Hour \$135/hour
- 2. Preparation Fee – Per Day \$280
- 3. Jury Deliberation – Per Hour (payable only if attorney is unable to return to office – explain on bill) \$75/hour

**B. Court Trial**

- 1. Court Trial Fees - Per Hour \$100/hour
- 2. Preparation Fee – Per ½ Day (am or pm) \$120

**NOTE:** Trial fees commence ONLY when and if a case is actually assigned out to a TRIAL department, and is thereafter payable ONLY for hours in court, or for in-chambers discussions.

Preparation fee is payable for each day of jury trial and each ½ day of court trial, once the case is assigned to a TRIAL department AND once *in limine* motions or jury selection has begun through closing argument only.

The Preparation Fee is NOT paid for Probation Violations or Court Trials on transcripts with no testimony.

**7. MOTIONS- a copy of the motion must be attached to the bill for review.**

**A. COMPLEX MOTIONS \$325**

A complex motion is one that includes complex issues, original research, original writing, or a combination of these things. Extensive details and facts regarding the client could also make a motion fall into this category. (e.g. –a detailed Romero motion, a 995 with citations to the record and detailed legal analysis.) In this type of motion facts are detailed and attorney has attempted to analyze and distinguish the case, or go beyond addressing simple issues that have been previously briefed.

**B. STANDARD MOTIONS \$110**

A standard motion is one that uses material that has been previously briefed, but still requires some original material that analyzes the applicability of the case’s facts to the cited law and a statement of facts. It should include unique application to your client and argument applicable to your case.

C. BOILERPLATE MOTIONS

\$0

A Boilerplate motion is one that has no original research, writing, or argument about the case and the only original work is the caption and possibly a brief statement of facts. These are basic motions to join in someone else's motion, in limine motions for not using certain terms like "victim", federalizing all objections, and the like.

**Note on Motion Levels:** If you feel that your motion does not fit into a specific level – Administrative Fees may be requested with a detailed explanation of why your work is beyond the level generally applicable. (See section: IV: 1)

D. HEARINGS AND ARGUMENT ON MOTIONS

\$100/hour

**8. MISDEMEANOR AND FELONY CRIMINAL CALENDARS**

A. Misdemeanor Arraignment Calendar – two (2) hours or less

\$125

1. Over two (2) hours – additional per hour

\$75/hour

2. Cases closed on calendar—per case

\$80

B. Superior Court AM Arraignment Calendar- two (2) hours or less

\$225

1. Over two (2) hours – additional per hour

\$75/hour

2. Cases closed on calendar -per case

\$80

C. Superior Court PM Custody Calendar

\$540

**NOTE:** Cases closed on this calendar or continued for resolution are not separately billable by attorney.

D. Specialty Court Calendars- per hour

\$185/hour

1. Drug Court, Treatment Court, Bridges, Pathways, Veterans and Military Diversion Court

2. PC1370 Court, DV Review Calendar, Laura's Law Court, CAMI Court, DUI Review Calendar, DUI Conference Calendar and Restitution Court

\$170/hour

E. Specialty Court Calendars – preparation fee

\$135

(Drug Court, Treatment Court, Veterans and Military Diversion Court, Laura's Law Court, CAMI Court, DUI Court and Restitution Court)

## 9. PC1367/1368 – WHEN A DOUBT IS DECLARED AS TO COMPETENCE

### A. FELONY CASES IN “LOWER COURT”

For arraignment in Superior Court on the mental health case (no new case number) through ALL hearings involving finding on competency and placement order. \$300

If a client is found competent and proceedings are reinstated, bill from where you left off.

If a client is found incompetent and placed, when and if the client is later returned as competent, the case should be billed as a new case. (Unless the client is returned within 60 days).

### B. FELONY CASES IN SUPERIOR COURT

If a doubt is declared at any time in Superior Court, bill for the mental health/1367 portion of the case. \$300

If client is found **competent** and proceedings are reinstated, when the case goes back to wherever it left off, you bill normally.

If a 1367 doubt is declared and the client is found **not competent**, then at the time of the placement order, bill a case fee and other fees as appropriate.

When a client is returned from a placement (after 60 days) and is then found **competent**, bill as a new case. (Unless returned within 60 days).

If a client is returned less than 60 days from the last placement order, (and the original attorney is reassigned to the case) no new case fee is appropriate.

**C. SPECIAL FEE CASES** – Felony and Misdemeanor – these cases should be billed hourly for all work.

### D. MISDEMEANOR CASES

If at any time a doubt is declared \$300

(This fee covers all appearances for doctor’s reports and findings as well as communication with doctors, the client or others regarding the competency determination.)

If client is found **competent** – then the case goes back to wherever it left off and you bill normally.

If a client is found **not competent** and placed, then when the client is returned as competent, bill as a new case. (Unless the client is returned within 60 days).

If the client is returned from placement and found competent within 60 days, then the original attorney will be reassigned the case (absent compelling reasons), and no new case fee or PTC fee will be paid if attorney was paid these fees previously.

If the client returns from placement after 60 days, the original attorney will be reassigned the case (absent compelling reasons) and fees should be billed as if it is a new case.

#### **E. WORK ON FELONY OR MISDEMEANOR CASES AFTER PLACEMENT IS ORDERED**

During the time in which criminal proceedings are suspended, it may be necessary or appropriate to deal with issues **after placement is ordered**, but before competency has been restored. In that event, any work done should be billed at the rate of **\$105 an hour**.

Examples of this type of work include: speaking to the jail or hospital personnel to determine if placement has occurred, checking on the client's mental health status and progress toward competence, keeping track of the maximum time for which the proceedings can be suspended, advocating for the client when the maximum confinement or competency restoration time is near, handling of a case where it is deemed that the client will not regain competency, and work towards getting a dismissal or other resolution of the case when appropriate. This may also include an appropriate motion to have the client returned to court and working with LPS attorney or County Counsel.

#### **F. TRIAL ON COMPETENCY**

If there is a trial on competency, then billing should be done pursuant to Section 7 of the Fee Schedule, billing like any other trial.

### **10. PETITIONS FOR REDUCTION AND DISMISSAL PURSUANT TO PROP 47 AND PROP 64**

- |   |      |
|---|------|
| A. Filing Petition for Reduction or Dismissal   | \$50 |
| B. Mandatory Court Appearance for resolution of Petition  | \$80 |
| C. Writing and Arguing Motion for resolution of Petition are billed according to Section I:8:A-D of this fee schedule |      |

### **11. SPECIAL ASSIGNMENTS (Only by assignment from the Staff Attorneys)**

- |  |                         |
|--|-------------------------|
| A. Special Assignment by Staff Attorneys                       | \$95-125                |
| B. Expungements  | \$250/Case              |
| C. Line-Up   | \$295                   |
| D. Motion to Withdraw Plea Review<br>Case Fee plus hourly rate | \$325 fee<br>\$105/hour |
| E. Officer of the Day – half day/full day                      | \$250/\$500             |
| F. Witness Representation<br>Case Fee plus hourly rate         | \$325 fee<br>\$105/hour |

## 12. BILLING NOTES FOR ALL CASE TYPES

A. Where a single client has multiple cases on the same calendar for pre-trial conference, only a single pre-trial conference fee may be billed. (Attorney can pick the case on which to apply the single fee).

When a case or probation violation is consolidated with other cases then only one pre-trial fee may be billed.

In all cases the pre-trial fee is payable only one time, regardless of how many pre-trials are held on the case.

As with any case that requires an extraordinary amount of work, an administrative fee request can be submitted if multiple pre-trial conferences occur and the case is appropriate for such a fee.

B. In ANY CASE – when the client fails to appear at any point in the proceedings and the PDP is relieved, the case may be submitted for payment. If the client returns to court within sixty (60) days of the FTA, then the previously assigned attorney will be expected to resume representation of the client, and no additional case fee may be billed. (Policy and Procedure Manual section 3.2.4)

If a client fails to appear for a **third** time with the same attorney, then the attorney can bill as if the case is a new case. (Case Fee and Pre-Trial Fee if held)

C. ALL bills must be submitted within 90 days of completion of the case or they may not be paid.

D. Non-Special Fee cases MUST NOT be billed until the case is completely closed. If restitution or a Driver's License issue is still pending, then the case is still open. (See Policy and Procedure Manual section 3.2.1)

E. All Special Fee/Hourly Cases must be billed MONTHLY or bills may not be paid.

## **SECTION II-SPECIAL SERVICES**

### **1. CIVIL PROCEEDINGS**

(Family Law Contempt, DCSS Contempt, Probate, Military Dissolution, Paternity, etc.)

- |   |           |
|---|-----------|
| A. Per hour (up to 15 hours: Special Fee request required if over 15 hours)           | \$95/hour |
| B. Trial fees – Same as Adult see section 1:7:A and B (except Prep Fees are not paid) |           |
| C. Probate Code Sect. 3200 Medical Consent cases                                      |           |
| 1. Case Fee   | \$195     |
| 2. Hourly   | \$95/hour |
| D. DCSS Contempt Calendar   |           |
| 1. Two (2) hours or less  | \$125     |
| 2. Over two (2) hours – additional per hour   | \$90/hour |

\* **NOTE:** Civil Cases MUST be paid MONTHLY like other special fee and hourly cases.  
A bill should be submitted EVERY month.

### **2. WRITS**

- |  |            |
|--|------------|
| A. Case Fee  | \$250      |
| B. Per hour – including preparation and hearing (up to 15 hours;<br>Special Fee request required if over 15 hours) | \$105/hour |

### **3. APPEALS**

- |  |            |
|--|------------|
| A. Per Hour – including preparation and hearing (up to 15 hours;<br>Special Fee request required if over 15 hours) | \$105/hour |
|--|------------|

### **4. MENTOR SERVICES**

- |             |        |
|-------------|--------|
| A. Case Fee | \$1080 |
|-------------|--------|

**NOTE:** This fee is intended to compensate for the time the mentor invests as a resource to the mentee. It covers such things as telephone conversations and other casual meetings that do not consume significant amounts of time during the period of the relationship.

- |               |            |
|---------------|------------|
| B. Hourly Fee | \$105/hour |
|---------------|------------|

**NOTE:** This rate is paid in addition to the Case Fee above, and covers time spent in more structured meetings that consume significant amounts of time, including but not limited to: scheduled meetings to discuss cases, attending court appearances including pre-trials and jury trials that you attend with your mentee, etc.

## SECTION III- LPS

### 1. LPS TRIALS AND RE-HEARINGS

A. Case Fee	\$255
B. Jury Trial	
1. Jury Trial Fees – Per Hour (in addition to case fee)	\$135/hour
2. Preparation Fee – Per Day	\$280
3. Jury Deliberation – Per Hour (payable only if attorney is unable to return to office – explain on bill)	\$75/hour
C. Court Trial	
1. Court Trial Fees – Per Hour (in addition to case fee)	\$100/hour
2. Preparation Fee – Per ½ day (am or pm)	\$120
D. Re-Hearing Hourly	\$95/hour

**NOTE:** Trial fees commence ONLY when and if a case is actually assigned out to a TRIAL department, and are thereafter payable ONLY for hours in court, or, for in-chambers discussions.

Preparation fee is payable for each day of jury trial and each ½ day of court trial, once the case is assigned to a TRIAL department AND once *in limine* motions or jury selection has begun through closing argument only.

The Preparation Fee is NOT paid for Probation Violations or Court Trials on transcripts with no testimony.

### 2. CALENDAR

A. Two hours or less (including preparation)	\$250
B. Over two Hours – additional per hour	\$85/hour

### 3. WRITS

A. Case Fee	\$250
B. Per Hour – including preparation and hearing. (Up to 15 hours; Special Fee request required if over 15 hours)	\$105/hour

### 4. MEDICAL CONSENT/DO NOT RESUSCITATE

A. Case Fee	\$195
B. Hourly	\$95/hour

**NOTE:** Civil Cases that are determined to be special fee MUST be paid MONTHLY like other special fee and hourly cases. A bill should be submitted EVERY month.

## **SECTION IV- EXTRAORDINARY FEE REQUESTS**

**1. ADMINISTRATIVE FEE CASES**— Reviewed by Staff Attorneys (Chief Defender, Assistant Chief Defender and Managing Attorneys) for requests up to \$2500 additional to fee schedule.

Cases that do not meet the criteria for treatment as a Special Fee Case (see below), and yet require **extraordinary** effort and time, may be considered for additional compensation. The standard case fee already includes compensation for things that would normally come up in a case including working with a PI, experts, mental health experts, motions to continue, etc. When you have a case that is particularly complex or difficult you may apply for an Administrative Fee.

Administrative Fee requests must seek a **specific amount of compensation**. (Specific dollar amount.) A letter describing the case and specific factors that made it extraordinary should be attached to the bill. Additionally, the letter should include a brief itemization of the time invested. A cursory statement simply asking for the additional fee without details is insufficient. Insufficiently documented requests will be returned for documentation and may not be paid.

Your bill should reflect your understanding that the Fee Schedule was designed to cover the vast majority of cases, and is intended to compensate all attorneys on the panel equally for their work. While the Administrative Fee process is available to compensate lawyers for truly extraordinary cases, the evaluators will be mindful of the fact that panel attorneys are never asked to return money on cases assigned to them that settle quickly with little time or effort.

**2. SPECIAL FEE CASES**— Special Fee cases are assigned by the Staff Attorneys. These cases are billed hourly; no other part of the fee schedule is used in billing these cases. There are different types of Special Fee Cases.

**A. Life Imprisonment:** This category includes murders and any case that includes a charge for which the penalty prescribed by law is life imprisonment. Examples of this type of case include murder, attempted pre-meditated murder, One-Strike sexual assault, kidnapping for ransom, etc.

**B. Three Strikes Cases:**

1. A true Three Strikes Case where the client has two or more strike priors and the new charge is a serious or violent felony will start out as a “Life Case” under the Special Fee schedule and is billed at \$135/hour.

2. If a Three Strikes Case, at any time during the pendency of the case, becomes a second strike case (e.g.- by designation of the District Attorney or because a prior is determined to not be valid and this is acknowledged by the DA) then the special fee amount changes from \$135/hour to \$105/hour from that point forward.

3. If a Client has multiple strike priors but the case is filed as, or is being prosecuted as, a second strikes case, then the case is NOT a Three Strikes Case. (e.g. – The new charge is not a serious or violent felony.) This case should be billed as a general felony case. If you believe that the case is appropriately a special fee, then follow the instructions regarding making a request under that section of this fee schedule. (Section IV: 2: D)

C. Non-Life Imprisonment: Cases that most frequently fall into this category are extremely difficult felony cases. Examples are: manslaughter, kidnapping, sexual assault, child molestation, high tech crimes, complex fraud litigation, or any other case a Staff Attorney determines to be appropriately set as a special fee case based on the charges.

D. Difficult and Complex Issue Cases

These cases are ones that place extraordinary demands on the attorney's time and skills, and thus qualify, in the Staff Attorneys' Judgment, for treatment as Special Fee cases payable at an hourly rate described below.

Generally, this type of case will be assigned by a Staff Attorney as a Special Fee case from the beginning. However, an attorney should make a request when it becomes clear that a case seems it should appropriately be billed as Special Fee. (See section IV: 3)

In determining whether or not it is appropriate for a case to be a special fee case, the Staff Attorneys will evaluate the request for compensation in light of the realities of indigent criminal defense representation, including our inability to pay the true market value of attorney services. Factors that are considered in determining whether or not a case merits Special Fee treatment include:

- i. Difficult Client – serious mental issues, personality, contrariness, etc.
- ii. Nature of charges – the gist of the case, the prosecution position, potential punishment.
- iii. Extra Hours – unusual legal issues, unusual number of or type of expert witnesses to deal with, travel, quantity of documentary evidence to review, difficult witnesses to interview, etc.
- iv. Motions – unusual in scope or number (attach copy to billings)

E. Petitions for Resentencing on Murder Convictions

\$135/hour.

### 3. Special Fee Request Format

The majority of Special Fee cases will be predetermined by the Staff Attorneys (Chief Defender, Assistant Chief Defender and Managing Attorneys). If you have a case that was not already marked as a Special Fee case that should have been (by charge or sentence exposure), you should contact one of the Staff Attorneys.

If you have a case that you would like to have considered as a special fee case (that is not one by definition by its charge or sentence), then you **MUST** get approval from a Staff Attorney BEFORE you submit **ANY** hourly billing. Vouchers will be returned if you do not get approval prior to submitting hourly billing.

Without violating the attorney client privilege or compromising either the rights of the client or the attorney's ethical or legal duties, each Special Fee request **MUST** include the following:

1. An email to a Staff Attorney explaining the charges against the client and why you believe the case is or should be a special fee case.
2. A notation on the first billing of the case as to why it is special fee and which staff attorney made the special fee approval, and why (very briefly) it is special fee.
3. Special Fee billing must be specific and detailed and done MONTHLY.  
Specific examples of how this billing must be done are as follows:
  - A. Attorneys shall identify each major issue researched and the time spent on them.
  - B. The bill shall indicate the nature of the work performed, i.e. SCR, pre-trial, review discovery, preliminary hearing, preparation for trial, meeting with client, investigator, DA, or witness, etc.
  - C. Identify the documents reviewed
  - D. Identify any motion researched or drafted
  - E. State the nature of the court appearance and the time involved
  - F. All time spent must be itemized in 1/10 hour increments

#### 4. SPECIAL FEE HOURLY RATES

When a case is a special fee case, the billing consists only of hourly billing. You should not bill a case fee, pre-trial fee, motion fees, or any other event based fee.

- A. \$180/hour\* Applies to Lead Counsel in Death Penalty Cases
- B. \$150/hour Applies to Lead Counsel in a Special Circumstance Cases
- C. \$150/hour\* Applies to Second Counsel in Death Penalty Cases
- D. \$135/hour Applies to all other murder, attempted-premeditated murder cases, Three Strikes Life cases, Petitions for Resentencing under SB1437, Youthful Offender Parole cases and cases that include a charge for which life imprisonment can be imposed.
- E. \$120/hour\*\* Applies to extremely difficult felony cases, such as manslaughter, non-premeditated attempted murder, vehicular manslaughter, kidnapping, sexual assault, sexually violent predator, child molestation, gang cases, high tech crime, complex fraud prosecution, Veterans Resentencing (AB865), or any other case a Staff Attorney determines is appropriately set at this level.
- F. \$115/hour Complex cases that involve unique facts, defendants or issues where not covered elsewhere in this section as deemed appropriate by the Staff Attorneys.
- G. \$105/hour\*\* Applies to Strike Cases that begin as Three Strikes but become Second Strike Cases, MDO, NGI extensions and outpatient extensions, and other cases that the Staff Attorneys determine are appropriately set at this rate.
- H. \$105-150/hour Advisory Counsel and Stand By Counsel. Amount will be determined based on type of case and charge. A Staff Attorney will determine the appropriate hourly fee based on the underlying case details.
- I. \$95 - 125/hour\*\* Applies to all other cases that Staff Attorneys determines are appropriately set as special fee cases, special projects or special assignments.

\*In death penalty cases where two attorneys are authorized, counsel may agree to split the hourly rates between themselves. For example, Lead Counsel and Second Counsel might agree to each bill at \$165 per hour instead of \$180 and \$150 respectively.

\*\*The rate paid for jury trial in these cases will be the higher rate described for all jury trials in the fee schedule – e.g. \$135 an hour.

**NOTE:** You should be aware that some changes in the status of a case will likely result in a change of the applicable rate. For example, if the District Attorney's Office declares that they will no longer seek the death penalty in a special circumstance murder prosecution, the rate would change from \$180/hour rate to \$150/hour. Similarly, if a simple kidnapping charge becomes a kidnapping for robbery case after the preliminary hearing, the case would go from a general non-special fee felony to a special fee case payable at the \$125/hour rate from that point forward. You should alert a Staff Attorney of such a change in status at the first available opportunity.

**SECTION V – JUVENILE COURT**

**1. DELINQUENCY (602 Cases)**

A. CASE FEE	\$500
1. Additional Petition: Unconsolidated	\$355
2. Additional Petition: Consolidated (with case or other PV)	\$145
B. Contested Hearing Fee	
1. Per Hour	\$100/hour
NOTE: Hourly fees commence from the scheduled calendar time (e.g. 9:00 am or 2:00 pm) ONLY if a witness is called and are thereafter payable only for hours in court and in-chambers discussions.	
2. Preparation Fee- per ½ day (am or pm)	\$120
NOTE: Preparation fee is payable for each ½ day of contested hearing, once the hearing has begun. The preparation fee is NOT paid for Probation Violations or Contested Hearings on transcripts or reports with no testimony.	
C. Disposition Fee (for each separate appearance)	\$160
E. PETITIONS FOR REDUCTION AND DISMISSAL PURSUANT TO PROP 47 AND PROP 64	
1. Filing Petition for Reduction or Dismissal	\$50
2. Mandatory Court Appearance for resolution of Petition	\$80
3. Writing and Arguing Motion for resolution of Petition are billed according to Section I:8:A-D of this fee schedule	
F. Calendars	
1. Placement Review Calendar	\$160
2. Glenwood Review Calendar	\$400
3. Girls Program Calendar	\$400

**2. DEPENDENCY: (300 Cases)**

A. CASE FEE	
1. Child Representation (1 or more child)	\$970
2. Parent Representation (1 or both)	\$970

**NOTE:** Case fee is billable after disposition hearing and includes all uncontested hearings through disposition and all future non-appearance reviews. Contested hearing fees are additional. On cases assigned before 7/1/18, case fee is billable prior to disposition.

**B. CONTESTED HEARING FEE**

1. Per Hour \$100/hour

**NOTE:** Hourly Fees commence from the scheduled calendar time (e.g. 9am or 2pm) ONLY IF a witness is called and are thereafter payable only for hours in court and in-chambers discussions.

2. Preparation Fee- per ½ day (am or pm) \$120

**NOTE:** Preparation fee is payable for each ½ day of contested hearing once the hearing has begun. The preparation fee is NOT paid for Contested Hearings on transcripts or reports with no testimony.

C. MANDATORY POST DISPOSITION REVIEW– by assigned attorney \$160  
(for each appearance made by assigned attorney)

**3. WELFARE AND INSTITUTIONS CODE SECTION 366.26 CASES**

A. CASE FEE \$970

**B. CONTESTED HEARING FEE**

1. Per Hour \$100/hour

**NOTE:** Hourly Fees commence from the scheduled calendar time (e.g. 9am or 2pm) ONLY IF a witness is called and are thereafter payable only for hours in court and in-chambers discussions.

2. Preparation Fee- per ½ day (am or pm) \$120

**NOTE:** Preparation fee is payable for each ½ day of contested hearing once the hearing has begun. The preparation fee is NOT paid for Contested Hearings on transcripts or reports with no testimony.

C. MANDATORY POST DISPOSITION REVIEW– by assigned attorney \$160  
(for each appearance made by assigned attorney)

**4. AB12 CASE FEE:**

A. When originates from 602 \$970

B. When originates from 300 and is a new case \$970

C. When continues from established 300 case there is no new case fee

**5. MOTIONS- a copy of the motion must be attached to the bill for review.**

**A. COMPLEX MOTIONS**

**\$325**

A complex motion is one that includes complex issues, original research, original writing, or a combination of these things. Extensive details and facts regarding the client could also make a motion fall into this category. (e.g. –difficult presumed father or relative placement motions, complex 700.1 or a detailed Romero motion) In this type of motion facts are detailed and attorney has attempted to analyze and distinguish the case, or goes beyond addressing simple issues that have been previously briefed.

**B. STANDARD MOTIONS**

**\$110**

A Standard motion is one that uses material that has been previously briefed, but still requires some original material that analyzes the applicability of the case's facts to the cited law and a statement of facts. Should include unique application to your client and argument applicable to your case.

**C. MOTION USING STANDARD "JV" FORMS – 300 AND 602**

**\$80**

This motion is one where the motion simply requires the filling in of a form after finding Out information from or about your client his or her circumstances. (e.g. – WIC 778,338)

**D. BOILERPLATE MOTIONS**

**\$0**

A Boilerplate motion is one that has no original research, writing, argument or thought about the case and the only original work is the caption and possibly a brief statement of facts. These are basic motions to continue, motions to join in someone else's motion, in limine motions for not using certain terms like "victim", federalizing all objections, and the like.

**Note on Motion Levels:** If you feel that your motion does not fit into a specific level – Administrative Fees may be requested with a detailed explanation of why your work is beyond the level generally applicable. (See section IV: 1)

**E. HEARINGS AND ARGUMENT ON MOTIONS**

**\$100/hour**

## 6. OTHER JUVENILE RELATED ASSIGNMENTS

A. Managing Attorney Special Assignments – per hour	\$105/hour
B. Adoption/Guardianship-per hour	\$90/hour
C. DEJ Violations	\$160
D. EMP Violations	\$160
E. Guardian Ad Litem #1	\$970
As client representative in court when client has mental health Issues. Bill case fee and reviews just like any other dependency case.	
F. Guardian Ad Litem #2- per hour Representation of a minor where the client/minor has a potential civil claim.	\$100/hour
G. Juvenile Court Adoption- per hour	\$90/hour
H. Line-up	\$295
I. Officer of the Day- half day/full day Half Day is 8:30-12:00 or 1:30-4:30	\$250/\$500
J. Sealing Fee is per client. If more is warranted attorney should request an Administrative Fee with explanation as to why extra fee is warranted.	\$110
K. Witness Representation – Case Fee plus Hourly Rate	\$325 \$105/hour
L. Miranda advice to in-custody 15 y.o. or younger minor [SB395] On-call 24 hours for consultation—non-holiday 24 hours On-call 24 hours for consultation—holiday 24 hours Consultation with 15 y.o. or younger minor [SB395]	\$250 \$500 \$135/hour
This fee covers travel to/from location of minor to be questioned and time spent doing the consultation.	
M. Miranda advice to minors requested by Juvenile Probation. This fee covers travel to/from location of minor to be questioned and time spent doing the consultation.	\$135/hour

## 7. RE-ASSIGNMENT OF CASES

When re-assignment of a case is made, the Chief Defender, Assistant Chief Defender or Managing Attorney of the Juvenile Office will determine the fee to be paid. The factors considered in making the fee determination will be the type of case reassigned, the complexity of that case, as well as the status of the case on the court calendar.

## IV. JUVENILE EXTRAORDINARY FEE REQUESTS

**1. ADMINISTRATIVE FEE CASES**— Reviewed by Managing Attorney (for requests up to \$2500 additional to fee schedule. This applies to both 300 and 602 cases.

Cases that do not meet the criteria for treatment as a Special Fee Case (see below), and yet require **extraordinary** effort and time, may be considered for additional compensation. The standard case fee already includes compensation for things that would normally come up in a case including working with a PI, expert, mental health expert, motions to continue, etc. When you have a case that is particularly complex or difficult you may apply for an Administrative Fee.

Administrative Fee requests must seek a **specific amount of compensation**. (Specific dollar amount.) A letter describing the case and specific factors that made it extraordinary should be attached to the bill. Additionally, the letter should include a brief itemization of the time invested. A brief statement simply asking for the additional fee without details is insufficient. Insufficiently documented requests will be returned for documentation and may not be paid.

Your bill should reflect your understanding that the Fee Schedule was designed to cover the vast majority of cases, and is intended to compensate all attorneys on the panel equally for their work. While the Administrative Fee process is available to compensate lawyers for truly extraordinary cases, the evaluators will be mindful of the fact that panel attorneys are never asked to return money on cases assigned to them that settle quickly with little time or effort.

**2. JUVENILE SPECIAL FEE CASES**— Special Fee cases are assigned by the Managing Attorney. These cases are billed hourly; no other part of the fee schedule is used in billing these cases. In determining whether or not a case is appropriate for special fee status, the Managing Attorney will evaluate the case in light of the realities of indigent criminal/juvenile defense representation, including our inability to pay the true market value of attorney services.

### **A. DETERMINATION OF SPECIAL FEE CASES:**

Determination regarding if a juvenile case is a special fee case may be made in advance of assignment or at the request of an attorney, but the special fee status can only be designated by the Managing Attorney. The specific hourly rate is determined by the type of case and/or by the Managing Attorney. (See section B below.)

Factors that are considered in determining whether or not a case merits Special Fee treatment include:

- i. Difficult Client – serious mental issues, personality, contrariness, etc.
- ii. Nature of charges – Seriousness of the offenses charged, potential serious dispositional consequences
- iii. Extra Hours – unusual legal issues, complex cases, quantity of documentary evidence to review, difficult witnesses to interview, etc.
- iv. Motions – unusual in scope or number (attach copy to billings)

## **B. JUVENILE SPECIAL FEE HOURLY RATES**

When a case is a special fee case, the billing consists only of hourly billing. You should not bill a case fee, disposition fees, motion fees, or any other set type of fee.

- 1. \$135/hour\* Applies to Murder, and Attempted pre-meditated Murder
- 2. \$120/hour\* Applies to extremely serious felony 707(b) offenses or Sexual Assault cases as defined In Penal Code section 290.008, gang cases and non-premeditated attempted murder cases. Applies to complex 300 cases (i.e. shaken baby cases, etc.) Managing Attorney determines which cases are appropriately set at this level
- 3. \$105/hour\* Applies to Serious 602 cases including those involving strike offense, Complex 300 cases, 300 cases involving extremely difficult clients. Managing Attorney determines which cases are appropriately set at this level.
- 4. \$105-150/hour Advisory Counsel and Stand By Counsel. Amount will be determined based on type of case and charge. A Staff Attorney will determine the appropriate hourly fee based on the underlying charges and facts.
- 5. \$90-125/hour\* Applies to all other cases that the Managing Attorney determines are appropriately set as special fee cases, special projects or special assignments.

\*The rate paid for Contested Hearings in these cases will be the higher rate of either the Contested Hearing Rate of \$100 per hour or the approved Special Fee rate.

### C. Special Fee Request Format

The majority of Special Fee cases will be predetermined by the Managing Attorney. If you have a case that was not already marked as a Special Fee case that you think should have been, you should contact the Managing Attorney.

If you have a case that you would like to have considered as a special fee case that is not one by definition by its charge or sentence, then you **MUST** get approval from the Managing Attorney **BEFORE** you submit **ANY** special fee billing. Any such vouchers will be returned if you do not get approval **prior** to submitting hourly billing.

Without violating the attorney client privilege or compromising either the rights of the client or the attorney's ethical or legal duties, each Special Fee request **must** include the following:

1. An email to the Managing Attorney explaining the charges against the client and why you believe the case is or should be a special fee case.
2. A notation on the first billing of the case as to why it is special fee case, that the Managing Attorney approved it as a special fee, and why (very briefly) it is special fee.
3. Special Fee billing must be specific and detailed and done **MONTHLY**.

Specific examples of how this billing must be done are as follows:

- a. Attorneys shall identify each major issue researched and the time spent on them.
- b. The bill shall indicate the nature of the work performed, i.e. Jurisdictional Hearing, Contested Hearing, Contested Dispositional Hearing, review of discovery, etc.
- c. Identify the documents reviewed
- d. Identify any motion researched or drafted
- e. State the nature of the court appearance and the time involved
- f. All time spent must be itemized in 1/10 hour increments

### 3. BILLING NOTES FOR ALL CASE TYPES

- A. In ANY CASE – when the client fails to appear at any point in the proceedings and the PDP is relieved, the case may be submitted for payment. If the client returns to court within sixty (60) days of the FTA, then the previously assigned attorney will be expected to resume representation of the client, and no additional case fee may be billed. (Policy and Procedure Manual 3.2.4) If a client fails to appear for the third time for with the same attorney, then the attorney can bill for a new case fee.
- B. ALL bills must be submitted within 90 days of completion of the case or they may not be paid.
- C. All Special Fee/Hourly Cases must be billed **MONTHLY** or bills may not be paid.

# **AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND THE SAN MATEO COUNTY BAR ASSOCIATION**

**FY 2019-2021**

## **APPENDIX C**

### **CLIENT COMPLAINT PROCEDURES**

Contract with County requires OD to log complaint into a centralized database with:

- a. Name of person making complaint;
- b. If not the PDP client, relationship to the client;
- c. Details of the complaint;
- d. All actions taken by the OD and/or administrative staff in response, including any investigative actions;
- e. Disposition of the complaint.

If appropriate, the OD shall:

- a. Contact the client to gather additional info;
- b. Contact other who may offer relevant info;
- c. Review Court records;
- d. Contact attorney to investigate merit of complaint.

OD may or may not recommend a change to the assigned attorney after considering;

- a. Nature and seriousness of complaint;
- b. Relationship between the complainant and assigned attorney;
- c. Specificity of the complaint;
- d. Veracity, substance/merit of complaint;
- e. Urgency of complaint;
- f. Timeliness of complaint in relation to the status of the case;
- g. Impact change would have on the outcome of the case;
- h. Best interests of client.
- i.

If No Change is Recommended, OD should inform client:

- a. Right to bring a Marsden
- b. Right to appeal to Managing Atty., ACD or Chief Defender and ultimately Co. Manager
- c. Right to file a complaint with the State Bar of California
- d. Provide complaint form to client and direct them to its location on the Cal. Bar website

**Trial**

You have the right to a Jury Trial where twelve jurors must all agree before you can be found guilty. You can also choose to have a Court Trial where the Judge alone decides the outcome. Your lawyer will provide you with complete and diligent legal representation throughout the entire legal process, including your trial.

**Sentencing**

Practically all sentences for misdemeanors include formal or informal probation, a fine, community service, time on a work program, or in some instances, time in custody.

Convictions for some offenses will affect your driving privileges or immigration status and some convictions have long-term registration requirements. Be sure to listen carefully to your lawyer and ask him or her questions about how a plea of guilty or no contest will affect you.

**Questions or Concerns:**

The Private Defender Program offices are open Monday through Friday, 8:30am-noon and 1:00-5:00pm. There is an Officer of the Day available to receive calls at (650)298-4000 or visits regarding any questions, concerns or complaints you may have about the handling of your case

All complaints will be thoroughly investigated, discussed with you and logged into the Private Defender database. If you are not satisfied with the outcome of that investigation, you will be able to appeal the decision. In that case, the appeals process will be carefully explained to you.



Misd. Arraignment Date \_\_\_\_\_

**PRIVATE DEFENDER PROGRAM**

650-298-4000  
333 Bradford St., Ste. 200  
Redwood City, CA 94063  
Mon-Fri 8:30-5:00 pm  
(closed noon-1:00)

**COURT DATES**

\_\_\_\_\_ at \_\_\_\_\_ am/pm RWC/SSF  
\_\_\_\_\_ at \_\_\_\_\_ am/pm RWC/SSF  
\_\_\_\_\_ at \_\_\_\_\_ am/pm RWC/SSF

**IF YOU ARE IN CUSTODY:** Call the Private Defender Program (#210 from jail) 2 or 3 working days from today during office hours. The receptionist can tell you the name and phone number of the attorney appointed to represent you. The attorney will come to visit you before the next court appearance.

**IF YOU ARE OUT OF CUSTODY:** Call the Private Defender Program a week from today during office hours. The receptionist can tell you the name and phone number of the attorney appointed to represent you. It is your duty to contact the attorney and set up an appointment.

**My Attorney's Name:**

**Phone Number:**

## The Private Defender Program

The Private Defender Program is operated by the San Mateo County Bar Association under a contract with the County of San Mateo. All Private Defenders are experienced criminal lawyers, licensed to practice law in California.

Private Defender lawyers work with well-trained, experienced investigators and experts in a variety of fields. Every person charged with a misdemeanor has the right to be represented by an attorney at all stages of the criminal proceedings. If you cannot afford an attorney, the San Mateo County Superior Court will appoint the Private Defender to represent you.



## The Court Process for Misdemeanors

A misdemeanor is a criminal charge that can carry a maximum sentence of up to one year in the county jail and/or a fine of up to \$1,000, plus penalty assessments.

Conviction of a misdemeanor can have serious consequences. Therefore, any person charged with a misdemeanor offense should consult with an attorney prior to proceeding with their case.

If you are arrested for a misdemeanor and held **in custody**, you will be brought to your first court appearance within 48 hours of your arrest.

If you were released on a citation or you posted bail and are **not in custody**, you will have been

given a date, time and place for your first court appearance.

### Arraignment

The first court appearance is called the Arraignment. During the Arraignment:

- You are informed of the charges against you.
- You are given a copy of the Complaint listing the charges against you.
- You are advised of your constitutional rights.
- You can apply to have the Private Defender Program represent you.
- You enter a plea of not guilty.
- The Court will set a date for a Pre-Trial Conference and a Jury Trial.

### Bail or Release on Own Recognizance

If you are in custody, the Private Defender lawyer in court will request you be released on your "own recognizance" or that the court set a reasonable bail – money or some form of property posted with the court in exchange for your release. Information on how to contact a bail bond agency is located in the Maguire and Maple Street Correctional Facilities.

### Contacting your Private Defender Lawyer

Within a few days of your Arraignment, a specific lawyer will be assigned to your case. You can learn the name and contact information for your lawyer by calling the Private Defender offices during business hours. It is very important for you to work with your lawyer to achieve the best outcome for your case.

If you are in custody, your lawyer will visit you in the jail before your next court date. **You should not discuss your case on the phone with anyone.** All phone conversations within the jail

are recorded and what you say may be used against you in Court.

If you are not in custody, you should arrange to meet with your lawyer before your next court date. You may be asked to provide the names and contact information for potential witnesses. Your lawyer will request investigation and prepare pre-trial motions, as needed. These might include motions to keep evidence out of court, limit the use of certain evidence or to dismiss the charges before trial.

### Pre-Trial Conference

At a Pre-Trial Conference, your lawyer will meet with the District Attorney and a Judge to discuss a possible settlement of your case. Your lawyer will present your side of the case in an effort to reduce the charges or the possible sentence. Your lawyer is required to present any offer to settle the case to you, even one you may consider to be unreasonable. You should discuss the offer with your attorney but remember that you have the final decision as to whether you wish to accept or reject the offer. If the offer is rejected your case will be confirmed for trial.

If you enter a plea of guilty or no contest you will usually be sentenced immediately. As a general rule, you will have to complete and sign a "Change of Plea and Waiver of Rights" form prior to entering your plea. Be sure you carefully read and understand this form

court decides there is probable cause, you will be ordered to appear for Arraignment in Superior Court.

**Arraignment in Superior Court**

Before the Arraignment in Superior Court, the District Attorney will file the charges in an Information. Arraignment on the Information is generally set approximately two weeks after the Preliminary Hearing. These proceedings are held at 400 County Center in Redwood City.

After entering new pleas of not guilty, you will have a Pre-Trial Conference and a Jury Trial set. You will have the right to set a trial date within 60 days. You can also waive your right to a speedy trial and set a trial date out more than 60 days from the date of the Arraignment.

**Pre-Trial Conference**

A date for a Pre-Trial Conference is set at the Arraignment. There, your lawyer, the District Attorney and the Court and will meet to discuss a possible settlement of your case before trial. Your lawyer must present you with any offer to settle the case against you, even what you may consider an unreasonable offer.

The ultimate decision to accept or reject an offer is yours and yours alone.

**Trial**

You have the right to a Jury Trial where twelve jurors decide if you are guilty or not guilty. Or you can have a Court Trial where a judge alone decides. Your lawyer will provide you with complete and diligent legal representation throughout the entire legal process, including your trial.

**Questions or Concerns**

The Private Defender Program has an Officer of the Day available to receive calls or visits regarding any questions, concerns or complaints you may have about the handling of your case.

All complaints regarding the handling of your case will be thoroughly investigated, discussed with you and logged into the Private Defender database. If you are not satisfied with the outcome of that investigation, you will be able to appeal the decision. In that case, the appeals process will be carefully explained to you.



Felony Arraignment Date \_\_\_\_\_

**PRIVATE DEFENDER PROGRAM**

650-298-4000

333 Bradford St., Ste. 200

Redwood City, CA 94063

Mon-Fri 8:30am-5:00pm

(closed Noon-1:00pm)

**COURT DATES**

\_\_\_\_\_ at \_\_\_\_\_ am/pm RWC/SSF

\_\_\_\_\_ at \_\_\_\_\_ am/pm RWC/SSF

\_\_\_\_\_ at \_\_\_\_\_ am/pm RWC/SSF

**IF YOU ARE IN CUSTODY:** Call the Private Defender Program (#210 from jail) 2 or 3 working days from today during office hours. The receptionist can tell you the name and phone number of the attorney appointed to represent you. The attorney will come to visit you before the next court appearance.

**IF YOU ARE OUT OF CUSTODY:** Call the Private Defender Program a week from today during office hours. The receptionist can tell you the name and phone number of the attorney appointed to represent you. It is your duty to contact the attorney and set up an appointment.

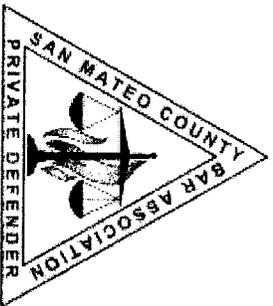
My Attorney's Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

### The Private Defender Program

The Private Defender Program is operated by the San Mateo County Bar Association under a contract with the County of San Mateo. All Private Defenders are experienced criminal lawyers, licensed to practice law in California.

Private Defender lawyers work with well-trained, experienced investigators and experts in a variety of fields. Every person charged with a felony has the right to be represented by an attorney at all stages of the criminal proceedings. If you cannot afford an attorney, the San Mateo County Superior Court will appoint the Private Defender Program to represent you.



### The Court Process for Felonies

A felony is a serious criminal charge that can, upon conviction, result in a sentence of more than a year in County Jail or State Prison.

If you have been charged with committing a felony and are **in custody**, you will typically be brought to your first court appearance within 48 hours of your arrest.

If you are **not in custody**, you will have been given a time and place for your first court appearance.

### Arraignment

This first court appearance is called the Arraignment. During an Arraignment:

- You are informed of the charge(s) against you.

- You are given a copy of the Complaint listing the charges against you.
- You are advised of your constitutional rights.
- You can apply to have the Private Defender represent you.
- You enter a plea of not guilty.
- The court will set a date for a Preliminary Hearing and, in some cases, a Superior Court Review.

### Bail or Release on Own Recognizance

If you are in custody, the Private Defender lawyer in court will request you be released on your "own recognizance" or that the court set a reasonable bail – money or some form of property posted with the court in exchange for your release. Information on how to contact a bail bond agency is located in the Maguire or Maple Street Correctional Facilities.

### Contacting your Private Defender

Within a few days of your Arraignment, a specific lawyer will be assigned to your case. You can learn the name and phone number of that lawyer by calling the Private Defender offices during business hours. It is very important for you to work with your Private Defender lawyer to achieve the best outcome for your case.

If you are in custody, your lawyer will visit you in the jail before your next court date. **You should not discuss your case on the phone with anyone.** All phone conversations within the jail are recorded and what you say can be used against you in Court.

If you are out of custody, you should arrange to meet with your lawyer before your next court date.

Your lawyer will request investigation and prepare pre-trial motions, as needed. These may include motions to keep evidence out of court, limit the use of certain evidence or to dismiss the charges before trial. You may be asked to provide the

names and contact information for potential witnesses and other key information.

### Superior Court Review

Your case may be eligible for an early resolution if certain conditions are met. This process is called Superior Court Review.

At a Superior Court Review, the District Attorney, the court and your lawyer meet to discuss your case.

The District Attorney may make an offer to settle the case without a Preliminary Hearing and a Jury Trial.

Your lawyer must present you with any offer to settle the case, even one you may consider to be unreasonable. This is to ensure you can intelligently exercise your constitutional rights and have full and complete information.

The ultimate decision to accept or reject an offer is yours and yours alone.

### Preliminary Hearing

You have a right to a Preliminary Hearing within 10 court days or 60 calendar days from the date of the arraignment. This date can be set farther out if you choose to give up or waive that right. This is called a time waiver.

The Preliminary Hearing is a hearing before a Judge where the District Attorney, by calling witnesses, seeks to establish that probable cause exists to believe that a crime was committed and that you are probably the person that committed it.

The defense may question the witnesses, call witnesses and challenge the sufficiency of the evidence at a Preliminary Hearing. It's important to remember that probable cause is a low standard of proof, otherwise known as a strong suspicion.

If the court decides there is no probable cause, the charge(s) against you will be dismissed. If the



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO**  
**STANDARD AGREEMENT** rev December 2016  
**with SAN MATEO COUNTY BAR ASSOCIATION, a corporation**

AGREEMENT NUMBER  
K# 41-20-0003

1. In this agreement (“Agreement”), the term “Contractor” refers to SAN MATEO COUNTY BAR ASSOCIATION, a corporation, (hereinafter, “Association”, and the term “Court” refers to the Superior Court of California, County of San Mateo
2. It is the desire of both the Court and the Contractor to provide appropriate and competent legal representation and services to financially eligible children and parent(s) who are parties in proceedings adjudicated by the Juvenile Dependency Division of the Court, pursuant to Welfare and Institutions Code Section 300. The Contractor is qualified to provide legal representation and services through its Private Defender Program, subject to the authority of the Court to appoint counsel in accordance with Welfare and Institutions Code Section 317.
3. This Agreement is effective as of July 1, 2019 and expires on June 30, 2021.
4. The maximum amount the Court may pay Contractor under this Agreement is \$923,000.00 per year for a total not to exceed of \$ 1,846,000.00. (the “Contract Amount ”). The Court shall make payments to Contractor in the manner specified herein and in Appendix “C” Payment Terms.
5. The purpose or title of this Agreement is to provide appropriate and competent legal representation and services to all financially eligible children and parent(s) who are parties in proceedings adjudicated by the Juvenile Dependency Division of the Court pursuant to Welfare and Institutions Code Section 300. The Contractor will provide qualified Attorneys for acceptance of appointment as counsel for all financially eligible persons entitled to court-appointed counsel as a matter of law in the Superior Court of San Mateo County

*The purpose or title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.*

6. Notices: Notices, as may be required in the Agreement, will be provided to the following:

**Court:**

Superior Court of California, County of San Mateo  
Attn: Jeniffer Alcantara  
400 County Center, 2nd Floor  
Redwood City, CA 94063  
Telephone: (650) 261-5650  
Email: jalcantara@sanmateocourt.org

**Contractor:**

San Mateo County Bar Association  
Attn: Myra Weiher, Chief Private Defender  
333 Bradford Street, Suite 200  
Redwood City, CA 94063  
Telephone: 650-298-4006  
Email: myraw@smcba.org

7. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

- Appendix A – General Terms and Conditions
- Appendix B – Scope of Services and Service Levels
- Appendix C – Payment Terms
- Attachment 1 – Contractor Certification
- Attachment 2 – Statement 504 Certification
- Attachment 3 – Unruh Civil Rights Act and FEHA Certification
- Attachment 4 – Fee Schedule

APPROVALS

(For Court Use Only)

PROJECT MANAGER APPROVAL

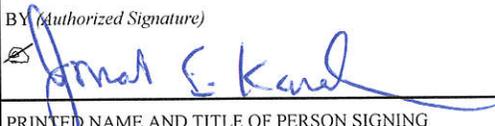
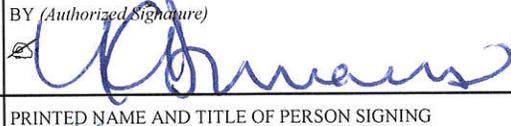
Approved by: Jeniffer Alcantara, Senior Managing Attorney	
SIGNATURE OF APPROVING AUTHORITY 	DATE 6-20-19

FINANCE DIRECTOR REVIEW AND PROCESSING

Approved by: Steven Chang, Director of Finance	
SIGNATURE OF APPROVING AUTHORITY 	DATE 6-26-19

LEGAL APPROVAL (if applicable)

Approved as to legal form by: N/A	
SIGNATURE OF REVIEWING ATTORNEY 	DATE

COURT'S SIGNATURE	CONTRACTOR'S SIGNATURE
Superior Court of California, County of San Mateo	CONTRACTOR'S NAME (if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized) San Mateo County Bar Association
BY (Authorized Signature) 	BY (Authorized Signature) 
PRINTED NAME AND TITLE OF PERSON SIGNING Hon. Jonathan Karesh Presiding Judge	PRINTED NAME AND TITLE OF PERSON SIGNING Kathleen A. Durran Vice-President, SMCBA
DATE EXECUTED Date. 6/26/2019	DATE EXECUTED Date. 6/19/2019
ADDRESS 400 County Center Redwood City, CA 94063	ADDRESS Contractor Address.

APPENDIX A

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

- A. Wherever capitalized in this Agreement, the following words shall have the following meanings:
- i. **“Agreement”** mean(s) the entire integrated agreement between the Court and the Contractor, as attached to and incorporated by a fully executed Standard Agreement Coversheet form.
  - ii. **“Agreement Amount”** means the maximum amount encumbered under this Agreement as set forth on the Standard Agreement Coversheet of this Agreement.
  - iii. **“Fee Schedule”** means the schedule of rates and fees set forth in the San Mateo County Bar Association Private Defender Program Dependency Fee Schedule Effective 1/1/18 (Revised 2/7/19, A copy of the Fee Schedule is Attached hereto as Attachment 4 and incorporated herein by reference.
  - iv. **“Amendment”** means a written document issued by the Court and signed by the Contractor which alters the Agreement and identifies the following:
    - a. A change in the Services;
    - b. A change in Agreement Amount;
    - c. A change in time allotted for performance; and/or
    - d. An adjustment to the Agreement terms.
  - v. **“Child”** or **“Children”** refers to all children and youth, including eligible non-minor dependents in juvenile dependency proceedings.
  - vi. **“Confidential Information”** means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the Court’s business or the business of its constituents. Confidential Information does not include:
    - a. Information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party;
    - b. Information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement;
    - c. Information that is independently developed by the receiving party without reference to the Confidential Information; and

- d. Information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
- vii. “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, subsidiaries, affiliates, or combination thereof, including joint ventures, contracting with the Court to perform the Services. The Contractor is one of the parties to this Agreement.
- viii. “**Court**” means the Superior Court of California, County of San Mateo.
- ix. “**Force Majeure**” means a delay that prevents the timely performance of any obligation because such delay or failure to perform was unforeseeable and beyond the control of the party that failed to perform. Acts of Force Majeure include, but are not limited to:
  - a. Acts of God or the public enemy;
  - b. Acts or omissions of any government entity;
  - c. Fire or other casualty for which a party is not responsible;
  - d. Quarantine or epidemic;
  - e. Strike or defensive lockout; and,
  - f. Unusually severe weather conditions.
- x. “**Parent**” refers to all parents, guardians, and de facto parents in juvenile dependency proceedings.
- xi. “**PCC**” refers to the California Public Contract Code.
- xii. “**Services**” means the services to be performed by the Contractor pursuant to this Agreement, as set forth in Exhibit B (Scope of Services and Service Levels).
- xiii. “**Standard Agreement Coversheet**” refers to the form used by the Court to enter into agreements with other parties.
- xiv. “**Standard Amendment Coversheet**” refers to the form used by the Court to amend agreements with other parties.
- xv. “**Subcontractor**” shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement.
- xvi. “**Third Party**” refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the Court or the Contractor, which is not a party to this Agreement.

## 2. INDEPENDENT CONTRACTOR

Contractor shall be, and is, an independent contractor, and is not an employee or agent of the Court, and is not covered by any employee benefit plans provided to Court

employees. Contractor is liable for the acts and omissions of itself, its employees, its Subcontractors and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the Court, and Contractor. Contractor will determine the method, details and means of performing the Services, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all Subcontractors, agents, employees or other persons assisting Contractor in the performance of the Services. Contractor shall be solely responsible for all matters relating to the payment of Contractor's employees, including but not limited to compliance with Medicare, social security, income tax withholding, unemployment and workers' compensation laws and regulations, withholding for/providing of any and all employee benefits, and all other laws and regulations governing such matters. Neither party to this Agreement has any authority to enter into any contract or otherwise incur any liability in the name of, or on behalf of, the other party.

### 3. QUALITY OF SERVICES

- A. Contractor agrees that each of its employees, Subcontractors, and agents assigned to perform any Services under this Agreement shall have the skills, training, and background reasonably commensurate with his or her responsibilities, so as to be able to perform in a competent and professional manner. Contractor further agrees that the Services provided shall be performed in good faith and in a competent and timely manner consistent with professional standards for such work, will conform to the requirements of this Agreement, and will not infringe upon the rights of third parties. In addition, Contractor shall, and shall cause its employees, agents and Subcontractors to:
- i. Provide quality representation for its clients, and comply with the provisions of California Welfare and Institutions Code section 317 and California Rules of Court, rule 5.660.
  - ii. Provide competent attorneys to render the Services ("Attorneys"). Contractor's Attorneys shall participate regularly in continuing legal education activities respecting juvenile dependency issues, and shall demonstrate adequate skills, knowledge and comprehension of the statutory scheme, purposes and goals of dependency proceedings, the specific statutes, rules of court and cases relevant to such proceedings, and the applicable procedures for filing petitions for extraordinary writs and other documents.
  - iii. Not restrict its Attorneys' ability to serve on countywide committees, or their ability to participate in or lead public training seminars or conferences, provided such activities are consistent with the Attorneys' obligations as professionals and the performance of the Services.
  - iv. Adhere to the State Bar Act and the California Rules of Professional Conduct relative to the provision of the Services.

#### 4. COURT'S QUALITY ASSURANCE PLAN

- A. The Court or its agent may evaluate Contractor's performance under this Agreement. Such evaluation may include assessing Contractor's compliance with all Agreement terms and performance standards.
- i. The Court may perform annual peer, client and judicial officer evaluation of Attorneys, including Attorneys providing services on a subcontracting basis. Contractor agrees to participate in the evaluation process by providing information requested by the Court, including completion and return of peer evaluation forms to the Court or to the Court's agent as requested.
  - ii. Contractor's deficiencies which the Court determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to Contractor. The report may include recommended improvements and corrective measures required to be taken by Contractor. If Contractor's performance remains unsatisfactory to the Court, the Court may terminate this Agreement for cause or impose other penalties as specified in this Agreement. Any evaluation of Contractor's performance conducted by the Court shall not be construed as an acceptance of Contractor's work product or methods of performance. Contractor shall be solely responsible for the work product it delivers under this Agreement; Contractor shall not rely on the Court to perform any quality control review of Contractor's work product, and Contractor shall be solely responsible for the quality, completeness, and accuracy of its own work product.
- B. As required by PCC 10353.5, Contractor shall (i) adhere to legal cost and billing guidelines designated by the Court; (ii) adhere to litigation plans designated by the Court, if applicable; (iii) adhere to case phasing of activities designated by the Court, if applicable; (iv) submit and adhere to legal budgets as designated by the Court; and (v) submit to legal bill audits and law firm audits if so requested by the Court, whether conducted by employees or designees of the Court or by any legal cost-control provider retained by the Court for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the Court.

The Contractor shall have the sole responsibility for determining the fees and rates paid to the Private Defender Program Attorneys for work performed under the terms of this Agreement. The Contractor shall provide to the Court a copy of the current Fee Schedule, setting forth such fees and rates, and shall provide to the Court a copy of any modifications to the Fee Schedule 30 days prior to adoption by the Contractor. The Court and Contractor agree to meet and confer regarding the proposed changes to the Fee Schedule within 30 days of notice.

The "not to exceed" contract amount stated on the standard contract cover page shall include any Extraordinary Case Costs (as defined herein) that may be paid to Attorneys upon petition and finding by the Superior Court of the County of San Mateo. Extraordinary Case Costs are defined as those fees on an individual matter that exceed the total amount payable under the Fee Schedule, including the

Administrative Fee, by 20% or more. For the avoidance of doubt, Extraordinary Case Costs do not include fees/costs for ancillary services including investigators, experts and other forensic services. The fees related to the filing of the petition shall be payable to the Attorney only in the event the petition is granted. As the contract vendor for the San Mateo Superior Court, it is the responsibility of the Contractor to manage the costs of dependency counsel to ensure the most effective and efficient provision of services within the funding available.

The Contractor agrees that all funds provided to it pursuant to this contract will be used only to enable the Contractor to meet its responsibilities as herein defined.

## 5. SUBCONTRACTING

- A. Contractor is prohibited from subcontracting this Agreement or any part of it, unless such subcontracting is first approved by the Court in a written instrument executed and approved in the same manner as this Agreement. An agreement made in violation of this paragraph shall confer no rights on any party and shall be null and void.
- B. If requested by the Court, Contractor shall provide documentation that the proposed Subcontractor is experienced and able to perform that portion of the Services Contractor wishes to subcontract. Contractor shall require all Subcontractors to comply with the provisions of this Agreement. Contractor shall provide copies to the Court of all agreements with Subcontractors who will perform Services pursuant to this Agreement. The Court's approval of subcontracts shall in no way relieve Contractor of any of its responsibilities and obligations under this Agreement.

## 6. INDEMNIFICATION

Contractor will defend (with counsel satisfactory to the Court or its designee) indemnify and hold harmless the Court, and their officers, agents, and employees from and against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) a latent or patent defect in any goods, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any goods, services, or deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Court's prior written consent, which consent shall not be unreasonably withheld; and the Court shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and

expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

## 7. INSURANCE

- A. Insurance Required. Without limiting Contractor's indemnification obligations, Contractor shall secure and maintain in force throughout the term of this Agreement the following types of insurance with limits as shown. Each policy, other than the Professional Liability policy, shall be written on an "occurrence" form. The Professional Liability policy may be written on a "claims made" form.
- i. Workers' Compensation—A program of Workers' Compensation Insurance in an amount and form sufficient to meet all applicable requirements of the California Labor Code. This coverage shall not be required when Contractor has no employees.
  - ii. Commercial General Liability Insurance—Coverage at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall provide limits of at least \$1,000,000 per occurrence and annual aggregate.
  - iii. Automobile Liability Insurance—If an automobile is used in providing the Services, automobile liability insurance covering bodily injury and property damage and applicable to all owned, non-owned, leased, and hired vehicles. The policy shall provide combined single limits of at least \$500,000 per occurrence.
  - iv. Professional Liability Insurance—Covering any act, error, or omission committed in the performance of Services under this Agreement. The policy shall provide limits of at least \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the termination and acceptance of all work provided under this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.
- B. Umbrella Policies. Contractor may satisfy coverage limits required in Section 7.A above through any combination of basic coverage and umbrella insurance.
- C. Additional Insured Endorsements. All policies required in Section 7.A above, with the exception of Workers' Compensation, and Professional Liability, must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of Services under this Agreement: The State of California, the Judicial Council of California, the Superior Court of California, County of San Mateo (Court) and their respective judges, subordinate judicial

officers, executive officers, administrators, and any and all of their other officers, officials, agents, representatives, contractors, volunteers or employees.

- D. Required Policy Provisions. Each policy required in Section 7.A above must provide that:
- i. The insurance is primary and non-contributory with any insurance or self-insurance programs carried or administered by the Court.
  - ii. The insurance shall apply separately to each insured against whom a claim is made and/or a lawsuit is brought, except with respect to the limits of the insurer's liability.
  - iii. Each insurer waives any right of recovery or subrogation it may have against the State of California, the Judicial Council of California, the Superior Court of California, County of San Mateo (Court), including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents for loss or damage.
- E. Notices. The Contractor shall provide the Court fifteen (15) days' advance written notice of any reduction in coverage or other change, nonrenewal, or cancellation, mailed to the address provided for notices in Section 22 J of this Exhibit.
- F. No Reduction or Limit of Contractor's Obligation. Insurance affected or procured by Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Court. Acceptance of Contractor's insurance by the Court shall not relieve or decrease the liability of Contractor hereunder.
- G. Evidence of Coverage. Before commencing any work under this Agreement, Contractor must furnish to the Court certificates of insurance and applicable endorsements, in form and with insurers satisfactory to the Court, evidencing that all required insurance coverage is in effect. The Court reserves the right to require Contractor to provide complete, certified copies of all required insurance policies.
- H. Accident Reporting. If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, Contractor shall immediately notify the Superior Court, Executive Officer, by mail, at the following address: San Mateo Superior Court, 400 County Center, Redwood City, California, 94063. Contractor shall promptly submit a written report, in such form as may be required by the Court, of all accidents which occur in connection with this Agreement. The report must include at least the following information:
- i. Name and address of the injured or deceased person(s);
  - ii. Name and address of Contractor's Subcontractor, if any;
  - iii. Name and address of Contractor's liability insurance carrier;
  - iv. A description of the circumstances surrounding the accident, whether any of the Court's equipment, materials or staff were involved and the extent of damage to Court and/or other property; and

- v. A description of what effect, if any, the accident will have upon Contractor's ability to perform the Services.

**8. NOTICE OF TERMINATION AND TRANSITION SERVICES OTHER THAN WHEN TERMINATION IS FOR CAUSE OR NON-APPROPRIATION OF FUNDS**

If either of the Parties to the Agreement intends not to contract further at the end of this two year Agreement, said Party shall deliver notice of such intent in writing no later than 90 days prior to the end date of this agreement (March 31, 2021). In the event of such Notice, there shall be a Transition Assistance Period that will begin immediately upon the effective date of termination of this Agreement (June 30, 2021). The Transition period will begin July 1, 2021 and continue for six months unless by mutual agreement of the parties, and in no event to exceed one year. During this Transition Assistance period, the Contractor and the Court shall reasonably cooperate to ensure a prompt and efficient transfer of all data, documents and other materials to a new service provider in a manner such as to minimize the impact of termination on the individuals receiving Services pursuant to this Agreement. The Court shall be responsible for any actual direct and indirect costs incurred by the Contractor during any period of Transition Assistance.

**9. TERMINATION FOR CAUSE**

- A. Default. Each of the following shall constitute an event of default ("**Event of Default**"):
  - i. Contractor fails or refuses to perform any covenant contained in this Agreement at the time and in the manner provided.
  - ii. Any representation or warranty made by Contractor is untrue when made or becomes untrue during the term of this Agreement.
  - iii. Contractor is generally not paying its debts as they become due.
  - iv. Contractor voluntarily files a petition in bankruptcy or to take advantage of any bankruptcy, insolvency, or other debtors' relief law of any jurisdiction.
  - v. Contractor is subject to an involuntary petition in bankruptcy filed by its creditors that has not been dismissed within forty-five (45) days of its filing.
  - vi. Contractor makes an assignment for the benefit of its creditors.
  - vii. A custodian, receiver, trustee, or other officer with similar powers is appointed over any substantial part of Contractor's property.
  - viii. Contractor winds up or dissolves its business, or is liquidated.
- B. Remedies. On and after any Event of Default, the Court shall have the right to exercise its contractual, legal and equitable remedies, which shall include, without limitation, the right to terminate this Agreement upon written notice or to seek specific performance of all or any part of this Agreement. In addition, the Court shall have the right (but no obligation) to cure or cause to be cured on behalf of

Contractor any Event of Default. Contractor shall pay to the Court on demand all costs and expenses incurred by the Court in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The Court shall have the right to offset from any amounts due to Contractor under this Agreement, or any other agreement between the Court and Contractor, all damages, losses, costs, fees, penalties, interest or expenses incurred by the Court as a result of such Event of Default.

#### 10. TERMINATION FOR NON-APPROPRIATION OF FUNDS

- A. Contractor acknowledges that funding for this Agreement is conditioned upon appropriation by the California Legislature and allocation by the Judicial Council of California of sufficient funds to support the activities described in this Agreement. By written notice to Contractor, the Court may terminate this Agreement, in whole or in part, at any time for lack of appropriation of funds, or other withdrawal, reduction or limitation in any way of the Court's budget, funding or financial resources. If this Agreement is terminated for non-appropriation:
- i. The Court will be liable only for payment in accordance with the terms of this Agreement for Services rendered and expenses incurred prior to the effective date of termination;
  - ii. Contractor shall be released from any further obligation to provide the Services affected by such termination; and
  - iii. Termination shall not prejudice any other right or remedy available to the Judicial Council.

#### 11. ACTIONS OF CONTRACTOR UPON NOTICE OF TERMINATION FOR CAUSE OR NON-APPROPRIATION OF FUNDS

- A. Immediately upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by the Court and to minimize the liability of Contractor and the Court to Third Parties as a result of termination. All such actions shall be subject to the prior approval of the Court, at the Court's sole discretion, and shall be in accordance with the Attorneys' obligations to their clients.
- i. Withdrawal and Tail Representation. Contractor's Attorney(s) will continue to represent existing clients until Contractor's Attorney withdraws as counsel of record (or substitutes counsel) without prejudice to the interests of Contractor's clients and without violating any law, rule or regulation.
  - ii. Release from Performance of Services. Contractor's Attorneys will be released from performing Services to the extent Contractor's Attorney(s) effectively withdraws as counsel of record (or substitutes counsel) in accordance with Section 10.A.i above. If Contractor's Attorney(s) cannot be

released from performing Services due to an inability to withdraw as described above, Contractor and/or its Attorneys will give the Court as much written notice as possible before the termination date, which notice will describe each affected matter and the basis for the Contractor's Attorney(s) inability to withdraw, and the Contractor's Attorney(s) and the Court will then confer in good faith. If a court orders that Contractor's Attorney(s) maintain certain representations or, using its reasonable judgment, the Court determines that Contractor's Attorney(s) assertions warrant its continued representation as its withdrawal is not permitted for the reasons stated in the immediately preceding paragraph, then, until such time as this Agreement would have expired, (had it not been earlier terminated for change in law) pursuant to the expiration date of the Agreement or, if renewed, the date of expiration of the renewed Agreement, the following provisions shall apply:

- a. Contractor's Attorney(s) duties under this Agreement will continue after the termination date solely with respect to the affected matters;
- b. Compensation following the termination date will be at rates set forth in the attached Fee Schedule per client for legal services provided;

## 12. EFFECT OF TERMINATION

- A. In addition to any other remedies and actions set forth in this Agreement, if this Agreement is terminated for cause or non-appropriation of funds, the following will apply:
  - i. Payment Upon Termination. The Court shall pay for Contractor's Services satisfactorily performed through the effective date of termination; provided, however, that in no event shall Contractor's total compensation pursuant to this Agreement exceed the Agreement Amount.
  - ii. Offset and Deduction. The Court may deduct from any payment upon termination:
    - a. All payments previously made by the Court for Services covered by Contractor's final invoice.
    - b. The amount of any claim that the Court may have against Contractor in connection with this Agreement.
    - c. Where Contractor is terminated for cause, in the event the Court determines it must provide services to remedy the results of Contractor's inadequately performed Services, the Court may deduct, from any amounts owed Contractor hereunder, the Court's good faith estimate of the reasonable cost of replacing performance of such inadequately performed Services.

### 13. CLIENT FILES; OWNERSHIP OF DATA

**Client Files.** Contractor's Attorneys will provide to the client or subsequent counsel, at no cost, copies of all relevant client files produced by Contractor's Attorneys in the course of its performance of Services including, without limitation, any motions or briefs. Contractor's Attorney(s) will provide these copies upon request by the client or upon appointment of subsequent counsel. The client or the subsequent counsel may use the materials in the client file at his or her discretion.

**Ownership of Data.** All reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data that the Contractor is required to create by the Court or provide to the Court pursuant to this Agreement (collectively, "Data") are the sole property of the Court without the payment of additional compensation to Contractor. Contractor shall provide the Court with all Data within thirty (30) days of the Court's written request. However, nothing in this Section 13 is intended to create any right in any person or entity to any Data that is covered by the attorney work-product doctrine.

### 14. PROPRIETARY OR CONFIDENTIAL INFORMATION OF THE COURT

- A. Contractor understands and agrees that, in the performance of the Services under this Agreement or in contemplation thereof, Contractor may have access to private or Confidential Information (including confidential case information) that may be confidential by law, owned or controlled by, or entrusted to, the Court, their personnel or constituents and that the disclosure of such information to Third Parties may be damaging to the Court. Contractor agrees that all information disclosed to Contractor in connection with this Agreement shall be held in confidence and used only in the performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as Contractor uses to protect its own proprietary information and in any case no less than a reasonably prudent person or entity would use to protect his or her own proprietary data.
- B. Notwithstanding the foregoing, Contractor may disclose the Confidential Information to the extent necessary to comply with any law, rule, regulation or ruling applicable to it or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that Contractor has given reasonable prior notice of its intention to disclose in order to give the Court an opportunity to seek a protective order.
- C. Contractor agrees that monetary damages are inadequate to remedy any breach or threatened breach of this provision and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

### 15. AUDIT AND RETENTION OF RECORDS

Contractor shall permit authorized representatives of the Court and/or its designee at any reasonable time to inspect, copy, or audit any and all records and documentation related to the performance of the Agreement, including records related to billings and other financial records. Contractor shall allow the auditor(s) access to such records during

normal business hours and shall allow the auditor(s) to interview any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the Court to audit records and interview staff in any subcontract related to performance of this Agreement. Contractor shall correct errors and deficiencies by the 20th day of the month following the audit. Contractor shall maintain all records and documentation related to the performance of this Agreement, including records related to billings and other financial records, in an accessible location and condition for a period of not less than four (4) years after final payment is received pursuant to this Agreement or until after final audit has been resolved, whichever is later. Contractor shall adequately protect all records against fire or other damage. The State of California, or any other government agency or entity having an interest in the subject of this Agreement, shall have the same rights conferred upon the Court by this Section 16. Without limiting the foregoing, this Agreement is subject to examinations and audit by the State Auditor for a period of three years after final payment.

## 16. ACCOUNTING SYSTEM REQUIREMENTS

Contractor shall maintain an adequate system of accounting and internal controls in accordance with Generally Accepted Accounting Principles (GAAP).

## 17. CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES

- A. By executing this Agreement, Contractor certifies under penalty of perjury under the laws of the State of California that the following representations and warranties are true and correct as of the Effective Date of this Agreement:
- i. Nondiscrimination/No Harassment Provisions and Compliance.
    - a. Nondiscrimination. During the performance of this Agreement, Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation.
    - b. No Harassment. During the performance of this Agreement, Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor or its Subcontractors interact in the performance of this Agreement. Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
    - c. FEHA. Contractor shall comply with all applicable provisions of the Fair Employment and Housing Act, Government Code section 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, sections 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing

Government Code section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.

- d. Compliance with Americans with Disabilities Act. Contractor shall provide the Services specified in this Agreement in a manner that complies with the Americans with Disabilities Act, 42 United States Code section 012101 *et seq.* and applicable regulations and guidelines in accordance therewith (the “ADA”), and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of Services, benefits or activities provided under this Agreement.
- e. Notice to Labor Organizations. Contractor and its Subcontractors shall give written notice of their obligations under this Section to any labor organizations with which they have a collective bargaining or other agreement.
- f. Compliance. Contractor shall include the nondiscrimination and compliance provisions of this Section 18.A.i in any and all subcontracts issued to perform Services under the Agreement.
- ii. Conflict of Interest. Contractor has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 *et seq.* or 87100 *et seq.*; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- iii. Drug-Free Workplace. Contractor will provide a drug-free workplace as required by Government Code sections 8355 through 8357.
- iv. National Labor Relations Board. No more than one, final un-appealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.
- v. Licenses and Permits. Contractor and any Subcontractors providing Services under this Agreement have, and will maintain in full force and effect throughout the term of this Agreement, all licenses, permits, and qualifications legally required to provide the Services.
- vi. Covenant Against Gratuities. No gratuities, in the form of gifts, entertainment, or otherwise, were or will be offered by Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the Court with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement.
- vii. Authority. Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor’s signatory has authority to bind

Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. If Contractor is a corporation, LLC, or limited partnership, Contractor is qualified to do business and in good standing in the State of California.

- viii. Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Court. (Expatriate corporations are certain foreign incorporated entities that are publicly traded in the United States. For additional information, see PCC 10286.1.)
- ix. Domestic Partners, Spouses, Gender, and Gender Identity Discrimination If the Agreement Amount is \$100,000 or more, Contractor certifies that it is in compliance with PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits regarding marital or domestic partner status and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity..
- x. Child Support Compliance Act. If the Agreement Amount is \$100,000 or more:
  - a. Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
  - b. Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

B. During the term of this Agreement, Contractor shall not take an action, or omit to perform any act, that results in a representation and warranty becoming untrue. Contractor shall promptly notify the Court if any representation and warranty becomes untrue.

**18. [INTENTIONALLY OMITTED]**

**19. UNION ACTIVITIES**

If the Agreement Amount is \$50,000 or more, no Court funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term).

## 20. IRAN CONTRACTING ACT

If the Agreement Amount is \$1,000,000 or more, Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran (“**Iran List**”) created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Court to enter into this Agreement pursuant to PCC 2203(c).

## 21. GENERAL

- A. Survival. Termination or expiration of this Agreement shall not affect, alter or impair the respective rights and obligations of the parties that accrue prior to the effective date of termination or expiration, except as otherwise expressly provided herein.
- B. No Endorsement. Contractor shall make no written or oral statement, which represents or implies any endorsement by the Court, or the State of California of Contractor, its employees or subcontractors or the quality of the Contractor’s, its employees’ or subcontractor’s services without the Court’s Executive Officer’s prior written consent, the granting of which shall be in the Court’s sole discretion. Nothing herein shall prevent Contractor’s disclosure of the existence and nature of this Agreement.
- C. Assignment. The Services to be performed by Contractor are personal in nature and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor, including delegation to one or more Subcontractors, unless such assignment or delegation is first approved by the Court by written instrument executed and approved in the same manner as this Agreement. All of the terms, provisions and conditions of the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns and legal representatives. Any assignment or delegation in violation hereof shall be null and void.
- D. Waiver. Either party’s failure to enforce any of its rights pursuant to this Agreement shall not be construed as a waiver of such rights. Any waiver of any term of this Agreement must be in writing and executed by an authorized representative of the waiving party and shall not be construed as a waiver of any succeeding breach of the same, or breach of any other, term of this Agreement.
- E. Severability. The provisions of this Agreement are separate and severable. Should any court hold that any provision of this Agreement is invalid, void or unenforceable, then:
  - i. The validity of other provisions of this Agreement shall not be affected or impaired thereby, and
  - ii. Such provision shall be enforced to the maximum extent possible so as to effect the reasonable intent of the parties and shall be reformed without

further action by the parties to the extent necessary to make such provision valid and enforceable.

- F. Compliance with Laws. Contractor shall keep itself fully informed of, and shall comply with, all applicable federal, state, and local laws, rules, regulations, rules of court and ordinances in any manner affecting the performance of this Agreement, as they may be amended from time to time.
- G. Time is of the Essence. Time is of the essence in Contractor's performance of this Agreement.
- H. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and interpreted in accordance with California law, without regard to any conflict of law provisions that would direct the application of the laws of any other jurisdiction. Contractor irrevocably consents to personal jurisdiction in the courts of the State of California, and any legal action filed by Contractor in connection with the Agreement must be filed in San Mateo County, California, which shall be the sole venue for any such action.
- I. Agreement Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.
- J. Notices to the Parties. All notices, requests, demands, and other communications hereunder must be in writing and will be deemed to have been duly given when hand delivered or five (5) days after being deposited in the United States mail, if mailed by certified or registered mail, return receipt requested, postage prepaid, to the following contact information or at such other address as delivered by like notice:

To the Court:

San Mateo Superior Court  
Attn: Jeniffer Alcantara  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063

To the Contractor:

San Mateo County Bar Association  
Attn: Myra Weiher  
333 Bradford Street, Suite 200  
Redwood City, CA 94063

- K. Amendments. This Agreement may not be modified or amended, except by written instrument executed and approved by all parties in the same manner as this Agreement. Requests for Amendments shall be submitted in writing and shall be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. Amendments to the Agreement shall be authorized via execution of a Standard Amendment Coversheet.
- L. Entire Agreement. This Agreement, consisting of the executed Standard Agreement Coversheet, the Agreement Funding and Account Code Information Form, and all addendums, exhibits and attachments thereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties.

## 22. DVBE PARTICIPATION CERTIFICATION

If Contractor committed to achieve disabled veterans business enterprise (“DVBE”) participation, Contractor shall within sixty (60) days of receiving final payment under this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the Court: (1) the total amount the prime Contractor received under the Agreement; (2) the name and address of any DVBE that participated in the performance of this Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under this Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.



**APPENDIX B**  
**SCOPE OF SERVICES AND SERVICE LEVELS**

1. Scope of Services

A. Contractor and its Attorneys shall comply with San Mateo Superior Court Rules in performance of this Agreement.

B. Contractor and its Attorneys shall provide legal representation for both parents and juvenile clients in juvenile dependency proceedings in the Superior Court of California, County of San Mateo. The Contractor will provide necessary and appropriate ancillary services such as investigators, experts and other forensic services, the expense which is not otherwise provided by law. Case load includes all Juvenile Dependency cases in which the Private Defender Program is appointed by the Court on or after July 1, 2019 to June 30, 2021, and also includes cases to which they have been appointed prior to June 30, 2019 which are still active and open on July 1, 2019. This contract covers case load fees and costs incurred on or after July 1, 2019 through and including June 30, 2021.

C. This representation requires, but is not limited to, adherence to the following performance standards:

- i. Establishing and maintaining an attorney-client relationship;
- ii. Visiting Child clients at each new placement, whenever feasible;
- iii. Conducting thorough, continuing, and independent investigations and interviews at every stage of the proceedings;
- iv. Determine the client's position, counsel them on all their legal options, and provide zealous advocacy.
  - For child clients, determine the child's wishes and best interests. Advise the court of the child's wishes and advocate for those wishes and best interests, when appropriate;
- v. Contacting social workers and other professionals associated with the client's case prior to each hearing, whenever practical and appropriate:
  - For Child clients, this includes contacting CASA and school personnel;
- vi. Requesting services (by court order if necessary) to access entitlements and to ensure a comprehensive service plan:
  - For Child clients, this may include requesting services related to IEPs and attending meetings related to the Child, as practical and appropriate;

- vii. Monitoring compliance with court orders, including provision of and effectiveness of court-ordered services;
- viii. Filing pleadings, motions, responses, or objections as necessary to represent the client;
- ix. Preparing for and participating in all hearings:
  - For Child clients, preparing for and participating in 241.1 hearings pertaining to current juvenile dependents with a goal of maintaining the dependency jurisdiction wherever possible and appropriate;
  - For Parent clients, representation at hearings set to determine the ability to pay for the cost of court appointed counsel.
- x. Investigating the interests of Child clients beyond the scope of the juvenile dependency proceeding and notifying the court of issues on behalf of the Child, administratively or judicially. These interests may include:
  - a. School/special education issues;
  - b. Mental health assessment and treatment;
  - c. Immigration;
  - d. Personal injury; and
  - e. Delinquency or status offender matters;

Contractor's Attorneys shall not be required to provide legal representation regarding any of the above-referenced interests.

- xi. Participating in alternative dispute resolution efforts, including but not limited to Family Group Conferences, Team Decision Making meetings and Mediation, as appropriate and beneficial to the client;
- xii. Determining if appeals and writs are appropriate and, where necessary, filing writ and notice of appeal;
- xiii. Arranging for substitute representation where necessary to avoid court delay;
- xiv. Providing representation if the Child client becomes a non-minor dependent; and
- xv. Performing any other duties as required by applicable law, statute or ethical obligations, including the Welfare and Institutions Code.

## 2. Conflicts Avoidance

- A. Contractor will ensure that conflicts are declared only when an actual conflict exists and ensure that no assignments will result in, or continue with a conflict of interest.
  - i. New Appointments and ongoing Clients
    - Contractor shall establish procedures to check for conflicts of interest, and institute a process to avoid conflicts, including among new or

existing clients and within sibling groups. Contractor shall arrange for representation of all new and ongoing clients by one of its panel members in a manner to avoid conflicts of interest.

3. Courtroom Staffing

Contractor shall staff the Dependency courtroom(s) so as to ensure adequate attorney availability at all times.

4. Education and Training

- A. Contractor shall comply with the education and training standards outlined in California Rules of Court, rule 5.660.
- B. Contractor shall attend statewide multi-disciplinary trainings or conferences, as practical.
- C. Insuring compliance with the provisions of Welfare and Institutions Code section 317 and California Rule of Court, Rule 5.660 and providing confirmation annually in writing to the Juvenile Presiding Judge that the panel members are in compliance.

5. System Meetings

- A. Contractor shall participate in systems meetings, as required by the Court that are intended to improve services for children and families in dependency court. Those meetings include but are not limited to those specified by the Court.

6. Staffing

- A. Contractor agrees to provide, at a minimum, the following staffing pursuant to this agreement:
  - i. One (1) Managing Attorney for Juvenile Services
  - ii. One (1) Administrative Assistant
  - iii. Contractor will maintain a sufficient number of Attorney members on the Dependency Panel to provide the legal representation herein

7. Case Reports and Maintenance of Records

- A. Contractor shall provide the following Court case management reports:

Upon Agreement Signing. A list of all assigned cases effective July 1, 2019.

Caseload Data. Contractor agrees to provide monthly reports of case data to the Court. This reporting shall include numbers of cases, dispositions, WIC 366.26 and AB12 cases, and shall include the Name of the Attorney, Case Number, Party(s) represented, date of

appointment, and itemized hours, costs and fees per case. Contractor shall also report all costs and expenses for Attorneys and investigators as well as experts and consultants. Each monthly report will include an attached invoice for all fees, costs and expenses under the contract.

For cases where representation is terminated:

- (1) Case number:
- (2) Date of termination of representation; and
- (3) Reason for termination of representation.

Financial Reports. If requested by the Court, Contractor shall provide an income and expenditures report or an audited financial statement within thirty (30) days.

8. Juvenile dependency counsel collections

The Court has implemented and maintains an existing collections program for dependency counsel services. Contractor agrees to participate in that effort at no additional cost; participation includes, but is not limited to, the distribution of financial declaration forms to clients upon initial appointment and representation of Parent clients at hearings set to determine the ability to pay for the cost of court appointed counsel.

9. Significant Increases or Decreases in Case Appointments

Both the Contractor and the Court acknowledge uncertainty about the effect that significant increases or decreases in case appointments, the number of appointments and the seriousness of Special Litigation cases, legislation, court decisions, or actions of other agencies could have on the ability of the parties to perform under the terms of this Agreement. The Contractor and the Court agree to meet, at the request of either party to discuss any such concern at the earliest possible time so as to determine whether changes in the terms of the Agreement are necessary.

**APPENDIX C**  
**PAYMENT TERMS**

**1. COMPENSATION FOR SERVICES**

Contractor shall be paid as compensation in full for the Services to be performed under this Agreement per period, as set forth in Table 1, below, which includes all of Contractor's expenses to perform the Services:

**Table 1: Compensation for Services**

<b>Period of Service</b>	<b>Fiscal Year</b>	<b>Period Amount</b>	<b>Monthly Amount</b>	<b>Number of Monthly Payments per Period</b>	<b>Invoice Due By Date:</b>
July 1, 2019- June 30, 2020	2019-2020	\$ 923,000	See Below	See Below	Included with monthly Report
July 1, 2020- June 30, 2021	2020-2021	\$923,000			

Funds for a fiscal year are available at the point the Budget Act of said fiscal year passes; e.g., fiscal year 2019-2020 funds are available at the point the Budget Act of fiscal year 2019-2020 passes.

1. The Court will provide payment for the services in the following quarterly installments:

(Quarterly Installments 2019-2020)

- \$230,750 on July 15, 2019, or two business days from the date this agreement is executed, whichever is later;
- \$230,750 on October 1, 2019;
- The third installment on January 2, 2020 will be the same or revised based on actual cost and caseload data to be reviewed by Court and Association.
- The fourth installment on April 1, 2020, based on actual cost and caseload data to be reviewed by Court and Association.

Bar Association and Court shall reconcile expenses with contract payments at the end of each fiscal year.

(Quarterly Installments 2020-2021)

- \$230,750 on July 15, 2020, or two business days from the date this agreement is executed, whichever is later;
- \$230,750 on October 1, 2020;
- The third installment on January 2, 2021 will be the same or revised based on actual cost and caseload data to be reviewed by Court and Association.

- The fourth installment on April 1, 2021, based on actual cost and caseload data to be reviewed by Court and Association.

Bar Association and Court shall reconcile expenses with contract payments at the end of each fiscal year.

2. The parties recognize that from time to time, extraordinary circumstances may arise that impact the delivery of services and may result in exceeding the Contract amount and the quarterly installments. If the Bar Association anticipates Services that may exceed the Quarterly Installment or the Contract Amount, ("Unanticipated Fees"), the Association shall immediately notify the Court and provide written documentation substantiating the Unanticipated Fees for such services in order for the court to have sufficient time to make budgetary modifications if necessary to insure funds are available. The parties will immediately negotiate in good faith to determine whether changes in the terms of the Agreement are necessary to provide additional funding for the Unanticipated Fees.

## 2. MANNER OF PAYMENT

Within thirty (30) days after the end of each month, Contractor shall submit one original and two copies of each invoice for payment for the Services rendered under this Agreement ("**Invoices**") for review and approval by the Court to:

San Mateo Superior Court  
Attn: Jeniffer Alcantara  
400 County Center, 2<sup>nd</sup> Floor  
Redwood City, CA 94063

All Invoices must include a reference to this Agreement, the dates and times Contractor performed the Services during the month, a brief description of the Services performed (i.e. the Name of the Attorney, Case Number, itemized hours, costs and fees per case), in a format acceptable to the Court, Contractor's Federal Tax Payer Identification Number, Contractor's name, address and remittance address (if different), and such other information as the Court may require.

The Court shall endeavor to make payments to Contractor as set forth in the schedule above, and upon the timely receipt and approval by the Court of the Invoices from Contractor. The Court will not be in breach of this Agreement for failure to pay Contractor's Invoices on time unless:

- a. The Court has received a reasonably detailed written notice of late payment from Contractor; and
- b. The Court has not made the delinquent payment(s) within thirty (30) days of the Judicial Council's receipt of such notice.

In no event will the Court be in breach of this Agreement for failure to pay Contractor's Invoices on time if such failure results from the Legislature's failure to approve and adopt a budget in a timely manner.

In no event shall the Court be liable for interest or late charges for any late payments.

Contractor is responsible for paying, when due, all applicable income taxes, including estimated taxes, incurred as a result of the compensation paid by the Court to Contractor for the Services. The Court may offset any taxes paid by the Court as a result of

Contractor's breach of this provision against any sums owed to Contractor pursuant to the Agreement or otherwise. The Court is exempt from federal excise taxes, and no payment will be made by the Court for any taxes levied on Contractor's or any Subcontractor's employees' wages. The Court will pay any applicable State of California or local sales or use taxes on the services rendered pursuant to this Agreement.

**3. FINAL INVOICING**

Contractor must submit Invoices for Services provided no later than the "Invoice Due By Date" identified for each appropriate funding source in Table 1 in this Exhibit C. The Court may not be responsible for payment of Invoices received after the "Invoice Due By Date" specified in this Exhibit C for the applicable funding source.

For the very last Invoice to be processed under this Agreement, Contractor will identify the Invoice as the "Final Invoice."

**4. DISALLOWANCE**

If Contractor claims or receives payment from the Court for a Service that is later disallowed by the Court, Contractor shall promptly refund the disallowed amount to the Court upon the Court's request. At its option, the Court may offset the amount disallowed from any payment due or that may become due to Contractor under this Agreement or any other agreement.

**5. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK**

The granting of any payment by the Court, or the receipt thereof by Contractor, shall in no way alter the obligation of Contractor to remedy unsatisfactory performance of the Services. Services that do not conform to the requirements of this Agreement, in the Court's judgment, may be rejected by the Court. In such case Contractor must remedy the unsatisfactory performance without delay to bring it into conformance with this Agreement.

**ATTACHMENT 1  
CONTRACTOR CERTIFICATION**

Contractor does not have an interest that would constitute a conflict of interest under California Public Contract Code sections 10365.5, 10410 or 10411, Government Code sections 1090, et seq. or 87100, et seq., or rule 10.103 or rule 10.104 of the California Rules of Court, which restrict employees and former employees from contracting with judicial branch entities.

By (Authorized Signature) 	Date: 6/26/19
Printed Name and Title of Person Signing: Myra A Weiher, Chief Defender	

**ATTACHMENT 2  
ASSURANCE OF COMPLIANCE WITH  
SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED**

The undersigned (hereinafter called the "Contractor") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation and all guidelines and interpretations issued pursuant thereto.

The Contractor gives this assurance in consideration for the purpose of obtaining contracts after the date of this assurance. The Contractor recognizes and agrees that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor.

The Contractor:

           employs fewer than 15 persons

           employs 15 or more persons and, pursuant to section 84.7(a) of the regulation (45 C.F.R. 84.7(a)), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Deborah Kumper, Executive Director, San Mateo  
Name: County Bar Association

San Mateo County Bar Association  
Name of Contractor: \_\_\_\_\_

I certify that the above information is complete and correct to the best of my knowledge.

Dated: 6/26/19 Uyen Suwan  
Signature and Title of Authorized Official  
Chief Defender

\* Exception: DHHS regulations state that:  
"If a recipient with fewer than 15 employees finds that, after consultation with a handicapped person seeking its services, there is no method of complying with (the facility accessibility regulations)... other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

ATTACHMENT 3

UNRUH CIVIL RIGHTS ACT AND  
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 2010, the following certifications must be provided when (i) submitting a bid or proposal to the JBE for a solicitation of goods or services of \$100,000 or more, or (ii) entering into or renewing a contract with the JBE for the purchase of goods or services of \$100,000 or more.

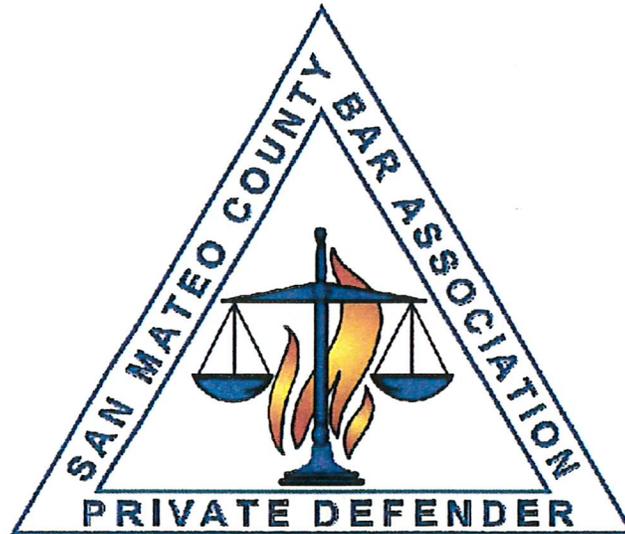
CERTIFICATIONS:

1. Contractor is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. Contractor is in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code); and
3. Contractor does not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

The certifications made in this document are made under penalty of perjury under the laws of the State of California. I, the official named below, certify that I am duly authorized to legally bind the Contractor to the certifications made in this document.

Contractor Name (Printed) <i>San Mateo County Bar Association</i>		Federal ID Number
By (Authorized Signature) <i>Myra A. Weiber</i>		
Printed Name and Title of Person Signing <i>Myra A. Weiber, Chief Defender</i>		
Date Executed <i>6/26/19</i>	Executed in the County of <i>San Mateo</i> in the State of <i>California</i>	

# San Mateo County Bar Association Private Defender Program



## FEE SCHEDULE

Effective  
07/01/2018

**SECTION V – JUVENILE COURT**

**1. DELINQUENCY (602 Cases)**

A. CASE FEE	\$460
1. Additional Petition: Unconsolidated	\$355
2. Additional Petition: Consolidated (with case or other PV)	\$145
B. Contested Hearing Fee	
1. Per Hour	\$100/hour
NOTE: Hourly fees commence from the scheduled calendar time (e.g. 9:00 am or 2:00 pm) ONLY if a witness is called and are thereafter payable only for hours in court and in-chambers discussions.	
2. Preparation Fee- per ½ day (am or pm)	\$120
NOTE: Preparation fee is payable for each ½ day of contested hearing, once the hearing has begun. The preparation fee is NOT paid for Probation Violations or Contested Hearings on transcripts or reports with no testimony.	
C. Disposition Fee (for each separate appearance)	\$160
A. PETITIONS FOR REDUCTION AND DISMISSAL PURSUANT TO PROP 47 AND PROP 64	
1. Filing Petition for Reduction or Dismissal	\$50
2. Mandatory Court Appearance for resolution of Petition	\$80
3. Writing and Arguing Motion for resolution of Petition are billed according to Section I:8:A-D of this fee schedule	
B. Calendars	
1. Placement Review Calendar	\$160
2. Glenwood Review Calendar	\$295
3. Girls Program Calendar	\$295

**2. DEPENDENCY: (300 Cases)**

A. CASE FEE	
1. Child Representation (1 or more child)	\$970
2. Parent Representation (1 or both)	\$970

**NOTE:** Case fee is billable after disposition hearing and includes all uncontested hearings through disposition and all future non-appearance reviews. Contested hearing fees are additional. On cases assigned before 7/1/18, case fee is billable prior to disposition.

A. CONTESTED HEARING FEE

1. Per Hour \$100/hour

**NOTE:** Hourly Fees commence from the scheduled calendar time (e.g. 9am or 2pm) ONLY IF a witness is called and are thereafter payable only for hours in court and in-chambers discussions.

2. Preparation Fee- per ½ day (am or pm) \$120

**NOTE:** Preparation fee is payable for each ½ day of contested hearing once the hearing has begun. The preparation fee is NOT paid for Contested Hearings on transcripts or reports with no testimony.

B. MANDATORY POST DISPOSITION REVIEW– by assigned attorney \$160  
(for each appearance made by assigned attorney)

3. WELFARE AND INSTITUTIONS CODE SECTION 366.26 CASES

A. CASE FEE \$970

B. CONTESTED HEARING FEE

1. Per Hour \$100/hour

**NOTE:** Hourly Fees commence from the scheduled calendar time (e.g. 9am or 2pm) ONLY IF a witness is called and are thereafter payable only for hours in court and in-chambers discussions.

2. Preparation Fee- per ½ day (am or pm) \$120

**NOTE:** Preparation fee is payable for each ½ day of contested hearing once the hearing has begun. The preparation fee is NOT paid for Contested Hearings on transcripts or reports with no testimony.

C. MANDATORY POST DISPOSITION REVIEW– by assigned attorney \$160  
(for each appearance made by assigned attorney)

4. AB12 CASE FEE:

A. When originates from 602 \$970

B. When originates from 300 and is a new case \$970

C. When continues from established 300 case there is no new case fee

**5. MOTIONS- a copy of the motion must be attached to the bill for review.**

**A. COMPLEX MOTIONS \$325**

A complex motion is one that includes complex issues, original research, original writing, or a combination of these things. Extensive details and facts regarding the client could also make a motion fall into this category. (e.g. –difficult presumed father or relative placement motions, complex 700.1 or a detailed Romero motion) In this type of motion facts are detailed and attorney has attempted to analyze and distinguish the case, or goes beyond addressing simple issues that have been previously briefed.

**B. STANDARD MOTIONS \$110**

A Standard motion is one that uses material that has been previously briefed (e.g. -Williams motion, Pitchess motion) but still requires some original material that analyzes the applicability of the case’s facts to the cited law and a statement of facts. Should include unique application to your client and argument applicable to your case.

**C. MOTION USING STANDARD “JV” FORMS – 300 AND 602 \$80**

This motion is one where the motion simply requires the filling in of a form after finding Out information from or about your client his or her circumstances. (e.g. – WIC 778,338)

**D. BOILERPLATE MOTIONS \$0**

A Boilerplate motion is one that has no original research, writing, argument or thought about the case and the only original work is the caption and possibly a brief statement of facts. These are basic motions to continue, motions to join in someone else’s motion, in limine motions for not using certain terms like “victim”, federalizing all objections, and the like.

**Note on Motion Levels:** If you feel that your motion does not fit into a specific level – Administrative Fees may be requested with a detailed explanation of why your work is beyond the level generally applicable. (See section IV: 1)

**E. HEARINGS AND ARGUMENT ON MOTIONS \$100/hour**

## 6. OTHER JUVENILE RELATED ASSIGNMENTS

A. Managing Attorney Special Assignments – per hour	\$105/hour
B. Adoption/Guardianship-per hour	\$90/hour
C. DEJ Violations	\$160
D. EMP Violations	\$160
E. Guardian Ad Litem #1	\$970

As client representative in court when client has mental health issues. Bill case fee and reviews just like any other dependency case.

F. Guardian Ad Litem #2- per hour Representation of a minor where the client/minor has a potential civil claim.	\$100/hour
G. Juvenile Court Adoption- per hour	\$90/hour
H. Line-up	\$295
I. Officer of the Day- half day/full day Half Day is 8:30-12:00 or 1-:30	\$215/\$430
J. Sealing Fee is per client. If more is warranted attorney should request an Administrative Fee with explanation as to why extra fee is warranted.	\$110
K. Witness Representation – Case Fee plus Hourly Rate	\$325 \$105/hour
L. Miranda advice to in-custody 15 y.o. or younger minor [SB395] On-call 24 hours for consultation—non-holiday 24 hours On-call 24 hours for consultation—holiday 24 hours Consultation with 15 y.o. or younger minor [SB395] This fee covers travel to/from location of minor to be questioned and time spent doing the consultation.	\$250 \$500 \$135/hour
M. Miranda advice to minors requested by Juvenile Probation. This fee covers travel to/from location of minor to be questioned and time spent doing the consultation.	\$135/hour

## **7. RE-ASSIGNMENT OF CASES**

When re-assignment of a case is made, the Chief Defender, Assistant Chief Defender or Managing Attorney of the Juvenile Office will determine the fee to be paid. The factors considered in making the fee determination will be the type of case reassigned, the complexity of that case, as well as the status of the case on the court calendar.

## **IV. JUVENILE EXTRAORDINARY FEE REQUESTS**

**1. ADMINISTRATIVE FEE CASES**— Reviewed by Managing Attorney (for requests up to \$2500 additional to fee schedule. This applies to both 300 and 602 cases.

Cases that do not meet the criteria for treatment as a Special Fee Case (see below), and yet require **extraordinary** effort and time, may be considered for additional compensation. The standard case fee already includes compensation for things that would normally come up in a case including working with a PI, expert, mental health expert, motions to continue, etc. When you have a case that is particularly complex or difficult you may apply for an Administrative Fee.

Administrative Fee requests must seek a **specific amount of compensation**. (Specific dollar amount.) A letter describing the case and specific factors that made it extraordinary should be attached to the bill. Additionally, the letter should include a brief itemization of the time invested. A brief statement simply asking for the additional fee without details is insufficient. Insufficiently documented requests will be returned for documentation and may not be paid.

Your bill should reflect your understanding that the Fee Schedule was designed to cover the vast majority of cases, and is intended to compensate all attorneys on the panel equally for their work. While the Administrative Fee process is available to compensate lawyers for truly extraordinary cases, the evaluators will be mindful of the fact that panel attorneys are never asked to return money on cases assigned to them that settle quickly with little time or effort.

**2. JUVENILE SPECIAL FEE CASES**— Special Fee cases are assigned by the Managing Attorney. These cases are billed hourly; no other part of the fee schedule is used in billing these cases. In determining whether or not a case is appropriate for special fee status, the Managing Attorney will evaluate the case in light of the realities of indigent criminal/juvenile defense representation, including our inability to pay the true market value of attorney services.

### **A. DETERMINATION OF SPECIAL FEE CASES:**

Determination regarding if a juvenile case is a special fee case may be made in advance of assignment or at the request of an attorney, but the special fee status can only be designated by the Managing Attorney. The specific hourly rate is determined by the type of case and/or by the Managing Attorney. (See section B below.)

Factors that are considered in determining whether or not a case merits Special Fee treatment include:

- i. Difficult Client – serious mental issues, personality, contrariness, etc.
- ii. Nature of charges – Seriousness of the offenses charged, potential serious dispositional consequences
- iii. Extra Hours – unusual legal issues, complex cases, quantity of documentary evidence to review, difficult witnesses to interview, etc.
- iv. Motions – unusual in scope or number (attach copy to billings)

#### **B. JUVENILE SPECIAL FEE HOURLY RATES**

When a case is a special fee case, the billing consists only of hourly billing. You should not bill a case fee, disposition fees, motion fees, or any other set type of fee.

1. \$135/hour\* Applies to Murder, and Attempted pre-meditated Murder
2. \$120/hour\* Applies to extremely serious felony 707(b) offenses or Sexual Assault cases as defined In Penal Code section 290.008. Applies to complex 300 cases (i.e. shaken baby cases, etc.) Managing Attorney determines which cases are appropriately set at this level.
3. \$105/hour\* Applies to Serious 602 cases including those involving strike offense, gang allegations, Complex 300 cases, 300 cases involving extremely difficult clients. Managing Attorney determines which cases are appropriately set at this level.
4. \$105-150/hour Advisory Counsel and Stand By Counsel. Amount will be determined based on type of case and charge. A Staff Attorney will determine the appropriate hourly fee based on the underlying charges and facts.
5. \$90-105/hour\* Applies to all other cases that the Managing Attorney determines are appropriately set as special fee cases.

\*The rate paid for Contested Hearings in these cases will be the higher rate of either the Contested Hearing Rate of \$100 per hour or the approved Special Fee rate.

### C. Special Fee Request Format

The majority of Special Fee cases will be predetermined by the Managing Attorney. If you have a case that was not already marked as a Special Fee case that you think should have been, you should contact the Managing Attorney.

If you have a case that you would like to have considered as a special fee case that is not one by definition by its charge or sentence, then you **MUST** get approval from the Managing Attorney **BEFORE** you submit **ANY** special fee billing. Any such vouchers will be returned if you do not get approval **prior** to submitting hourly billing.

Without violating the attorney client privilege or compromising either the rights of the client or the attorney's ethical or legal duties, each Special Fee request **must** include the following:

1. An email to the Managing Attorney explaining the charges against the client and why you believe the case is or should be a special fee case.
2. A notation on the first billing of the case as to why it is special fee case, that the Managing Attorney approved it as a special fee, and why (very briefly) it is special fee.
3. Special Fee billing must be specific and detailed and done **MONTHLY**.

Specific examples of how this billing must be done are as follows:

- a. Attorneys shall identify each major issue researched and the time spent on them.
- b. The bill shall indicate the nature of the work performed, i.e. Jurisdictional Hearing, Contested Hearing, Contested Dispositional Hearing, review of discovery, etc.
- c. Identify the documents reviewed
- d. Identify any motion researched or drafted
- e. State the nature of the court appearance and the time involved
- f. All time spent must be itemized in 1/10 hour increments

### 3. BILLING NOTES FOR ALL CASE TYPES

A. In ANY CASE – when the client fails to appear at any point in the proceedings and the PDP is relieved, the case may be submitted for payment. If the client returns to court within sixty (60) days of the FTA, then the previously assigned attorney will be expected to resume representation of the client, and no additional case fee may be billed. (Policy and Procedure Manual 3.2.4) If a client fails to appear for the third time for with the same attorney, then the attorney can bill for a new case fee.

B. ALL bills must be submitted within 90 days of completion of the case or they may not be paid.

C. All Special Fee/Hourly Cases must be billed MONTHLY or bills may not be paid.



## EVALUATION STANDARDS

### 1. PROFESSIONAL ABILITY

#### A. Preparation and Knowledge

1. Recognition of Legal Issues: The attorney recognizes the issues in the case that are necessary for the proper defense of the client. The attorney demonstrates creativity in resolving legal problems.
2. Judgment in Assessing Cases: The attorney demonstrates an ability to evaluate and assess a case taking into consideration the strengths and weaknesses of the prosecution and defense cases.
3. Effective Legal Research and Use of Pretrial Motions: The attorney has a satisfactory working knowledge of resource materials for use in all aspects of criminal practice. The attorney prepares well-written and researched motions that are timely filed in appropriate cases.
4. Effective Use of Investigation: The attorney recognizes those cases in which investigation is required. Requests are reasonable and appropriate and communicated in a clear and timely manner.
5. Effective Use of Experts: The attorney seeks assistance of experts in appropriate cases. Information is provided to the expert in a timely fashion, and the attorney prepares for presentation of expert testimony.
6. Witness Preparation: The attorney prepares witnesses and clients in such areas as courtroom procedures, direct and cross-examination, demeanor, and physical appearance.

#### B. Advocacy

1. Courtroom Demeanor: The attorney's demeanor is professional and conducive to effective representation.
2. Willingness to Try Cases: The attorney takes cases to trial when appropriate.
3. Advocacy Skills: A Private Defender is called upon to employ a variety of differing advocacy skills in representing clients in jury trials, court trials, juvenile hearings, preliminary hearings, and in other courtroom matters. For purposes of this category, the attorney should demonstrate effective advocacy skills including but not limited to such items as: voir dire; direct and cross-examination; introduction of, objection to, and admissibility of evidence; argument; instructions; and recognition of appellate issues.
4. Case Negotiations and Sentencing: The attorney enters into case negotiations conversant with the significant issues and ascertainable facts. The attorney recognizes plea alternatives and

consequences and properly advises the client. The attorney communicates effectively with the other parties involved in the case. The attorney makes thorough use of sentencing laws, seeking imaginative and creative sentencing alternatives.

## II. PROFESSIONAL ATTITUDE

### A. Professionalism

1. Ethics and Integrity: The attorney is aware of and observes the Rules of Professional Conduct and other ethical obligations of the defense bar and acts at all times with integrity.

2. Professional Growth: The attorney demonstrates an interest in his or her professional growth by a willingness to accept new and more challenging assignments and by seeking educational opportunities that will make him or her a more knowledgeable advocate. The attorney's attendance at Private Defender Program education programs and at continuing education programs sponsored by other defender organizations, such as CPDA and CACJ, should demonstrate his or her zeal for excellence as a trial lawyer.

### B. Work Habits

1. Volume and Calendar Management: The attorney satisfactorily handles the number of cases he or she accepts and manages his or her schedule to maximize personal effectiveness to the benefit of the client.

2. Court Appearances: The attorney appears in court punctually and keeps the court apprised of his or her whereabouts.

## III. PERSONAL RELATIONS

1. Clients: The attorney maintains contact with both in- and out-of-custody clients sufficient to provide competent representation for each court appearance. The attorney develops and maintains the client's trust and confidence. The attorney keeps the client advised as to the status of the case and explains constitutional and statutory rights. The attorney is sensitive to the special problems attendant to the representation of mentally ill clients, hostile clients, and resistant clients.

2. Private Defender Staff: The attorney's interaction with, clerical staff, investigators, and other staff demonstrates a spirit of cooperation, assistance and respect. The attorney is considerate of the pressures imposed upon all staff by high volume, time constraints and limited resources.

3. Members of the Justice System: The attorney is cognizant that the manner in which he or she interacts with judicial officers, prosecutors, courtroom personnel, law enforcement personnel, co-counsel, and other members of the justice system contributes to the effective representation of Private Defender clients.



# PDP Annual Survey July 1, 2019 - June 30, 2020

We are conducting the Annual Survey of current members of the PDP juvenile and adult panels relating to your activities on cases pending during the period of July 1, 2019, through June 30, 2020. The last survey was conducted in July of 2019. Please answer the survey questions completely.

All responses must be completed no later than Monday, August 3, 2020.

\*Please read each question carefully and follow these directions

---The survey below is divided into sections: All Attorneys, Juvenile Panel and Adult Panel. Please reply to appropriate questions. People who are on both Panels should reply to all questions.

---ALL Responses MUST be delivered electronically.

---Surveys which are incomplete will be returned.

---Your name and email address is required.

---Even if the answer to any Survey question is "none", please answer each question of the Survey and submit it.

---Panel members who do not submit their Surveys by the due date may not be assigned further cases until the Survey is submitted.

---Please sign and date your Survey at the end.

The survey responses will be reviewed initially by staff. Thereafter, you may be invited to review your responses with a staff member.

**\* Required**

1. Email address \*

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*Skip to question 2* *Skip to question 2*

All Attorneys

2. Please provide the percentage of time spent on PDP assigned cases. \*

OUT OF YOUR WHOLE LAW PRACTICE---THE PERCENTAGE OF TIME YOU SPEND WORKING ON PDP ASSIGNED CASES. So, if you spend all of your work time on your PDP cases, your percentage would be 100%. If you work 40 hours per week on your law practice and spend 10 hours on your PDP cases, your percentage would be 25%. If you work 100 hours per week on your law practice and you spend 10 hours on your PDP cases, your percentage would be 10%.

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3. For Adult Panel lawyers and for Juvenile Panel lawyers, please list the courses you took for MCLE credit during the period covered by this Survey, the subjects of which were directly related to your work on PDP cases. Please include the name of the provider (e.g., PDP, CEB, CPDA, CACJ, PJDC, etc.), and the number of hours of MCLE credit earned. \*

Do not forget to include PDP provided seminars.

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4. Please provide the TOTAL number of the hours of MCLE you have earned during this time period. \*

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5. Have you used all or your PDP education budget? \*

*Check all that apply.*

Yes

No

6. If not, why not?

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Juvenile Panel Attorneys

7. Please list all PDP W & I 602 Jurisdictional Hearings you have tried during this same period. Provide the case number, the Judge before whom the case was tried and the result.

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8. Please list 3 PDP W & I 300 contested hearings in which witnesses were called. Please provide the case number, the Judge before whom the case was tried and the result.

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- 9. Please list 1 PDP W & I 300 contested hearing in which witnesses were called in which you were the moving party. Provide the case number, the Judge before whom the case was tried and the result.

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- 10. Please list two PDP W & I 602 cases which went to an evidentiary hearing on issues raised in written points and authorities. Please provide the case number, the Judge before whom the motion was litigated and the result.

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- 11. Please list two PDP W & I 300 cases in which you filed written points and authorities.

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- 12. Please provide the case number, the Judge before whom the case was tried and the result.

\*For attorneys handling Juvenile Panel cases.

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13. Please list the PDP W & I 602 cases in which you used an investigator. Name the investigator used.

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14. Please list the PDP W & I 300 cases in which you used an investigator. Name the investigator used.

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15. Please list the PDP W & I 602 or 300 cases in which you used an expert. Name the expert(s) used and the issue involved.

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16. For lawyers representing children on PDP 300 cases please list the number of children represented by you on PDP 300 cases.

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17. Please list the number of cases that you have used Deborah Crandall to assist you in this representation.

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18. Please list the PDP cases in which you raised competency or litigated In re Gladys R. issues.

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19. For lawyers representing children in PDP 300 cases, please list the number of visits with your children clients you have had in the last year.

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- 20. \*For Juvenile Panel Delinquency attorneys, please provide certification of compliance with the provisions of California Rule of Court 5.663 in regard to the responsibilities of children’s counsel in delinquency proceedings and Rule of Court 5.664 in regard to the training requirements for children’s counsel in delinquency proceedings; and with the provisions of W&I Code section 317 and the provisions of California Rule of Court 5.660 in regard to attorney caseloads and training requirements for competent counsel in Juvenile Dependency matters.

FOR JUVENILE PANEL ATTORNEYS ONLY:

Certification by Juvenile Panel Delinquency attorneys: I hereby certify that I am in compliance with the provisions of California Rule of Court 5.663 in regard to the responsibilities of children’s counsel in delinquency proceedings and Rule of Court 5.664 in regard to the training requirements for children’s counsel in delinquency proceedings.

Dated: \_\_\_\_\_ Signature: \_\_\_\_\_

Certification: For Juvenile Panel Dependency attorneys: I hereby certify that I am in compliance with the provisions of W&I Code Section 317 and the provisions of California Rule of Court 5.660 in regard to attorney caseloads and training requirements for competent counsel in Juvenile Dependency matters.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Form will be distributed separately. Please sign and return to the PDP Juvenile Office.

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- 21. For juvenile panel lawyers, please estimate the percent of juvenile clients you represented during the past twelve months that were in detention?

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- 22. For juvenile panel lawyers, please estimate the percent of detained juvenile clients you visited while they were detained?

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### Adult Panel Attorneys

- 23. Please list the PDP misdemeanor, felony, and/or LPS cases that you have tried to a jury verdict during July 1, 2019 - June 20, 2020 time period.

Please provide the client's name, the case number, the name of the Judge before whom the case was tried, and the result. \*For attorneys handling Adult Panel cases.

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- 24. Please list the PDP misdemeanor, felony, and/or LPS cases that you confirmed for trial on the trial calendar, and resulted in a dismissal in master calendar or a trial department during July 1, 2019 - June 20, 2020 time period.

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25. Please list the PDP misdemeanor, felony, probate or LPS cases that you have tried before a Court only during the July 1, 2019 to June 30, 2020 time period.

Please provide the client's name, the case number, the name of the Judge before whom the case was tried, and the result.

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26. Please list two PDP misdemeanor, felony, contempt, or LPS cases (other than the ones listed in response to question #1) which went to an evidentiary hearing on issues raised in written points and authorities.

Provide the client's name, the case number, the Judge before whom the motion was litigated, and the result.

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27. If you do felony cases, please list three felony cases where a preliminary hearing was held. Please list the case number, and the Judge who heard the preliminary hearing.

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28. For adult panel lawyers, please check the online research services you used in preparation of motions, briefs and responses during the period covered in this survey.

*Check all that apply.*

- Lexis (through PDP)
- Lexis (on your own)
- Westlaw
- OnLaw (CEB Online)
- FastCase
- I don't use online research

Other:  \_\_\_\_\_

29. For adult panel lawyers, please state the other research materials you use to prepare motions, briefs and responses during the period covered in this survey.

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30. For adult panel lawyers, please state the approximate percent of your cases in which the client had some type of immigration issue

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31. For adult panel lawyers, please state which sources/resources you used to assist you in providing accurate legal advice to your clients concerning the immigration consequences of a particular case.

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32. For adult panel lawyers, please state whether or not you consulted with the Immigrant Legal Resource Center for their assistance.

*Mark only one oval.*

- YES-Did consult with the Immigrant Legal Resource Center.
- NO-Did not consult with the Immigrant Legal Resource Center
- Not applicable

33. For adult panel lawyers, if you did not consult with the ILRC, please state why not.

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34. For adult panel lawyers, please state or estimate the percent of all your cases in which you used the services of a PDP investigator to assist you with the investigation and preparation of your client's case.

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35. For adult panel lawyers, did you work with any experts in the past year?

*Mark only one oval.*

Yes

No

36. For adult panel lawyers, please list the experts you have worked with over the past year, and the areas of expertise in which you used an expert consultation.

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37. If a Marsden motion has been granted in a Private Defender case assigned to you, or a finding of inadequacy of counsel by a trial or appellate court in your representation of a PDP client during the past fiscal year, please give the name of the defendant, case number, and give a brief description of the basis for the Court's ruling.

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38. If the court's ruling is written, please provide a copy.

email copies to:

*Mark only one oval.*

Not applicable

copy emailed

39. For adult panel lawyers, please attach a copy of a motion or brief, which you researched and wrote yourself, on substantive issues (not routine continuance motions) and filed in Court during the period between July 1, 2019 and June 30, 2020.

This should be a brief or motion or response to a DA's motion and should be based on your own legal research and writing. Do not submit a continuance motion (unless it had extraordinary issues) or an in limine motion which you file in every trial you have, or a canned brief you obtained from any other source to which the only modification made was to change the caption and include a brief statement of the facts of your case. This brief or motion is to be an example of your work, and your work alone.

*Mark only one oval.*

copy emailed

40. For adult panel lawyers, how many 1538.5 motions have you filed in the last year?

*Mark only one oval.*

More than 5

1-5

None

41. For adult panel lawyers, if you handle felony matters, how many 995 motions have you filed in the last year?

*Mark only one oval.*

- More than 5
- 1-5
- None

42. For adult panel lawyers, how many Pitchess motions have you filed in the last year?

*Mark only one oval.*

- More than 5
- 1-5
- None

43. For adult panel lawyers, please list other substantive motions you have filed in the last year (e.g. Non-statutory 995, Motion to Dismiss, Brady violations, Recusal motions)

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44. For adult panel lawyers, if you have not prepared and submitted any such document in this one year period, please so indicate in your answer to this question and explain why not.

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45. Please estimate the percent of in custody clients whom you have visited in custody before the first court appearance after the arraignment.

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46. With regard to your clients who are not in custody, please describe what method you use to contact them before the first court appearance after arraignment?

*Check all that apply.*

- Phone
- Text
- Email
- Other

47. If other, please list:

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48. Please estimate the percent of clients who are not in custody whom you have visited in your office or elsewhere before the date of the first court appearance after arraignment.

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49. Submitted by: \*

Please provide your full name and date:

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**PRIVATE DEFENDER PROGRAM CASES COUNTS  
FOR FISCAL YEAR ENDED JUNE 30, 2020**

	July 2019	Aug. 2019	Sept. 2019	Oct. 2019	Nov. 2019	Dec. 2019	Jan. 2020	Feb. 2020	March 2020	April 2020	May 2020	June 2020	Year End True-up	Grand Totals
<b>"A" CASES</b>														
1367, 1368														0
Appeals			2	1				1			1			5
* Contempts	8	8		7	3	3	4	5	3			2	6	49
* Probate	7	5	5	7	3	7	4	9	4		5	5	14	75
* Paternity														0
* SVP		1					1						(1)	1
SVP / Criminal														1
Parole Violation	14	11	19	6	15	14	22	9	10	3	2	5	1	130
PRCS	18	13	14	17	17	11	19	19	8		3	5	1	145
Probation Violation	69	59	54	66	54	67	82	55	61	12	16	18	7	620
Sexually Violent Predator (SVP)														0
* Adoption / Guardianship		1		1		1				1				4
* Military Civil Relief Act														0
* Probate / Medical Consent										8			(8)	0
Witness Representations - GJ														0
Witness Representations		1	4	2			2	3						15
Special Assignment / Witness Rep														0
187					1								1	2
187 - DP														1
187 - Spec Circ														0
187 - DP - GJ														0
187 - GJ														0
Life - GJ														0
Super Felony - GJ														0
NGI Extension		1	2			2							1	6
Other Mental														0
3 Strikes Review														0
3 Strikes / 1 Strike Life		4	2	1			2	2	1			1		13
Life		1		1	3		2							7
P47	1												2	3
P64	1													1
P57														0
SB-1437	1		1	2		2						1	1	8
Super Felony	114	110	78	106	111	101	97	111	97	51	45	51	(7)	1,065
Calendar Closed		1	1	2	2	2	1			2			(2)	9
Superior - Consolidated PV														0
Superior - Unconsolidated PV														0
Writs / Criminal Superior														0
Writs														0
YOP - Resentencing	1	2	2				3						(1)	7
Veterans Resentencing (AB865)				1									1	2
859a / Restitution		9	3	8	4	13	7	6	4	1		2	2	59
Monthly Totals	234	227	187	229	213	223	246	220	188	78	72	90	21	2,228
Cumulative Totals	234	461	648	877	1,090	1,313	1,559	1,779	1,967	2,045	2,117	2,207	2,228	4,456
<b>"B" CASES</b>														
187 - DP							1							1
187 - Spec Circ										1				1
187		1		2	1								(2)	2
3 Strikes / 1 Strike Life				2	1	1			1		1			8
Calendar Closed	44	42	40	48	54	38	46	67	23	1		1	3	407
Criminal Contempt	1													1
DV Misdemeanor	47	63	41	59	39	42	54	33	29	27	26	40	3	503
Felony - No SCR	79	105	105	102	103	90	88	94	69	54	55	71	12	1,027
Felony / SCR	116	130	97	110	83	102	106	98	72	37	22	45	(6)	1,012
General Misdemeanor	790	793	740	861	680	683	722	644	423	58	59	111	29	6,593
Life	1	4	4	2	1	1	1			3		2	1	16
Minor Traffic / Infractions	161	134	106	114	83	83	110	73	65	5	1	16	7	958
Probation Violation	180	127	105	112	99	97	114	148	67	19	9	20	(6)	1,091
Lineups					1									1
Lineups / Special Assignment														0
3 Strikes Review								1					(1)	0
Writs / Criminal Municipal														0
Witness Representations		2	1	1	1	1	1		1					8
Monthly Totals	1,419	1,401	1,235	1,413	1,146	1,138	1,243	1,158	750	205	173	306	42	11,629
Cumulative Totals	1,419	2,820	4,055	5,468	6,614	7,752	8,995	10,153	10,903	11,108	11,281	11,587	11,629	23,258
<b>"C" CASES-LPS</b>														
LPS - Regular	2	3	2	7	3	1	5	3	5	1	3	5	18	58
LPS - DNR / Medical Consent	4	1	4	5	1		1	3	3					22
LPS - Rehearing Petition	3	1	1	1	4		2	1	1			1	1	16
LPS - Writs	6	6	3	4	2	5	4	2	4	3	1	1		41
Monthly Totals	15	11	10	17	10	6	12	9	13	4	4	7	19	137
Cumulative Totals	15	26	36	53	63	69	81	90	103	107	111	118	137	274
<b>"E" CASES</b>														
P57														0
P47														0
602 - GAL		2												2
602 - Delinquency	96	66	88	70	52	69	65	64	58	5	18	49		700
Witness Representations - JV														0
Miranda - SB 395	33	31	31	35	31	31	33	32	34	30	31	31	3	386
Prob. Reg. Miranda Advice	3	5	9	5	8	7	6	6	10	2	4	1	2	68
Monthly Totals	132	104	128	110	91	107	104	102	102	37	53	81	5	1,156
Cumulative Totals	132	236	364	474	565	672	776	878	980	1,017	1,070	1,151	1,156	2,312
<b>"X" CASES</b>														
X - Other Services	164	167	163	164	139	153	166	157	146	127	136	159	93	1,934
Monthly Totals	164	167	163	164	139	153	166	157	146	127	136	159	93	1,934
Cumulative Totals	164	331	494	658	797	950	1,116	1,273	1,419	1,546	1,682	1,841	1,934	3,868
MONTHLY GRAND TOTALS	1,964	1,910	1,723	1,933	1,599	1,627	1,771	1,646	1,199	451	438	643	180	17,084
FY 1920 CUMULATIVE GRAND TOTAL	1,964	3,874	5,597	7,530	9,129	10,756	12,527	14,173	15,372	15,823	16,261	16,904	17,084	
* = "A" & "B" Type Civil Cases														
All "C" Cases are Civil Cases														
"X" : Accounts for "Services" as defined in Addendum 1 to the Fee Schedule (effective 6/1/17) which is attached to the Agreement of 6/1/17.														
NOTE: Delays in adding cases into our computer system may result in case counts being understated. The "Year End True-up" column adjusts for cases added in subsequent months.														
I = Incomplete data for this period.														



## **Private Defender Program Case Types**

**"Type A"** cases cover a wide array of civil and criminal cases. These range from felony cases arraigned in the Superior Court after preliminary hearings and other proceedings have been concluded ("Arraignments"), to civil proceedings, such as paternity, probate conservatorships, adoptions, and extensions of commitment pursuant to the Sexually Violent Predator Act. The Type A category also includes petitions filed pursuant to Proposition 47.

**"Type B"** cases generally originate in what was the Municipal Court before the unification of our court in 1998. This category itemizes the number of misdemeanor cases, felonies through preliminary hearings, and other miscellaneous criminal cases in which the PDP was appointed.

**"Type C"** cases describe those in which the PDP was appointed in various mental health proceedings. Included here are cases filed pursuant to the provisions of the Lanterman-PetrisShort Act (LPS cases), in which the involuntary commitment of persons who are gravely disabled, or alleged to be a danger to themselves or to others, as the result of a mental disorder is at issue.

**Originally "Type D"** cases described those Juvenile Dependency cases in which the PDP was appointed. However, these cases are now covered by an Agreement with the court and are now reported to the court and not to the County. As a result, they are not included in this report.

**"Type E"** cases describe those Juvenile Delinquency cases to which the PDP was appointed.

**"Type X"** cases include, in addition to their regular caseloads, several PDP lawyers who appear at and cover regularly scheduled court calendars, which is a time set aside by one judge to handle a significant number of cases that are at the same procedural point of the criminal justice process. Attorneys with extensive serious felony experience handle the arraignment calendars for those clients who are in custody. In addition to the in-custody calendar there are six weekly out-of-custody arraignment calendars, all of which are staffed by PDP attorneys. In addition, there are several regularly scheduled calendars for the various specialty court calendars including Pathways Mental Health Court, Bridges (Probation Department Drug Program), Laura's Law Court, Drug Court, Penal Code 1370 (not competent to stand trial) Court, Restitution Court, Domestic Violence Review, Veterans Treatment Court and Military Diversion. In addition to these calendars, the LPS cases are heard weekly.

**PDP Caseloads by Attorney and PDP Averages  
Fiscal Year Ended June 30<sup>th</sup>, 2020**

<b>Randomized Attorney Number</b>	<b>% of time spent on PDP Cases</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>E</b>	<b>X</b>
16	20%	2	7	0	0	0
61		0	29	0	0	0
73	95%	4	2	0	0	0
74	95%	8	13	0	0	36
90	50%	2	5	0	0	0
22	60%	6	7	0	0	1
26	100%	0	4	0	0	326
67	60%	4	8	0	0	0
70		0	5	0	0	0
95	20%	9	10	0	0	0
24	70%	34	46	0	0	1
57	15%	2	7	0	0	0
43	70%	11	17	0	0	1
75		34	11	0	0	21
42	50%	28	48	0	0	13
50		15	36	0	0	5
56	95%	2	33	0	0	19
18	80%	32	54	0	0	2
45	25%	5	34	0	0	0
14	100%	46	125	0	0	0
84	98%	55	61	0	70	37
86	100%	0	29	0	0	0
53	98%	1	40	14	27	2
78	80%	23	63	0	0	3
30	50%	4	44	11	0	6
77	95%	67	100	0	0	126
47	65%	47	107	0	0	0
31	90%	0	65	0	83	1
93	100%	0	54	0	0	48
79		15	99	0	0	0
28	85%	4	74	0	0	15
72	100%	262	76	0	0	133
2	95%	25	111	0	0	10
44	90%	71	173	0	0	0
29	99%	87	124	0	0	13
88	100%	51	189	0	0	0

**PDP Caseloads by Attorney and PDP Averages  
Fiscal Year Ended June 30<sup>th</sup>, 2020**

<b>Randomized Attorney Number</b>	<b>% of time spent on PDP Cases</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>E</b>	<b>X</b>
97	75%	21	121	0	0	4
81	90%	0	91	0	0	0
11	98%	25	142	0	0	43
5		18	173	0	0	28
3	95%	62	157	0	19	7
71	99%	149	146	0	65	75
37	25%	4	123	0	0	0
27	95%	14	150	0	0	18
60		7	161	0	0	2
62	99%	34	169	0	0	0
89	90%	60	242	14	0	13
58	83%	1	134	0	39	1
66	95%	42	172	0	0	15
38	90%	25	171	0	0	1
13	99%	61	246	0	0	53
63		0	204	0	0	18
59	25%	11	216	0	0	1
35	95%	43	296	0	0	19
41	60%	96	286	16	65	12
7	80%	87	338	3	0	49
46	90%	16	290	0	0	8
52	90%	13	311	0	1	32
32	98%	33	274	0	0	89
25	95%	4	300	0	76	0
48	99%	0	281	0	0	0
15	90%	81	408	0	0	26
20	75%	24	377	0	0	21
36	90%	60	354	0	0	68
19	95%	25	348	0	0	0
68	99%	8	346	0	0	52
80	85%	9	302	0	0	0
1	100%	0	362	0	0	63
83	98%	19	381	0	0	68
94	95%	23	417	0	0	25
4	100%	3	416	0	0	0
6	10%	0	0	0	7	2

**PDP Caseloads by Attorney and PDP Averages  
Fiscal Year Ended June 30<sup>th</sup>, 2020**

<b>Randomized Attorney Number</b>	<b>% of time spent on PDP Cases</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>E</b>	<b>X</b>
8	70%	0	0	0	0	1
10	30%	0	0	0	46	1
12	75%	20	0	42	0	13
17		3	0	3	3	2
21	40%	30	0	0	0	15
23		1	0	0	0	0
33	100%	34	0	0	0	1
34	40%	6	3	0	29	60
39	40%	4	1	0	0	2
40	40%	6	3	0	0	1
49	100%	0	0	0	24	4
51		3	0	0	0	0
54	85%	2	0	0	26	0
55	50%	0	0	0	67	1
64	95%	0	0	0	146	3
65	75%	0	2	0	0	1
69	95%	2	0	0	121	21
76	100%	0	0	0	0	47
82	5%	4	0	0	0	0
85	40%	0	10	0	0	65
87		1	0	0	0	0
92	80%	1	0	0	83	2
96		0	0	0	0	38
98		0	0	34	11	5
99	99%	1	0	0	142	8
100		0	1	0	0	0
Ancillary Services	N/A	8	7	0	0	0
Attorney Unassigned	N/A	68	787	0	6	11
<b>Totals</b>	<b>17084</b>	<b>2228</b>	<b>11629</b>	<b>137</b>	<b>1156</b>	<b>1934</b>
<b>Average Time Spent on PDP Cases</b>	<b>77.24%</b>					



**San Mateo County Bar Association  
Budget vs. Actual with Monthly Trend  
Private Defender Program  
As of June 30, 2020**

Reporting Book:

As of Date:

Location:

	Year To Date 06/30/2020	
	Actual	BUDGET
<b>Revenues over Expenditures</b>		
<b>Revenues</b>		
<b>Program Service Revenue</b>		
<b>Program Revenue</b>		
SM County Contract Revenue	18,720,000.00	18,720,000.00
AB109 Probation/Parole	266,714.69	233,000.00
Court Funding 300 W & I - JV	979,181.27	923,000.00
JCC Funding	6,721.00	0.00
<b>Total Program Revenue</b>	<b>19,972,616.96</b>	<b>19,876,000.00</b>
<b>Total Program Service Revenue</b>	<b>19,972,616.96</b>	<b>19,876,000.00</b>
<b>Investment Income</b>		
Investment Income	35,302.06	3,800.00
Unrealized Gain (Loss) on Investments	0.00	0.00
Realized Gain or Loss	(97,080.31)	0.00
<b>Total Investment Income all</b>	<b>(61,778.25)</b>	<b>3,800.00</b>
<b>Total Revenues</b>	<b>19,910,838.71</b>	<b>19,879,800.00</b>
<b>Expenditures</b>		
<b>Program</b>		
Attorney Fees	12,748,896.59	13,075,359.96
Investigator Fees	2,159,479.89	2,170,000.00
Expert & Related Services	1,016,165.72	1,350,000.00
Answering Service & Other Expenses SB395	2,857.48	2,600.00
Education Reimbursements - Attorneys	43,929.46	54,000.00
Education Reimbursements - Investigators	1,849.09	9,950.00
In-House Training Sessions	12,440.36	20,000.00
Lexis Nexis	90,002.00	58,000.00
Events Expense	7,918.95	5,150.00
Card Key Expense	1,520.00	1,400.00
Charitable Donations	0.00	5,000.00
<b>Total Program</b>	<b>16,085,059.54</b>	<b>16,751,459.96</b>
<b>Personnel</b>		
<b>Salary and Wages</b>	<b>1,784,758.98</b>	<b>1,853,614.00</b>
<b>PR Benefits</b>	<b>498,039.64</b>	<b>509,467.56</b>
<b>PR Taxes</b>	<b>118,944.29</b>	<b>141,782.92</b>
<b>Total Personnel</b>	<b>2,401,742.91</b>	<b>2,504,864.48</b>
<b>Occupancy</b>	<b>188,398.44</b>	<b>189,312.96</b>
<b>Professional Fees</b>		
IT Services	28,158.00	31,115.00
Consulting & Temp Services	0.00	10,000.00
HR & Payroll Consulting	19,335.27	20,250.00

Other Professional Services	46,892.98	24,999.96
Accounting Services	65,519.75	60,000.00
Auditors Fee	32,934.07	36,549.96
Legal Services	12,070.60	9,999.96
<b>Total Professional Fees</b>	<b>204,910.67</b>	<b>192,914.88</b>
<b>General and Administrative Expenses</b>		
<b>Advertising and Promotion</b>	<b>0.00</b>	<b>0.00</b>
<b>Credit Card and Other Service Charges</b>	<b>353.63</b>	<b>4,730.16</b>
<b>Depreciation</b>	<b>786.00</b>	<b>0.00</b>
<b>Due and Subscriptions</b>	<b>2,459.60</b>	<b>4,700.00</b>
<b>Equipment Rental</b>	<b>9,018.87</b>	<b>15,178.08</b>
<b>Facilities</b>	<b>4,414.51</b>	<b>5,000.00</b>
<b>Insurance</b>	<b>62,578.54</b>	<b>62,850.00</b>
<b>Meals and Entertainment</b>	<b>3,132.52</b>	<b>3,000.00</b>
<b>Office Expenses</b>		
Publication and Books	9,724.23	6,600.00
Office Supplies	27,529.50	23,540.00
Computer Hardware & Equipment	9,574.67	6,057.60
Computer Software	52,757.25	54,000.00
<b>Total Office Expenses</b>	<b>99,585.65</b>	<b>90,197.60</b>
<b>Other Expenses</b>	<b>0.00</b>	<b>5,000.00</b>
<b>Postage and Delivery</b>	<b>459.98</b>	<b>0.00</b>
<b>Repairs and Maintenance</b>	<b>5,979.00</b>	<b>0.00</b>
<b>State and Local Taxes</b>	<b>0.00</b>	<b>1,442.00</b>
<b>Telecommunication</b>	<b>43,015.93</b>	<b>44,849.88</b>
<b>Travel Expenses</b>	<b>3,660.93</b>	<b>4,300.00</b>
<b>Total General and Administrative Expenses</b>	<b>235,445.16</b>	<b>241,247.72</b>
<b>Total Expenditures</b>	<b>19,115,556.72</b>	<b>19,879,800.00</b>
<b>Total Revenues over Expenditures</b>	<b>795,281.99</b>	<b>0.00</b>

No assurance is provided on these financial statements. All disclosures required by GAAP are omitted.