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October 15, 2007

Gerald Uelmen

Executive Director

California Commission on the Fair Administration of Justice

900 Lafayette Street, Suite 608

Santa Clara, California 95050

Re: Supplemental Report by CPDA

Dear Mr. Uelmen:

On behalf of the California Public Defenders Association at the July meeting of the Commission I presented some preliminary survey results summarizing surveys disseminated to all indigent criminal defense service agencies to determine the extent of adherence to the California State Bar's Guidelines for Indigent Defense Delivery Systems (2006). Since there had been very few responses to the surveys, I suggested to the Commission that a supplemental report be lodged after a more representative sample of responses had been received. By this letter and the attached spreadsheet, I wish to offer the later results of the survey.

There were two separate types of surveys, one for contract entities, and one for institutional public defenders. Only four contract entities responded, too few to provide any meaningful

information. Nineteen institutional public defenders responded to the survey.¹ This analysis is a compilation of those responses and presents the percentages of indigent defendants whose counsel are in compliance with the Guidelines. Rather than presenting the percentage of *offices*

which are in or out of compliance with the Guidelines (as I had done at the July meeting), I believe that the approach presented here provides a more meaningful analysis.

As an example of the difference in the two approaches, consider a hypothetical state in which there are only two public defender agencies, A and B. Agency A represents 95% of the state's indigent defendants, and Agency B represents the other 5%. Assume that Agency A complies with the Guidelines, and that Agency B does not. It is of little statistical value to conclude that 50% of the agencies comply. It is much more meaningful to conclude that 95% of indigent defendants are represented by a compliant agency.

METHODOLOGY

The methodology employed in this analysis is as follows. The answers to the survey's questions were tabulated for each respondent in an Excel spreadsheet.² From the Judicial Council's Report of criminal filings by county for the fiscal year 2005-06, the number of criminal case filings for each respondent's county was added to the dataset. The Report contains separate counts of felonies, non-traffic misdemeanors, traffic misdemeanors, and infractions. Since there is no right to counsel in infractions, those counts were not used in the analysis. In many jurisdictions the

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- ¹ The institutional public defenders whose surveys are summarized are the following:
- Alameda County Public Defender
 - Contra Costa Public Defender
 - Fresno Public Defender
 - Humboldt County Public Defender
 - Kern County Public Defender
 - Lassen Public Defender
 - Los Angeles County Alternate Public Defender
 - Los Angeles County Public Defender (LA County counted only once in tabulation)
 - Marin County Public Defender
 - Mendocino County Public Defender
 - Merced County Public Defenders Office
 - Orange County Public Defender
 - Orange County Alternate Public Defender (Orange County counted only once in tabulation)
 - San Bernardino County Public Defender
 - Santa Clara County Public Defender
 - Shasta County Public Defender
 - Sonoma County Public Defender
 - Tulare County Public Defender
 - An Unknown County Public Defender

²The raw data cannot be presented to this Commission because in an attempt to foster candid answers to the questions, CPDA promised confidentiality, and ensured the potential respondents that only aggregated responses would be provided.

courts appoint counsel in misdemeanor prosecutions only upon request of the accused, and do not take a proactive approach to ensuring the right to counsel. On the other hand, we believe that counsel is nearly always appointed for defendants in felony prosecutions. Hence, for purposes of this analysis, we use the felony case counts to appropriately weight the responses of the public defender agencies that submitted answers to the surveys.

All but four of the survey questions were phrased in a fashion that a "Yes" response indicated compliance with the Guidelines. In Questions 3, 32, 39, and 41, a "No" response indicated compliance with the Guidelines. The attached spreadsheet presents the questions of the survey and a "Weighted Compliant Response Rate" for each question. The Weighted Compliant Response Rate is calculated by totaling the felony case counts for the counties which indicated a compliant response, and then dividing by the total number of felony filings within the counties of the 19 responding institutional public defenders.

LIMITATIONS OF ANALYSIS

The respondents' counties account for 169,699 felony filings³ out of a statewide total of 289,206 felony filings, or 58.7%.⁴ One cannot project from the respondents' answers the extent of compliance with the Guidelines statewide. Nor can any assessment of the contract providers be gleaned from the responses of the institutional public defenders.

SUMMARY OF ANALYSIS

Questions 1⁵ and 2, dealing with Independence of the service provider, deal with activities of other parts of the system, and reflect actions taken by the public defender to preserve the independence of the provider. As such they do not present a pertinent measurement of compliance with the Guidelines. The remainder of the questions, however, disclose a very high level of compliance with the Guidelines (mostly above the 90% level), with the following exceptions (which are listed if the compliance rate is below 80%):

4. Throughout the judicial proceedings are clients able to determine which attorney is assigned to represent them?

Respondents representing only 59.5% of felony filings indicated compliance.

Comment: In felony cases of many jurisdictions there are several different attorneys assigned to handle a given routine case. Typically, one attorney will represent the defendant at arraignment, another at the preliminary hearing stage,

³These figures do not represent the number of public defender cases. An assumption in this analysis is that the rate of appointment of the public defender is constant across the respondents' counties.

⁴The equivalent rates for the other types of filings are 68.3% for non-traffic misdemeanors, 63.8% for traffic misdemeanors, and 64.6% for all filings.

⁵Question 1f was somewhat ambiguous, but it apparently reflects the respondents' belief that the refusal to appoint the public defender was the result of an insufficient number of attorneys to handle appointments speedily enough to satisfy the judge.

and yet another in the remaining proceedings. This results in some periods in which the assignment of attorney may be unclear.

11. Is the assignment of case types to individual attorneys performed in conformance with a written set of guidelines?

Respondents representing only 74.0% of felony filings indicated compliance.

19. Do you require your experienced attorneys to complete a minimum of 15 hours of relevant legal education classes or equivalent training dealing specifically with juvenile (dependency or delinquency), mental health and/or criminal law, annually?

Respondents representing only 25.7% of felony filings indicated compliance.

COMMENT: This Guideline is more demanding than the general MCLE requirements.

21. Do you require those attorneys who practice in specialty courts, collaborative justice courts, or problem solving courts (e.g., drug treatment courts, Prop. 36 courts, mental health treatment courts, DUI treatment courts, domestic violence courts, reentry courts, juvenile resource advocacy courts) to acquire specialized technical training (i.e., dynamics of disease and treatment) relevant to the medical or psychosocial field involved?

Respondents representing 68.7% of felony filings indicated compliance.

29. In providing representation to children within the juvenile courts, does your Department monitor how those clients are faring within the California Department of Corrections and Rehabilitation (formerly the CYA) pursuant to Senate Bill 459 (Welfare and Institutions Code section 731 et. seq.), to determine whether they are receiving services intended by the court?

Respondents representing 76.6% of felony filings indicated compliance.

COMMENT: The monitoring detailed in this question is quite new to juvenile practice. The difficulty in establishing a standard of practice was recognized during the drafting of the Court Rules associated with this practice.

42. Has your department promulgated written policies or guidelines, and provided training to staff, regarding the ethical rules binding them and explaining the process whereby ethical issues are resolved.

Respondents representing 78.9% of felony filings indicated compliance.

COMMENT: A higher rate of compliance could be achieved if public defender agencies which have promulgated written ethics policies shared them with other agencies.

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48. Does the leadership provided by your department include conceiving and implementing criminal justice policy on a national, state, regional and local level, including maintaining an affirmative legislative agenda as well as addressing the proposals submitted by other entities.

Respondents representing 63.9% of felony filings indicated compliance.

COMMENT: There might be local limitations on county governmental department heads from engaging in the activities contemplated by this Guideline.

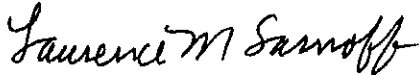
CONCLUSION

It appears that the institutional public defenders who responded to the surveys are complying with the Guidelines very substantially. There is some room for improvement.

Unfortunately, this exercise has provided insufficient information regarding compliance by contract agencies.

If there is any further information or analysis your Commission would like, please feel free to contact me.

Very truly yours,



LAURENCE M. SARNOFF
Assistant Public Defender (Administration), Retired
Los Angeles County Public Defender

TABULATION OF INSTITUTIONAL PUBLIC DEFENDER SURVEY

(see cover letter for definition of "Weighted Compliant Response Rate")

	Weighted Compliant Response Rate
<u>QUESTIONS RELATED TO INDEPENDENCE</u>	
1. Has your department ever found it necessary to challenge a court's refusal to properly appoint the public defender?	69.1%
If Yes, please check any of the following which applies:	
a. The refusal to appoint was based upon Penal Code section 987.05.	0.0%
b. The refusal purported to declare the public defender unavailable.	0.0%
c. The refusal purported to safeguard the defendant's <u>Farretta</u> rights notwithstanding the absence of a request for self-representation.	4.7%
d. The refusal was based upon <u>People v. Lucev</u> (1986) 188 Cal.App.3d 551, 556-557, or <u>People v. Johnson</u> (1980) 26 Cal.3d 557.	40.2%
In your opinion was the court's refusal:	
e. a direct challenge to your independence.	26.8%
f. the result of insufficient public defender resources.	51.7%
g. In challenging an inappropriate refusal to appoint which of the following remedies have you used?	
i. Filing of a writ.	57.7%
ii. Filing of a challenge for cause.	40.2%
iii. Filing of peremptory challenge.	40.2%
iv. Complaints to the Presiding Judge.	51.7%
v. Complaints to the Council on Judicial Performance.	0.0%
vi. Reports to the media or public disclosure during judicial elections or appointment investigations.	0.0%
2. Has the independence of your department ever been subject to challenge by federal, state, county, or local government, law enforcement, law schools, media, or individuals?	25.2%
3. Does your department require court appointment before commencing representation of a client who has requested your services, or for whom such services have been requested by someone acting in his behalf?	98.0%
	Measured by "NO" responses
<u>QUESTIONS RELATED TO STANDARDS OF REPRESENTATION</u>	
4. Throughout the judicial proceedings are clients able to determine which attorney is assigned to represent them?	59.5%
5. Does your department provide, or arrange for, prejudgment writ litigation in appellate tribunals initiated by the defense?	100.0%
6. Does your department provide, or arrange for, prejudgment writ litigation in appellate tribunals initiated by the prosecution?	97.8%
7. Does your department provide representation in response to requests for services at lineups?	100.0%
8. Does your department provide representation in response to requests for counsel pursuant to <u>Miranda</u> ?	100.0%
9. If you answered "No" to any of questions 4-8, is it a result of insufficient resources?	0.0%

**QUESTIONS RELATED TO QUALIFICATIONS OF
INDIGENT DEFENSE PROVIDERS**

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| 10. Do you maintain a system for tracking the development of competency of your attorney staff members for providing representation in cases of varying complexity? | 95.7% |
| 11. Is the assignment of case types to individual attorneys performed in conformance with a written set of guidelines? | 74.0% |
| 12. Do you maintain any system for ongoing assessments of the <u>current</u> qualifications of your staff for case type assignments notwithstanding such staff member's previous qualifications? | 95.1% |

QUESTIONS RELATED TO QUALITY CONTROL

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|---|-------|
| 13. Does your department maintain a continuous, interactive system in which mentors, supervisors and managers provide assessment, feedback, documentation, remediation and other functions to ensure that the quality of service being provided is assured? | 97.5% |
| 14. Are newer employees provided a higher level of supervision? | 99.2% |
| 15. Are the expectations and standards by which the quality of service is assessed clearly and accurately communicated to all employees? | 95.7% |
| 16. Are such expectations and standards in writing? | 84.9% |
| 17. If you have answered "No" to any of questions 13-17, is that because of a lack of resources? | 5.0% |

QUESTIONS RELATED TO TRAINING

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| 18. Does your department maintain a system for monitoring your attorneys' compliance with MCLE requirements? | 81.7% |
| 19. Do you require your experienced attorneys to complete a minimum of 15 hours of relevant legal education classes or equivalent training dealing specifically with juvenile (dependency or delinquency), mental health and/or criminal law, annually? | 25.7% |
| 20. Do you require your attorneys who are in their first year of criminal practice to complete a minimum of 21 hours of relevant classes or equivalent training dealing specifically with juvenile, mental health and/or criminal law during that first year? | 81.1% |
| 21. Do you require those attorneys who practice in specialty courts, collaborative justice courts, or problem solving courts (e.g., drug treatment courts, Prop. 36 courts, mental health treatment courts, DUI treatment courts, domestic violence courts, reentry courts, juvenile resource advocacy courts) to acquire specialized technical training (i.e., dynamics of disease and treatment) relevant to the medical or psychosocial field involved? | 68.7% |
| 22. Do you provide an in-house training program for attorneys <u>new</u> to criminal practice? | 98.9% |
| 23. Do you provide an in-house training program for more experienced attorneys? | 93.3% |
| 24. Do you provide, or arrange for, training in new legislation or judicial developments, forensic science, and technical support and administrative competencies? | 95.0% |
| 25. Is your department proactive in seeking out and maintaining an awareness of training opportunities (regardless of location of such training)? | 91.8% |
| 26. Does your department seek out resources, grants, partial scholarships, tuition waivers and other inducements and reimbursements to ensure the staff members acquire and maintain necessary competence? | 90.8% |

27. Does your department seek to be involved at the outset in leadership positions in novel overtures and cutting edge approaches that bring the benefits of academic and other research into multi-disciplinary efforts in dealing with human problems that end up under the purview of the courts staffed by institutional public defenders? 84.8%
28. If you have answered "No" to any of questions 18-27, is it due to a lack of sufficient resources? 13.2%

QUESTIONS RELATED TO JUVENILE PRACTICE

29. In providing representation to children within the juvenile courts, does your Department monitor how those clients are faring within the California Department of Corrections and Rehabilitation (formerly the CYA) pursuant to Senate Bill 459 (Welfare and Institutions Code section 731 et. seq.), to determine whether they are receiving services intended by the court? 76.6%
30. Under California Rule of Court 6.651 (formerly 1479), does your department perform resource advocacy (such as securing special education services for those who need it)? 60.1%
31. If you have answered "No" to any of questions 29-30, is it due to a lack of sufficient resources? 26.1%
32. Are the trial attorneys assigned to the juvenile courts primarily in entry level positions? 100.0% Measured by "NO" responses
33. Does assignment to juvenile court practice constitute a viable platform for upward mobility for employees? 94.4%

QUESTIONS RELATED TO WORKLOAD

34. Does your department maintain any system for determining the current workloads of its employees? 97.9%
35. Do you have a mechanism for determining whether a given employee's workload is excessive (given the parameters of the employee's assignment, i.e., the specific courtroom(s) in which he/she practices, the idiosyncrasies of the bench officers, and the prosecutors) to the extent that it threatens delivery of quality services by that employee? 97.8%
36. Are employees new to criminal practice given a reduced workload during the period of initial training and orientation? 92.0%
37. Does your department refuse to accept new cases when a determination is made that the combination of the existing and incoming workload exceeds the capacity of the employees to provide necessary services in a competent fashion in a timely manner, and without unduly risking the health of the defender workforce? 81.9%

QUESTIONS RELATED TO RESOURCES

38. Please check each of the following resources with regard to which your department enjoys parity (with the prosecutor's office) on a relative scaled basis, to the extent permitted by law:
- a. Access to technology 43.5%
 - b. Access to criminal history information 21.5%
 - c. Other criminal justice databases (e.g., DNA database) 1.7%
 - d. Legal research tools 97.9%
 - e. Travel budgets 34.5%
 - f. Expenses 32.3%
 - g. Paralegals 29.1%
 - h. Forensic laboratory fees and costs (including electronic data review and retesting of DNA evidence) 50.4%
 - i. Office and Library facilities 48.5%
 - j. Data processing 52.7%

k. Modern exhibit capabilities	39.8%	
l. Investigators	32.4%	
m. Qualified experts	88.2%	
39. Is the net personal compensation of the defenders diminished by the costs of the above resources?	100.0%	Measured by "NO" responses

QUESTIONS RELATED TO COMPENSATION

40. Check each of the following items of compensation for which your department enjoys at least full parity with the County Prosecutor's office regarding employee compensation:		
a. Salary	88.5%	
b. Fringe benefits	100.0%	
c. Retirement	88.5%	
d. Vacation	88.5%	
e. Reimbursement	82.7%	
f. Special bonuses	18.1%	
g. Student loan repayment assistance or forgiveness.	23.3%	
41. In your opinion is there a difference in your total compensation package which causes your department to be at a disadvantage (compared to the prosecutor) in attracting and retaining talented candidates?	58.7%	Measured by "NO" responses

QUESTIONS RELATED TO ETHICS

42. Has your department promulgated written policies or guidelines, and provided training to staff, regarding the ethical rules binding them and explaining the process whereby ethical issues are resolved.	78.9%
43. Does your department have a written policy regarding when, and under what conditions, a conflict of interest must be declared?	88.4%
44. Does your department have a policy about declaration of a conflict of interest when a colorable claim might be made that your department's prior representation failed to meet the standard of adequate assistance of counsel?	86.1%

QUESTIONS RELATED TO DEMOGRAPHICS/DIVERSITY/CULTURE

45. Does your department engage in a proactive outreach in order to successfully recruit a highly diverse and qualified staff?	92.5%
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QUESTIONS RELATED TO MANAGEMENT/LEADERSHIP

46. Is your management structure sufficient to properly run all of your offices consistent with the Guidelines?	8.9%
47. Do you feel your department occupies a leadership role in the local criminal justice community, sufficient to be considered a co-manager of the entire criminal justice system in collaboration with the leaders of the other criminal justice agencies and branches of government responsible for the justice system?	100.0%
48. Does the leadership provided by your department include conceiving and implementing criminal justice policy on a national, state, regional and local level, including maintaining an affirmative legislative agenda as well as addressing the proposals submitted by other entities.	63.9%