

OFFICES OF THE PUBLIC DEFENDER

SUMMARY

During the first part of 2006, the Public Defender's Office (PD) was experiencing a relatively large exodus of attorneys. Most of these attorneys were the more senior members of the staff. The reasons set forth by the Public Defender for this exodus were retirements, as well as the disparity of salaries and cost of living between Orange County and the surrounding counties. The research conducted by the Orange County Grand Jury verified that there in fact was a significant difference in the cost-of-living between Orange County and Riverside County as well as San Bernardino County; and, as of August 1st, there was a large disparity in the attorneys' salary ranges. The attorney salary ranges have since been brought much closer to those of the neighboring counties, but the cost of living variances still exist. As a part of this report, the Grand Jury interviewed those ex-employees that would participate in the process. The results of that limited number of interviews were inconclusive as to the reason(s) for leaving the Public Defender's Office, but salary did not appear to be a major reason. However, another potential reason for senior Public Defender attorneys leaving Orange County's employ could be "burn-out" which was implied by at least 30 % of the interviewees. This occurs when attorneys have too large a workload for too long a period of time. This situation can be exacerbated for senior level personnel by the number and complexity of the cases they are typically assigned. It was noted that the Public Defender's Office utilizes objective statistical data as a factor in assessing defender workloads as recommended by the National Legal Aid & Defender Association (NLADA) guidelines. However, the data can be more efficiently used if there is an automated system in place. The San Diego and San Bernardino Public Defender's Offices utilize statistical data in their computerized workload assessments but those systems are not totally compatible with the Orange County PD's other established systems. A compatible computerized management system is nearing completion and is scheduled for implementation by the Orange County Public Defender's Office in the near future.

The overall result of this study indicates that the Orange County Public Defender's office is performing very well. This is especially true when all of the constraints such as budget, manpower, and diverse type of cases being handled are taken into consideration.

REASON FOR INVESTIGATION

With the exception of a limited audit in 1996, the "Offices of the Public Defender" has not been studied by the Grand Jury since it was restructured in 1995. The audit study indicated that the restructuring was cost effective when compared with the prior configuration, which utilized a private defense attorney panel for dealing with conflicts declared by the Public Defender.

2006-2007 ORANGE COUNTY GRAND JURY

Most recently, allegations had surfaced that various forces were causing a high turnover rate among the mid-level and senior attorneys in the Public Defender's offices. The issues were initially thought to be the lower pay scales and higher cost of living in Orange County when compared to some of the neighboring counties, namely, San Bernardino and Riverside. However, there may be other issues causing an unstable work force, namely: too heavy a caseload causing burn-out; unpleasant work environment; or, lack of upward mobility. Subsequent to the initiation of this report, the pay scale was brought into parity with the neighboring counties with the conclusion of county/union negotiations this past summer.

METHOD OF INVESTIGATION

To effectively study the Public Defender's office, the 2006-2007 Grand Jury:

- Conducted interviews with the Offices of the Public Defender;
- Conducted telephonic interviews with ex-employees;
- Scanned the internet for various methods of monitoring/managing attorney workloads;
- Solicited the Public Defender offices in Riverside and San Diego counties for their method of monitoring/managing attorney workloads;
- Reviewed the Proficiency Index developed by and for the Public Defender (this Index may be an indicator of workload problems); and
- Scanned the internet for Public Defender Attorney salaries as well as the cost-of-living differences between Orange County and the neighboring counties.

BACKGROUND AND FACTS

Prior to 1995 the Orange County Public Defender's structure consisted of full time county attorneys and support staff, and the Alternate Defense Services which was a panel of private attorneys who were appointed to cases as needed by the courts and paid according to a court-approved fee schedule. The need for these private attorneys arose when the Public Defender's office was unavailable to handle one or more defendants in a single case. This unavailability generally arose in those instances where there were multiple defendants and it would be a conflict of interest for the Public Defender's office to represent more than one of the defendants.

In 1995, the Offices of the Public Defender was directed to be segmented by the Orange County Board of Supervisors into its present configuration. This reorganization was effected with the addition of the Alternate Defender and the Associate Defender, each with its own offices, library, and staff. This new arrangement obviates the need for the use of private defense attorneys (Alternative Defense Services) except for those infrequent instances when the Offices of the Public Defender declares itself unavailable for a certain defendant or case.

The main unit is referred to as the Public Defender and is made up of several distinct sections located throughout the county. The Santa Ana main office includes the felony

panel, the writs and appeals section, the welfare and institutions section, the capital case section, the training section, the computer systems section and senior managers. In a separate Santa Ana location is the mental health section, and in the City of Orange there is a juvenile court branch consisting of a child dependency section and the delinquency section.

The Alternate Defender Office is located in Santa Ana. Attorneys and support staff handle the first level of conflict cases (except for conflict cases, capital cases arising in Juvenile Court, frauds and mental health). The Alternate Defender represents clients who, because of a conflict of interest, cannot be represented by the main unit, often because more than one defendant is charged.

The Associate Defender Office is located in Santa Ana and is staffed by attorneys with a small support staff. This unit handles complex cases (including capital cases). These are cases that, because of a conflict of interest, would previously have been handled by court-appointed private lawyers at greater cost.

This segmentation was proposed as a cost savings in the Orange County bankruptcy era. A contract auditor hired by the 1996-1997 Grand Jury determined that this new configuration resulted in a cost savings of approximately \$2.5 million in 1995-1996. The latest savings are in excess of \$7.0 million. It has since been proven to also be a good configuration for the Public Defender's mission of providing "high quality legal representation to clients in a cost-effective manner." The PD handles approximately 77,500 cases annually.

A. Interviews Of Ex-PD Attorneys

In an attempt to verify whether there were reasons for leaving the employ of the Orange County PD other than financial, the Grand Jury conducted a telephonic survey. In order to contact the attorneys who had left in the most recent six to eight months, the PD sent a letter to each of these people requesting that these individuals contact the Grand Jury. The basic question asked the voluntary respondents during the telephonic interview was: "Why did you leave the employ of the Orange County Public Defenders Offices?" Follow up questions, if necessary, were: "Was money the issue -- or job dissatisfaction -- or insufficient upward mobility?"

The reasons each individual interviewee gave for leaving are summarized as follows:

- Money was an issue with travel time a secondary consideration. Upward mobility was not an issue.
- Money was one issue and a perceived lack of upward mobility was also a serious issue.
- Money was not the issue but there were other problems which were not clearly articulated (appeared to be general dissatisfaction with the work).
- She left to give birth and, if she returns to the work force, would like to go back to the Public Defender's Office.

2006-2007 ORANGE COUNTY GRAND JURY

- The Public Defender work was not what the person wanted to do. There was no perception of any upward mobility or money problems.
- The job demanded too much time and took a big toll on the attorney (nearing burnout). There did not appear to be enough upper level lawyers to handle the case load properly. There was no problem with the pay scale.
- There was an issue with the perceived lack of appreciation for the work being done causing much frustration. Money was a lesser issue.

B. Proficiency Index

As a result of a county mandated program called “Result Oriented Government,” the Offices of the Public Defender participated in a series of meetings and interactions with Management Partners Inc., a consulting firm specializing in assessing work and identifying meaningful performance measurements. During the period from October through December 1999, this firm thoroughly assessed the PD’s entire operation and ultimately concluded that overall performance could not be effectively measured in a quantifiable manner. The PD then reviewed several resources including the December 2000 edition of the “Compendium of Standards for Indigent Defense Systems.” Utilizing that document as well as reports from the Spangenburg Group (a consulting firm), California State Bar Guidelines, the American Bar Association and the National Legal Aid & Defender Association (NLADA) recommendations, the PD’s office developed voluminous checklists which were subsequently revised. These lists eventually became the guidelines used by the managers in reviewing closed cases. Supervising Attorneys (managers) have long been tasked to review closed files to gauge the level of performance of their assigned Public Defenders and to understand court trends. The proficiency index process was developed as a measurement tool to assist in analyzing overall department performance. This process was incorporated into the existing file review practice and managers were provided with the guidelines developed for each type of file (Criminal, Dependency, and Mental Health). The guidelines are for use in rating the closed files as “Exceeding Standards”, “Meets Standards”, or “Below Standards.” Even though this type of analysis assesses file documentation skills better than the quality of the overall representation, it offers some measurement of the office’s performance. The following caveat to the file rater is contained in the Guidelines for Closed File Evaluation:

“Rating of a file shall be based on the overall effectiveness and adequacy of the representation given to the individual client. Standard files should contain evidence of action in the following areas if deemed appropriate to the circumstances of that case. However, absence of evidence of particular actions, unless deemed significant to the overall advocacy for that client, does not make a file substandard. The rating should always reflect the Head of Court’s final analysis of the adequacy of the representation based on a complete review of the case.”

After a short pilot period, a baseline was established using all of the cases that had been rated up to November 16, 2004 (except for the cases done in the two-month pilot period). More than 13,000 cases were used in the baseline calculation resulting in the initial rating of 96.49% of the cases rated at “meets” or “exceeds standards.” The latest rating number (through November 1, 2005) is 98.43% which indicates a significant improvement over the initial rating period. However, the question remains as to whether this improvement is actual or a result of the raters’ improved ability. This Index, therefore, may or may not be a suitable vehicle for establishing proficiency of the overall operation.

C. Attorney Workload

The problem of excessive caseloads and their effects on the quality of legal representations was first addressed in 1973 by the National Advisory Commission (NAC). The NAC published numerical standards. It has come to be recognized by most jurisdictions that one size or standard does not fit all. NAC standards are limited to describing resource needs strictly according to the raw number of cases for which an attorney is responsible. They do not take into consideration administrative or supervisory work, waiting or travel time, professional development activities, or any special requirements established by the individual courts.

Experts in the management of indigent defense caseloads recently began to recommend an empirical approach called “case-weighting.” “Case weight” is a term that refers to the amount of work (in time) that is required to bring a case to conclusion. This method of evaluation requires the indigent defense organization to actually track the exact amount of time that it takes to reach a disposition in a wide variety of cases. By conducting such an empirical evaluation, the indigent defense organization can, theoretically, assess how much of a workload a numerical caseload actually represents, thus providing administration with a more realistic jurisdiction-specific look at the number and types of cases individual lawyers can effectively handle. In 1999, The Spangenburg Group employed a time-based methodology for nine judicial districts in Tennessee in an attempt to set standards for Tennessee’s Public Defender’s office. They developed a formula to determine workload standards for six types of cases. However, because of the assumptions made in developing the formula and comparing these results with other studies in other states, they felt that these numbers were too suspect to use for staffing in each individual district but might be used to assess the state’s Public Defender’s needs. Subsequent studies regarding management of PD caseloads have determined that thinking of caseloads in terms of number of clients captures only a portion of the full workload. Given the different amounts of time required for different kinds of cases, measuring caseload in terms of the number of clients is not an accurate means of comparing the amount of work done by attorneys handling different types of cases.

According to the NLADA Guidelines for Legal Defense Systems in the United States, caseloads should reflect national standards and guidelines. The determination by the

2006-2007 ORANGE COUNTY GRAND JURY

Public Defender's office as to whether or not the workloads of the attorneys in the office are excessive should take into consideration the following factors:

- objective statistical data;
- factors relating to local practice; and
- an evaluation and comparison of the workloads of experienced, competent private defense practitioners.

The system the Orange County PD has established for assessing the attorney workload includes a factor relating to the local court practices as well as a subjective evaluation and comparison of the workloads of the experienced and competent attorneys.

According to the Grand Jury's interviews with the PD management, they currently do not rely solely upon objective statistical data relative to the efficacy of the attorneys' workloads. This workload assessment is accomplished by the supervisor in his day-to-day contact with and observations of the attorneys. The supervisor's experience and knowledge are heavily relied upon in determining the maximum load per individual attorney.

The Grand Jury sent letters to both San Diego and Riverside Public Defenders requesting information as to whether either of them used statistical data as one factor in attorney workload management. Only the San Diego Public Defender responded to the inquiry. The San Diego Public Defender stated that they are using a computer program with statistical data. This program is "a very sophisticated and powerful web-enabled case management system" developed by and for San Diego County using the technical services of a software developer. Every case received by the San Diego Public Defender's Office (SDPD) for representation is entered into the case management system along with identifying data fields classifying the case by type (misdemeanor, felony, mental health, delinquency, etc.) as well as other information. This management system allows SDPD to track the numbers of cases received on a daily, weekly, monthly, and annual basis for each court in the county and allows them to staff the courts according to the needs indicated by the volume of work. This system allows the SDPD to develop "rules of thumb" guides for staffing needs. As added insurance that the appropriate workloads are maintained, SDPD requires the active involvement of experienced supervisors who assign cases based on the attorney's experience and competency and then follow up. To date, this system is in use, in whole or in part, by Fresno, Placer County and San Bernardino County as well as the entire State of Georgia for all of its PD offices.

A subsequent interview with the Orange County Public Defender's Office revealed that they are in the process of collaborating in the development of, or evaluating a different computerized case management system. They believe this new system will more adequately serve their management needs because it not only is compatible with the existing Investigators and the Clerical Case Management Systems but it is also compatible with the Orange County Superior Court's Case Management System. The

2006-2007 ORANGE COUNTY GRAND JURY

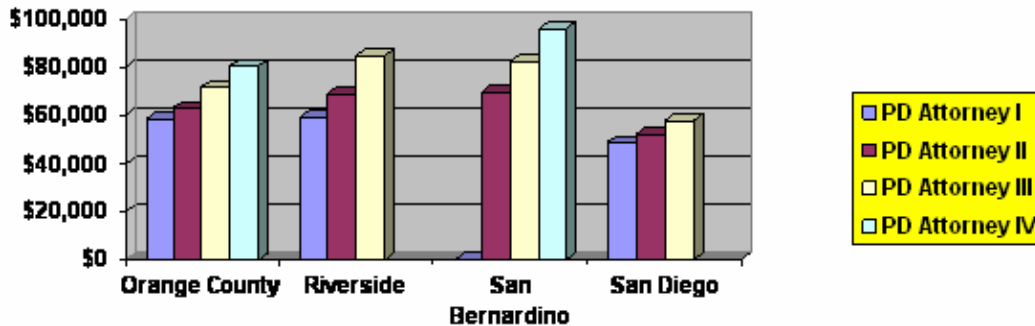
Public Defender’s Office believes this new system will be ready for installation and checkout within the next few months.

D. Attorney Compensation

The Office of the Public Defender has budgeted positions for 399 persons (legal, investigative, and administrative). As of October 1, 2006, the legal staff, including the Public Defender and the senior managing attorneys totaled 213 individuals. Until the recent completion of salary range negotiations, these attorneys were being compensated at a rate considerably less than the PD attorneys working in either Riverside or San Bernardino County. Furthermore, the compensation problem was exacerbated by the reduction in take-home pay brought about by the recent change in Orange County’s pension system and health care benefits. This disparity in the compensation package between the Orange County PD attorneys and their Riverside and San Bernardino counterparts was further compounded by the differences in the respective cost-of-living associated with each of the surrounding county.

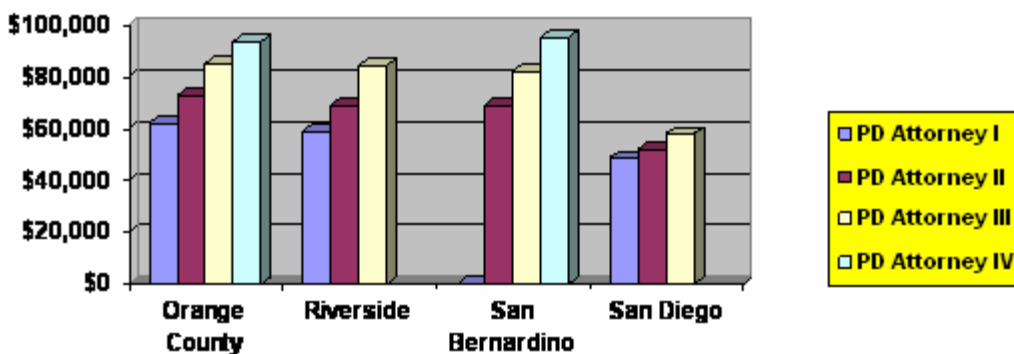
The above described situations are reflected in the following bar charts:

ANNUAL STARTING SALARIES
Prior to 7/01/06

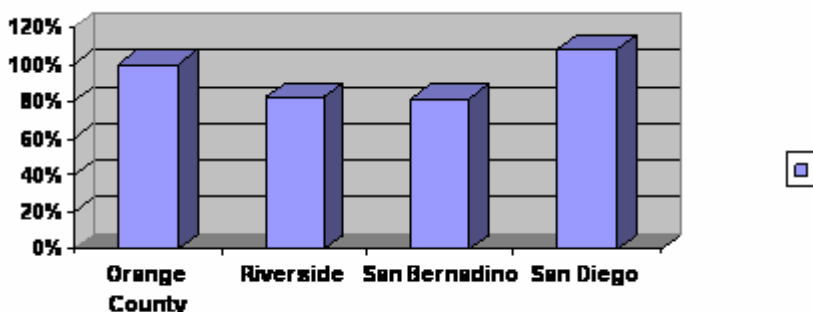


ANNUAL STARTING SALARIES
After 10/01/06

2006-2007 ORANGE COUNTY GRAND JURY



COST-OF-LIVING
Referenced to Orange County



CONCLUSION

The Orange County Grand Jury found no major problems with the operation of the Offices of the Public Defender. In fact the Grand Jury was very impressed with the proactive posture existing in the office resulting in the overall efficient management and operation of the Public Defender’s Office.

FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, each finding will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2006-2007 Orange County Grand Jury has arrived at the following findings:

- F-1. There is a large cost-of-living and attorneys’ salary variance existing between Orange County and the neighboring counties of Riverside and San Bernardino.
- F-2. The attorneys’ compensation problem continues to be exacerbated by the reduction in take-home pay brought about by the recent change in Orange County’s pension system and health care benefits.

2006-2007 ORANGE COUNTY GRAND JURY

F-3. The Public Defender’s Office is collaborating in the development of an automated case management system which will unify the case management systems in use for the investigative and clerical branches of the offices.

Responses to Findings F-1 and F-2 are required from the Orange County Board of Supervisors.

A Response to Finding F-3 is requested from the Orange County Public Defender.

RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, each recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2006-2007 Orange County Grand Jury has arrived at the following Recommendations:

- R-1. Continue to alleviate the attorney compensation disparities between Orange County and the surrounding counties created by the findings in F-1 and F-2.
- R-2. Continue the development and implementation of a computerized management system which would address the concerns in findings F-3...

Response to Recommendation R-1 is required from the Orange County Board of Supervisors.

A Response to Recommendation R-2 is requested from the Orange County Public Defender.

REQUIRED RESPONSES

The California Penal Code specifies the required permissible responses to the findings and recommendations contained in this report. The specific sections are quoted below:

§ 933.05. Responses to findings

(a) For purposes of subdivision (b) of section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions

- (1) The recommendation has been implemented, with a summary regarding the implemented action.

2006-2007 ORANGE COUNTY GRAND JURY

- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed...This timeframe shall not exceed six months from the date of the publication of the grand jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.