

SUCCESS IS A PLEA BARGAIN, A WIN IS A LESSER CHARGE

A Report on the Offices of the Public Defender and Alternate Defender

June 7, 2011

Summary

The 2010-2011 Mendocino County Grand Jury (GJ) chose to look into the court process in light of a recent arrest of 19 persons charged in a single incident. The GJ's concern is how these multiple arrests affect the Public Defender's Office (PDO).

The Government Code §27706 defines the duties of the PDO. The PDO provides mandated legal representation for indigent clients when appointed by the court, protects the confidences, constitutional, and statutory rights of every individual.

The PDO is responsible for representing any person financially unable to retain their own attorney (an indigent person), and charged with any contempt or criminal offense (felony or misdemeanor) within the jurisdiction of the Superior Court.

The PDO represents minors in delinquency proceedings, petitioners for the restoration of rights, application for pardon, persons alleged to be sexually violent predators or mentally disordered sex offenders, competency hearings to determine mental conditions, conservatorship proceedings, and various post trial/probation proceedings.

The Alternate Defender Office (ADO) acts as a second public defender and is appointed by the court in cases where the PDO declares a conflict of interest. A conflict of interest can occur when multiple persons are charged with the same case and/or have different defenses.

When there are more than two defendants, a private attorney may be called from the *Conflicts Attorney List* to represent that defendant. Only one person in a group of co-defendants can be assigned an attorney from the PDO. For many defendants, it is in their best interest to testify against co-defendants in exchange for a reduced sentence.

Background

The first person to propose the creation of a PDO was California's first female attorney. Before, private attorneys who were young and inexperienced were often ordered by the courts to defend indigent clients *pro bono* (for free) and in that capacity the female attorney saw firsthand the inequitable results of that system.

In 1921, the California Legislature extended the Public Defender System to all courts statewide.

Mendocino County employed private attorneys before the creation of the County Public Defender's Office and the Alternate Defender's Office.

In 2007, Mendocino County public attorneys created their own union. Initial negotiations between the Union and the County resulted in a pay raise for the attorneys. With this increase, parity in salary for like counties was not achieved; the attorneys were still paid 20% below parity.

On April 26, 2011, the Board of Supervisors (BOS) negotiated with the Union, resulting in a 12.5% pay decrease, rather than the 20% decrease that the BOS originally proposed. This reduction applied to the attorneys employed in the offices of the District Attorney, Public Defender, Alternate Defender, and Child Support Services. Attorneys in the Office of the County Counsel are not members of this union.

Methods

The GJ interviewed public and private attorneys, reviewed the following documents: California Penal Code, Ukiah Court and Ten-Mile Court *Conflicts Attorney List*, budgets, Organizational Program Charts, and the 2011 *California Criminal Law-Procedures and Practice*.

Findings – General

1. The Board of Supervisors (BOS) appoints the Public Defender (PDO).
2. The PDO assists with the Alternate Defender (ADO) budget and has certain control over that budget.
3. The Chief Executive Officer (CEO) receives a recommendation from the Public Defender for the position of Chief Alternate Defender. Final approval is made by the BOS.
4. The duties for the PDO and ADO are to represent defendants who are indigent and charged with misdemeanors or felonies within the jurisdiction of the Superior Court.
5. The PDO and ADO also represent juveniles. It was estimated that 80% of juveniles remain in the juvenile criminal justice system until they reach 18 years of age. Probation violations are the most common reason that juveniles remain in the system.
6. The PDO, ADO, and Conflict Attorneys (private practice attorneys) represent indigent defendants; the cost is paid by the taxpayers.
7. Indigent status is determined initially by the Collections Department of the Court, after a review of the *Defendant's Financial Statement*. The Court makes a final decision after the conclusion of the case as to the amount of attorney's fees, if any.
8. The *Defendant's Financial Statement* includes real estate, cash, and vehicles.
9. If the defendant is eligible to receive public defender services, a \$50 registration fee is due upon appointment of counsel. (PC 987.5)
10. The Court may order an indigent defendant to pay a fee for service at the end of the case.
11. When a defendant is deemed ineligible for public defender services and is unable to hire an attorney; the Court may appoint the PDO and bill the defendant.
12. The PDO office in Ukiah has 12 attorneys, two investigators, and five support staff.
13. The PDO office in Fort Bragg has one attorney, and one support staff.
14. Seventy-five percent of the total PDO staff has been with the department for five or more years.

15. The ADO staff includes two full time attorneys, one half-time attorney, one extra-help attorney, one investigator, and one secretary. The Chief ADO recently retired and has not been replaced.

Findings – Conflicts of Interest

16. The ADO represents defendants when the PDO declares a conflict of interest.
17. A conflict of interest exists when multiple defendants participate in a single crime and are charged as co-defendants. Only one person in the group of co-defendants will be assigned an attorney from the PDO.
18. The PDO and the ADO are located in separate buildings to avoid any appearance of conflict of interest.
19. When the PDO and ADO both declare a conflict of interest, a conflict attorney is appointed by the court from the *Conflicts Attorney List* and is paid with general fund dollars. Conflict attorneys are paid below the rate charged to their private clients.
20. A defendant can orally request a *Marsden Motion* hearing, which is a declaration to the court that the defending attorney is incompetent or inadequate in representation (same as firing your attorney). If the *Marsden Motion* is granted, the judge will assign an attorney from another office to avoid any conflict of interest.

Findings – Court Process

21. Since January 2011, the District Attorney's Office is currently charging multiple defendants who are involved in the same crime, separately, when appropriate.
22. In a 2010 court proceeding, 19 persons were charged in a single accusatory pleading.
23. For misdemeanors, if the defendant is *in custody*, s/he must be brought to trial within 30 days from entry of plea; if the defendant is *out of custody*, within 45 days from entry of plea, unless the defendant waives the right to a *speedy trial*.
24. For defendants charged with a felony, s/he has a right to a preliminary hearing within 10 court days, and no greater than 60 calendar days, unless the defendant waives time. If, after the presentation of evidence at the preliminary hearing, the defendant is held to answer, the prosecution must file an accusatory pleading known as *Information* within 15 calendar days of the holding order. Following arraignment on the *Information* and entry of plea, a defendant has a right to a jury trial within 60 calendar days, unless the defendant waives his/her right to a speedy trial.
25. A defendant is required to appear at all court proceedings - unless excused by the court, or through the use of PC §977, which allows the accused to be represented by counsel only.
26. The prosecution has the same rights as the defendant to a *speedy trial*.
27. Waiving the right to a *speedy trial* allows the District Attorney time to gather supporting evidence, arrange for witnesses, and solidify a case, as necessary. The defendant's attorney may need a later date to ensure discovery has been received and all witnesses are available on a specific date.
28. Few cases go to trial; most end in plea-bargaining and sentencing bargaining.
29. Public attorneys represent defendants with the same due diligence as a private practice attorney, and are subject to the same ethical obligations.

30. The ADO and the District Attorney have asserted that more experienced law enforcement officers tend to make fewer *technical* errors. Technical errors have the potential of causing the dismissal of charges.

Recommendations

The Grand Jury recommends that:

1. the Mendocino County Board of Supervisors fill the position of Chief Alternate Defender, (Findings 3,15)
2. the County Executive Officer maintain the Office of the Public Defender and the Office of the Alternate Defender in separate buildings, (Finding 18)
3. the Mendocino County Probation Department continue to work with juvenile offenders' parents on plans to reduce probation violations, (Finding 5)
4. the Public Defender evaluate the current fee schedule for reimbursement for appointed counsel legal services, (Findings 10-11)
5. the Public Defender develop a procedure to regularly request, at the end of a case, County reimbursement for legal services provided on that case, (Findings 10-11)
6. the Alternate Defender develop a procedure to regularly request, at the end of a case, County reimbursement for legal services provided on that case, (Findings 10-11)
7. the appointed Alternate Defender be responsible for preparing, presenting, and managing his/her own annual budget. (Finding 2)

Discussion

In the case of multiple defendants, each defendant has individual representation; taxpayers subsidize defendants' legal costs. Because incidents of crime have increased in our community, these legal costs have risen over recent years. Charging defendants separately may save the County money; as fewer defendants will need the private "conflict" attorneys.

Required Responses

Mendocino County Board of Supervisors (Findings 1,3,15; Recommendations 1-2)

Mendocino County Chief Executive Officer (Findings 3,18; Recommendation 2)

Mendocino County District Attorney (All Findings; All Recommendations)

Mendocino County General Service Agency Director (Finding 18; Recommendation 2)

Mendocino County Probation Department, Chief Probation Officer (Finding 5; Recommendation 3)

Mendocino County Office of the Public Defender (Findings 1-14, 16-30;
Recommendations 4-6)

Mendocino County Office of the Alternate Defender (Findings 2-11; 15-30)
Recommendations 6-7)