

ORDINANCE NO. 9989 (NEW SERIES)

AN ORDINANCE CONSOLIDATING THE COUNTY'S INDIGENT DEFENSE SERVICES,
AMENDING AND REPEALING RELATED PORTIONS OF THE SAN DIEGO COUNTY
ADMINISTRATIVE CODE, AND ABOLISHING THE APPOINTED POSITION OF ALTERNATE
PUBLIC DEFENDER

The Board of Supervisors of the County of San Diego ordain as follows:

Section 1. The Board of Supervisors finds and determines that the County of San Diego can provide criminal legal defense counsel to indigent criminal defendants more economically and efficiently if there is a reorganization of the existing Department of Public Defender into a new Department of the Public Defender that will include the following offices: primary public defender, alternate public defender, multiple conflicts, assigned counsel, dependency services and such other administrative offices as might be necessary. To implement this reorganization, it is necessary that the existing Department of Alternate Public Defender and the appointed position of Alternate Public Defender be abolished.

Section 2. Article XXXVII of the San Diego County Administrative Code is hereby amended to read as follows:

ARTICLE XXXVII DEPARTMENT OF THE PUBLIC DEFENDER

SEC. 690. RECOGNITION OF THE DEPARTMENT OF THE PUBLIC DEFENDER.

It is the intent of the Board of Supervisors to fully implement the provisions of Government Code sections 27700 et seq. and Penal Code section 987.2 for purposes of providing indigent defense services. Therefore, the Board of Supervisors hereby establishes in the County of San Diego a Department of the Public Defender.

SEC. 691. RECOGNITION OF THE PUBLIC DEFENDER.

There is in the County and in the Department the position of Public Defender. The position shall be in the Unclassified Service of the County and shall be filled by appointment by the Chief Administrative Officer in accordance with the County Charter and of the rules and policies established thereunder, and County ordinances. The Public Defender shall serve at the pleasure of the Chief Administrative Officer. A person is not eligible to the office of Public Defender unless the person has been a practicing attorney in all of the courts of the State of California for at least the year preceding the date of his or her appointment in accordance with Section 27701 of the Government Code. The Public Defender shall exercise general supervision of the Department.

SEC. 692. ORGANIZATION OF THE DEPARTMENT TO PROVIDE CONFLICT-FREE REPRESENTATION

When the County provides defense counsel legal representation to multiple indigent criminal defendants with divergent interests involved in a single case, the law requires that each criminal defendant has a right to conflict-free, separate and independent legal representation. Consistent with applicable law, the Department shall be organized into separate offices to include the following offices within the Department: primary public defender, alternate public defender, multiple conflicts, assigned counsel, dependency services, and other such administrative offices as may be necessary to the operation of the Department. Internal screening procedures, commonly referred to as "ethical walls," shall be implemented that meet prevailing legal standards for preserving each defendant's right to conflict-free, separate and independent counsel.

The offices shall operate with sufficient separation that is required by applicable law, coinciding only for matters of administrative convenience and only at the top administrative level, and for any other matters or levels as permitted by law. The Public Defender shall regularly review the internal screening procedures to ensure conformity with prevailing law.

SEC. 693. PUBLIC DEFENDER TO APPOINT PERSONNEL.

The Public Defender shall appoint and employ such personnel as may be necessary to conduct the business of the Department. All appointments and employments made by the Public Defender, other than the unclassified service positions authorized by the San Diego County Compensation Ordinance, shall be in accordance with the provisions of the County Charter, Civil Service Rules, and County ordinances.

SEC. 694. PUBLIC DEFENDER TO PREPARE BUDGET.

The Public Defender shall prepare and submit to the Chief Administrative Officer the required annual itemized estimates of the expenditures and revenues of the Department. The Public Defender shall supervise the expenditure of all funds allocated to the Department and review expenditures of those funds, except as such review may be precluded by the internal screening procedures established pursuant to Section 692 of this Article.

SEC. 695. DUTIES

The Public Defender shall perform the duties listed below. In the event the office of the primary public defender is precluded from providing legal defense counsel to an indigent criminal defendant under the circumstances described in Section 692 of this Article, such legal defense counsel duties shall be provided by the office of the alternate public defender, the multiple conflicts office or the office of assigned counsel, as appropriate:

- (a) Upon request of the defendant or upon order of the court, the Public Defender shall defend or cause to be defended, without expense to the defendant, except as provided by Section 987.8 of

the Penal Code, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior courts of the County of San Diego at all stages of the proceedings, including the preliminary examination. The Public Defender shall, upon request, give or cause to be given counsel and advice to such person about any charge against him or her or upon which the Public Defender is conducting the defense, and shall prosecute all appeals to the superior court and may file notice of appeals to a higher court for any person who has been convicted, where in the opinion of the Public Defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(b) Upon request the Public Defender shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel where the sum involved does not exceed one hundred dollars (\$100), and where, in the judgment of the Public Defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, the Public Defender shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the Public Defender, the person is being persecuted or unjustly harassed.

(d) Upon request, or upon order of the court, the Public Defender shall represent any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code and Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(e) Upon order of the court, the Public Defender shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(f) Upon order of the court, the Public Defender shall represent any person who is required to have counsel pursuant to Section 686.1 of the Penal Code.

(g) Upon order of the court or upon request of the person involved, the Public Defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or punishment resulting from criminal or juvenile proceedings.

(h) Such other duties as may be required or permitted by law.

SEC. 696. [RESERVED.]

SEC. 697. COST OF LEGAL SERVICES RENDERED TO A MINOR.

Pursuant to Section 904 of the Welfare and Institutions Code the Board of Supervisors has determined that the cost of legal services rendered to a minor by the primary public defender or attorneys from the office of the alternate public defender, the multiple conflicts office or the office of assigned counsel, pursuant to an order of the juvenile court, or by an attorney in private practice appointed pursuant to an order of the juvenile court, shall be established at an amount equal to the

full cost paid by the County for such services. These costs shall include, but are not limited to, costs for legal counsel and supportive services, medical and psychiatric examinations, investigative services, expert testimony or any other form of service provided to assist in preparation, and presentation of the case. This definition of cost of legal services shall be used to determine the liability of a person or his or her estate under Section 903.1 of the Welfare and Institutions Code.

SEC. 698. PROHIBITED ACTIVITIES.

Pursuant to Government Code Sections 1126 and 27705 the Public Defender and all attorneys appointed by the Public Defender or the supervising attorneys of the office of the alternate public defender or multiple conflicts office shall not engage in private practice of law and shall devote their full time to the duties of their position.

SEC. 699. [RESERVED.]

SEC. 699.5. [RESERVED.]

Section 3. Article XXXVIII-A of the County Code of Administrative Regulations is repealed.

Section 4. The appointed position of Alternate Public Defender is abolished pursuant to County of San Diego Charter section 700.

Section 5. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen (15) days after its passage, a summary hereof shall be published once with names of the members of this Board voting for and against it in a publication of general published in the County of San Diego.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of San Diego this 16th June, 2009.