

2019 - 2020 San Joaquin County Grand Jury



**San Joaquin County Office of the Public Defender:
Conflict, Mistrust, Lawsuits
A Perfect Storm
Case #0819**



Summary

The San Joaquin County 2019-2020 Grand Jury investigated the disproportionately high number of internal complaints filed against the Office of the Public Defender. (See Figure 1.) The effect of Equal Employment Opportunity (EEO) complaints, lawsuits, attorney improprieties, questioning of leadership, and the formation of cliques, cast a cloud of distrust and created a lack of cohesiveness throughout the Public Defender's Office, even though many allegations were not substantiated.

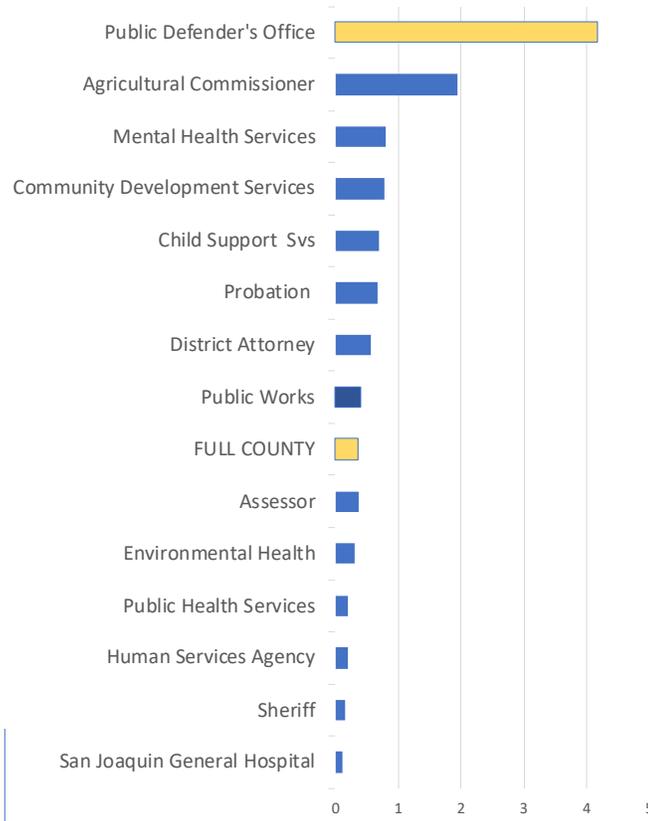


Figure 1. Per capita EEO complaints from 2015-2019¹

(adapted from Joaquin County Human Resources Department data)

Over the past five years, the Public Defender's Office has the highest per capita EEO complaint rate in the County. Additionally, the Office is involved in EEO lawsuits that are the most expensive in recent County history. The complaints required costly external investigations. This distracted the department's management and staff, and demanded significant attention from Human Resources (HR) and the County Administrator's Office. In the past four years, the County spent \$252,912 on

¹ Average is per 100 employees. Only departments with more than 50 employees are shown. In one case, where a single employee filed 10 complaints at the same time against different people, the data have been changed to show a single complaint. Total staff for each department is based on the final budget Full Time Equivalent (FTE) count for each year.

outside consultants to investigate EEO complaints regarding the Public Defender's Office. In May 2020, the Board of Supervisors partially settled a lawsuit in the amount of \$2,150,000. Although insurance will pay for more than half of this, a total of approximately \$2,400,000 in taxpayer dollars has been accrued² on these issues and the end is not yet in sight. Two plaintiffs have yet to settle.

Even though the Public Defender followed County HR policies, problems continued to escalate. Distrust of Management developed, and was fueled partially by, confidentiality constraints. Cliques and groups arose within the office. While some issues have subsided, factions and distrust remain.

The office of the Public Defender affords indigent persons the legal right to competent and effective counsel across a broad range of criminal and civil situations. The Office represents its clients with commitment and with passion.

The Grand Jury recommends San Joaquin County hire an independent consultant to conduct a thorough operational review of all aspects of the Public Defender's Office and to make recommendations for improvement.

Glossary

- **Complaint:** Any dispute between the county and one or more employees or a recognized employee organization concerning the interpretation or application of ordinances, resolutions, policies, procedures, or agreements, including memoranda of understanding, on matters within the scope of representation.
- **Constructive Termination:** Defined by California employment law as when an employer knowingly creates intolerable working conditions for an employee, who then believes they have no choice but to resign.
- **County:** San Joaquin County
- **EEO:** Equal Employment Opportunity
- **FTE:** Full Time Equivalent, meaning the hours worked by an employee divided by a full-time workweek. FTE of 1.0 is equivalent to a full-time worker while FTE of 0.5 is equivalent to a half time worker.
- **HR:** Human Resources Division
- **Management:** Public Defender, Assistant Public Defender, Chief Public Defenders, and Chief Investigator (Check!)
- **Public Defender's Office:** Refers to the Department
- **Public Defender:** The department head of the Public Defender's Office
- **Rule 20:** San Joaquin County Civil Service Rule 20 (Rule 20) provides procedures for complaints of discrimination. Section 1. "No employee of the County or any job applicant seeking employment with the County shall be discriminated against in any aspect of employment because of age, ancestry, color, creed, marital status, medical condition (cancer or genetic

² County excess insurance pays the amount over \$1,000,000. However, insurance premiums are paid with taxpayer dollars and over a period of time costs may equal or exceed the cost of claims.

characteristics), national origin, physical or mental disability, political affiliation or belief, pregnancy, race, religion, sex, or sexual orientation.”

Background

The San Joaquin County Public Defender’s Office is dedicated to serving the diverse needs of our community and its justice system by furnishing clients whose cases have been entrusted to the office, with competent, effective, loyal, ethical, zealous, compassionate and efficient advocacy. (Source: San Joaquin County Public Defender website.)

The San Joaquin County Public Defender’s Office was established as a County Department in 1968. The office is a major public law office, serving the county's 33 judicial positions in 5 locations, with 39 attorneys, 13 investigators, and an administrative support staff of 19. The Public Defender’s Office handles an incoming caseload exceeding 1,800 cases per month. The department has a budget expenditure of \$18,700,014. (Refer to San Joaquin County website for the current budget.)

The Public Defender's primary practice areas are:

- Adult Criminal Defense
- Juvenile Criminal Defense
- Child Dependency
- Mental Commitment Defense
- Civil Extension Actions

The San Joaquin County Public Defender’s Office website states, “San Joaquin County is required to provide effective legal defense for all indigent persons who face the loss of liberty in criminal or civil proceedings initiated by the San Joaquin County District Attorney, County Counsel or other prosecuting agency. Public Defender clients are screened by court staff for indigency. County funded legal services are provided only to those who lack the present means to hire private attorneys.”

The organization of the Office of Public Defender consists of the Public Defender, one Assistant Public Defender, three Chief Deputy Public Defenders, one Chief Investigator, (Management), a cadre of Deputy Public Defenders, Public Defender Investigators, and administrative staff.

The current Public Defender served as the Assistant Public Defender for approximately three years prior to elevating to the Public Defender position in April 2016. When the current Public Defender assumed leadership of the office, there were numerous employee and internal departmental issues that were either at the forefront or emerging. Within months and throughout the following year, four Public Defender Investigators filed multiple EEO complaints with County Human Resources. Collectively, the EEO complaint forms submitted by the investigators cited each of the 18 Rule 20 categories at least once.

Reason for Investigation

The Grand Jury received a complaint from a citizen alleging mismanagement of the Public Defender's Office. In addition, the Grand Jury reviewed a June 2019 article published in *The Record* newspaper. The article outlined details alleging sexual harassment and the failure of Management to adequately address complaints.

Method of Investigation

The Grand Jury reviewed a complaint submitted by a citizen and three articles published in *The Record*. The Grand Jury conducted sixteen interviews that included individuals from each level of the Public Defender's Office as well as former employees and various county administrators, noting commonalities and differences in testimony. The Grand Jury also reviewed reports, emails, memoranda, policies, and rules specific to the Public Defender's Office as well as those applicable to all County Departments.

Materials Reviewed (Note: Refer to "Sources" at end of Report for additional material reviewed.)

- Civil court cases
- Interoffice communications (email, memoranda, and notes)
- Redacted Equal Employment Opportunity (EEO) complaints and investigative reports
- County civil service rules, regulations, policies, and procedures
- County Equal Opportunity Training Programs, Training Handout Materials, Schedules, Activities, Goals, and relevant Laws
- County Human Resource documents related to EEO complaints
- *California Fair Employment and Housing Act*
- Court Assigned Council documents
- Performance evaluations
- Performance evaluation training documents
- Depositions

Interviews Conducted

The Grand Jury conducted 16 interviews which included:

- Current and former members of the investigative division of the Public Defender's Office
- Current and former Deputy Public Defenders
- Management/Leadership levels within the Public Defender's Office
- Human Resources Administration
- County Administration

Discussion

Public Defender Investigators

Approximately eight months prior to the current Public Defender's appointment to the position, a new Chief Investigator was appointed. Within the first few months after the current Public Defender took office numerous San Joaquin County Civil Service Rule 20 (Rule 20) complaints were filed by several Public Defender Investigators against this new Chief Investigator.

Several independent outside investigations found that most findings did not substantiate Rule 20 violations. However, the Grand Jury found a level of discomfort with and a distrust of the Chief Investigator, and of management in general. Outside investigations revealed a perception within the department that concerns and complaints brought to Management were not addressed or acted upon. In addition, other employees filed complaints with Human Resources alleging various acts of Rule 20 discrimination and retaliation within the Public Defender's Office.

On May 15, 2017 four experienced Public Defender Investigators simultaneously resigned in an act of constructive termination and collectively filed a lawsuit against the Office of the Public Defender. The reasons provided were issues with the Chief Investigator. Two other Public Defender Investigators had resigned the year before, and two more resigned the following year. All resignations were related to Chief Investigator issues. These vacancies created a temporary reduction in investigative staff capacity. Additionally, the Chief Investigator was on paid leave for more than five months. His absence also impacted available staffing.

HR investigations at the time determined that Management actions were being taken but communication back to complainants was minimal due to confidentiality requirements. This lack of feedback added to the reported angst and distrust. Many felt the complaints were not being taken seriously. Regardless, the actions taken by Management were supported in the complaint investigation findings. Management reportedly responded to situations promptly, appropriately, and in accordance with established policies and laws.

With respect to the Chief Investigator and Public Defender Investigator issues, documents support that the Public Defender made decisions in a good faith effort to manage the department. Additional findings note that the Public Defender did not delay in taking action in response to complaints.

Confidential File: Removed and Shared

According to numerous witnesses, an incident occurred when a Deputy Public Defender entered the office of another Deputy Public Defender (who was absent at the time) and accessed a confidential file. Subsequently, information within the file was provided to a private attorney. This irregular and unprecedented act was considered by some to be a violation of trust and ethics. Some Deputy Public Defenders believed this was an act of criminal conduct while others did not take issue with the incident. This difference of views caused consternation among the attorneys, and reportedly created further loss of trust and communication.

A letter signed by 22 Deputy Public Defenders was submitted to the Public Defender requesting an independent, outside investigation into the matter. The Deputy Public Defender from whose office

the file was accessed also requested an outside, independent investigation. The Public Defender's Office conducted an internal investigation, but due to existing mistrust, some felt the investigation was not conducted thoroughly or taken seriously. There was no outside, independent investigation.

Excessive Employee Complaints

Over the past five years the Public Defender's Office has had the highest rate of EEO complaints per employee in the County. (See Figures 1 and 2.)

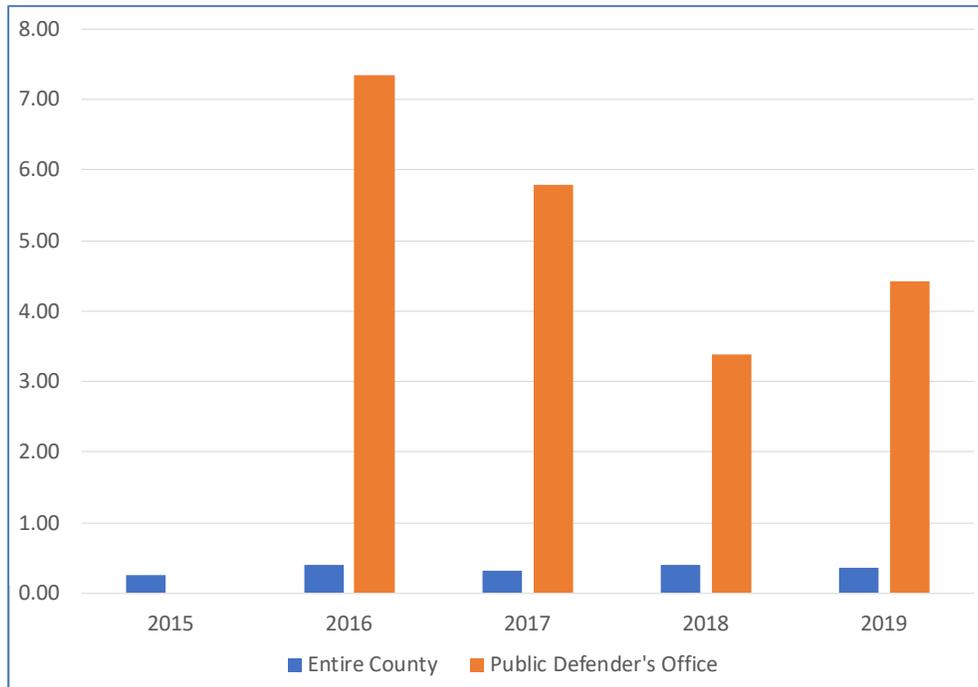


Figure 2. Average EEO complaints by year from 2015-2019³

(adapted from San Joaquin County Human Resources Department data)

A series of formal EEO complaints were filed after the current Public Defender assumed office in 2016. Each complaint noted one or more Rule 20 discrimination categories that include age, ancestry, color, gender, harassment, hostile work environment, marital status, medical condition, national origin, physical or mental disability, race, religion, retaliation, sex, and sexual orientation. The number of complaints appear to be disproportionately high compared to complaints filed in other County departments. (See Figures 1, 2, and 3.) Examples of some of these complaints are listed below.

- In the Spring of 2017, complaints were filed by four Public Defender Investigators against the Chief Investigator.

³ Average is per 100 employees. Only departments with more than 50 employees are shown. A single data point where a Public Defender's Office employee filed ten complaints at the same time against different people has been changed to a single complaint. Total staff count for each department is based on the final budget FTE's for each year.

- In September 2018, that same Chief Investigator filed a complaint against individuals of the Public Defender’s Office alleging retaliation and discrimination involving gender.
- In 2019, a former Deputy Public Defender filed a complaint against the Public Defender’s Office alleging repeated sexual harassment and failure by Management to adequately address complaints.

The Public Defender was named in some, but not all of these complaints. The Grand Jury reviewed investigative reports and found that some complaints were partially substantiated while others were not substantiated.

The County retained outside independent firms to conduct investigations regarding the allegations set forth in the Rule 20 complaints to assist in determining whether a violation of EEO policies and/or the *Harassment-Free Work Environment Policy* occurred. A total of eight of 28 EEO complaints filed over five years resulted in outside investigations. (See Figure 3.) The time and resources spent by management and staff to deal with these complaints impacted both staffing and morale. In addition, other County departments, including HR and the County Administrator’s Office, expended considerable resources in responding to the complaints.

Hiring independent investigation firms has significant financial impact on taxpayer dollars. (See Figure 3.)

Year	Number of Investigations	Cost
2016	1	\$ 47,319.29
2017	2	\$ 78,411.26
2018	2	\$ 78,407.30
2019	3	\$ 48,774.06
Total	8	\$ 252,911.91

Figure 3. Independent, Outside Investigations for Public Defender’s Office

(adapted from San Joaquin County Human Resources data)

HR policies and procedures (see Sources) encourages supervisors and managers to resolve problems at the lowest organizational level before moving up to the next level. Management responded in a timely manner and within HR guidelines. The complainants’ perception, however, was that Management was doing nothing to address their complaints. Rules, policies, and laws constrain Management from releasing information on the progress and resolution of complaint investigations. These constraints were either not understood or not accepted by some staff.

Exorbitant Lawsuits

During the past five years San Joaquin County has been the subject of seven resolved EEO lawsuits at a total cost⁴ of **\$600,033**. During the same time period, two EEO lawsuits naming the Public Defender Office as respondent were, and still are, pending with one lawsuit partially settled for **\$2,150,000**.

The partially settled lawsuit was filed in 2017 by the four female Public Defender Investigators who resigned citing constructive termination. The plaintiffs claimed harassment and discrimination by their immediate supervisor. Two of the four plaintiffs have settled collectively for \$2,150,000.

The other lawsuit, filed in November 2019 by a former Deputy Public Defender, alleged repeated sexual harassment as well as retaliation and failure by Management to adequately address the plaintiff's complaints. The County denied the allegation and the lawsuit is ongoing.

Toxic Office Environment

Cliques and groups developed in the Public Defender's Office. Although long term employees described the working environment in prior years as being "like a family," more recently-hired employees perceived the environment differently. Groups of attorneys hired at about the same time tended to relate more closely to one another. While this is not uncommon, these differences were seen as inhibiting the cohesiveness of the office.

The events identified in this report relating to the Public Defender Investigators/Chief Investigator and the unauthorized removal of a file from a Deputy Public Defender's Office were reported as major contributors to a breakdown of trust and communication. Although trust is improving, a lack of respect and professionalism continues to permeate the Public Defender's Office.

Findings

F1 Employees of the Public Defender's Office filed a disproportionate number of Equal Employment Opportunity (EEO) complaints compared to all other County Departments.

F2 Confidentiality rules prevented Management from sharing any information on EEO complaints. This lack of communication caused angst and distrust in the department.

F3 Management followed San Joaquin County Human Resources Department (HR) policies and procedures for addressing EEO complaints.

F4 In spite of following HR policies and procedures, problems continued to escalate within the Public Defender's Office.

F5 Past and present personnel issues created division and disruption between Deputy Public Defenders and Management, fueling a breakdown of trust and communication.

⁴ Total cost includes litigation costs and settlement. It does not include the time of County staff and lawyers. Historically, a large lawsuit can have over \$500,000 in litigation costs.

F6 Past and present personnel issues created division and disruption between Public Defender Investigators, the Chief Investigator, and Management, fueling a breakdown of trust and communication.

F7 The culture, divisions, and atmosphere of the Office did not lend itself to good intra-departmental communications or de-escalation of conflicts.

F8 Lack of respect and professionalism within the Public Defender's Office contributed to division and disruption.

F9 The Department has an intensive, time-consuming mission. The turmoil, as described in this report, placed additional stress on an already hard-working staff.

F10 The turmoil in the Department led to a significant and preventable expenditure of taxpayer dollars.

Recommendations

R1.1 By December 31, 2020 the Human Resources Division of San Joaquin County hire an independent consultant to conduct a thorough operational review of all aspects of the Public Defender's Office.

R1.2 By June 30, 2021 present the consultant's report including recommendations to the San Joaquin County Board of Supervisors.

R1.3 By September 30, 2021 develop and implement a plan to utilize the recommendations from the operational review.

Conclusion

The Office of the Public Defender affords indigent persons the legal right to competent and effective counsel across a broad range of criminal and civil situations. The Office represents its clients with commitment and with passion.

Over time, employee issues arose which were either not addressed or perceived as not being addressed. Complaints were filed regarding issues developed prior to and after the current Public Defender assumed office. The actions of some individuals fostered division and disruption. This contributed to intra-departmental distrust and diminished communication. These ingredients brought about a "perfect storm" of discontent, conflict, and disrespectful communication that clearly affected the atmosphere and culture within the Public Defender's Office and led to preventable and costly lawsuits. Trust is in the process of being restored, however it is evident a rift remains.

An independent review of the Department can address the structural organization of the Office and identify best practices in the areas of training, continuing education, and professional

development. Doing so will enable the San Joaquin County Public Defender's Office to take actions necessary to create a cohesive and positive work environment.

Given the high expenditure of taxpayers' dollars on complaints and lawsuits, the cost of an operational review that leads to positive changes will be money well spent.

Acknowledgements

The Grand Jury would like to acknowledge the dedicated individuals of the Public Defender's Office who work diligently to provide effective legal defense for the indigent.

Disclaimers

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon the specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Section 911.924.1 (a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

This report was issued by the Grand Jury with the exception of one juror who, due to a potential conflict of interest, recused himself from all parts of the investigations, including interviews, deliberations, and the writing and approval of the report.

Additionally, one juror was recused late during the preparation of the report. This juror had no impact at all due to the fact that the report was finalized before the juror could impact the findings and recommendations of the report.

Response Requirements

California Penal Code Sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of the San Joaquin County Superior Court within 90 days of receipt of the report and within 60 days of receipt in the case of an elected official.

The San Joaquin County Board of Supervisors shall respond to all findings and recommendations.

Mail or hand deliver a hard copy of the response to:

Honorable Xapuri B. Villapudua, Presiding Judge
San Joaquin County Superior Court
180 E Weber Ave, Suite 1306J
Stockton, California 95202

Also, please email a copy of the response to Ms. Trisa Martinez, Staff Secretary to the Grand Jury, at grandjury@sjcourts.org.

Sources

California Government Code Title 1, Division 4, Chapter 10, Meyers-Millas-Brown Act of 1968, (Local Public Employee Organizations) Sections 3500 – 3511.

California Government Code Title 2, Division 3, Part 2.8, Chapters 1 through 9. Fair Employment and Housing Act of 1959

Civil Service Rules and Regulations, Initial Adoption by Civil Service Commission 5/23/63, Initial Adoption by San Joaquin County Board of Supervisors 1/21/64; Most Recent Amendments Adopted by Civil Service Commission 8/08/18, Most Recent Amendments Adopted by San Joaquin County Board of Supervisors 10/09/18.

County of San Joaquin 2019-2020 Proposed Budget Public Defender 2020400000

The Record, September 29, 2017, <https://www.recordnet.com/news/20170929/former-investigators-file-complaint-against-sj-county>

The Record, June 30, 2019, <https://www.recordnet.com/news/20190630/sj-public-defenders-office-staffers-accused-of-mocking-lgbt-client-harassing-worker>

The Record, December 5, 2019, <https://www.recordnet.com/news/20191205/sj-public-defenders-office-sued-over-alleged-harassment-anti-lgbt-comments>

San Joaquin County California, County Administrative Manual, Section 2500 – Human Resources. Issued: August 1, 2005. Reviewed: December 2018. Revised: March 27, 2019.

San Joaquin County Employer-Employee Relations Policy. Adopted by the San Joaquin County Board of Supervisors January 11, 1977 (Superseding Policy adopted December 24, 1968).

San Joaquin County Equal Opportunity Plan October 2018, September 2020, Includes EEO Policy, Harassment-Free Work Environment Policy, Civil Service Rule 20 plus protected class definitions, responsibilities of all levels of employees and related procedures.

San Joaquin County Office of the County Counsel letter to Board of Supervisors, April 30, 2020, “Approve Settlement of Legal Action Entitled:” Superior Court of California County of San Joaquin Case # STK-CV-UWT-2017-10192.

San Joaquin County Work Rules, Established January 1988, Republished February 2007.

Superior Court of California County of San Joaquin Case # STK-CV-UWT-2017-10192.

Superior Court of California County of San Joaquin Case #STK-CV-UWM-2018-00-10949.

Superior Court of California County of San Joaquin Case # STK-CV-UWT-2019-15620.