

San Joaquin County Grand Jury



San Joaquin County Public Defender Fees 2015-2016 Case No. 1506

Summary

The Grand Jury received a complaint alleging the San Joaquin County Public Defender's Office is taking no initiative to recover fees from indigent defendants for legal services. The complaint further alleged the county is taking no initiative to determine the indigent defendant's ability to pay. Policies and procedures among county agencies for vetting and tracking the reimbursable fees owed to the Public Defender's Office are nonexistent.

The Grand Jury found communication and oversight among the Public Defender's Office and county agencies are severely lacking. The Grand Jury recommends the San Joaquin County Board of Supervisors conduct a study to determine the benefit of appointing a Chief Financial Evaluation Officer or designee to recover fees due the county.

Glossary

BOS	Board of Supervisors
County/SJC	San Joaquin County
Court	San Joaquin County Superior Court
Feasibility Study	Assessment of the practicality of a proposed plan or method
Indigent	A person with little or no income
MOU	Memorandum of Understanding describes a bilateral or multilateral agreement between two or more parties
Pre-trial Packet	Information the court uses when releasing and the risk factors of such release, setting bail, and determining indigence

Background

The United States Supreme Court in 1963 ruled that indigent criminal defendants have a 6th Amendment right to fair and competent defense counsel provided by the government. In San Joaquin County (SJC), the Public Defender is mandated to provide services to the indigent for a broad range of matters covered in the following:

- U.S. Constitution (Amendment VI and Amendment XIV);
- California Penal Code sections 686, 859, 982.2 and 897;
- Government Code sections 27700 and 27706;
- California Welfare and Institutions Code sections 300, 317, 600, et seq., 5365 and 6500;
- California Probate Code section 1470, et seq.

Prior to 1997 the SJC Superior Court was part of County operations and the judges were employees of the County. Judges are now state employees. The passage of the Trial Court Facilities Act of 2002 began the process of transferring courthouses from county to state ownership. California Attorney General's Office concluded grand juries do not have the authority to investigate or report on the fiscal and administrative operations of a superior court. By law, all grand juries' investigative powers extend only to "county officers and departments." The intent of the Grand Jury's inquiry was not to investigate the court, over which it has no jurisdiction.

In October 2009 Penal Code section 987.5 was amended by Senate Bill 676 to increase the maximum registration fee defendants are assessed at time of arraignment from \$25 to \$50 effective January 2010. To become operative, S.B. 676 required the BOS to adopt a resolution or ordinance. In February 2010 the Public Defender's Office recommended the BOS adopt a resolution approving the increased registration fee for court appointed counsel. In March 2010 a public hearing was held and the BOS approved and adopted the resolution.

California Penal Code sections 987.5 and 987.8 state the law regarding assessing the defendant's ability to pay and the collecting of fees (see Appendixes A and B). The difficult task for the Grand Jury was to determine who was accountable to vet the defendants' ability to pay and who collects and tracks the payment of the assessed fees.

Issues

The Grand Jury received a complaint alleging the collection of required fees for services provided to indigent defendants by the Public Defender's Office is non-existent. The Grand Jury chose to investigate the complaint to verify that defendants are vetted and actually pay for services rendered. During the course of the investigation it was difficult to determine:

- Who decides indigence
- Which department is responsible to collect the fees
- Who follows up with defendants required to pay for services.

Method of Investigation

The Grand Jury interviewed five witnesses, surveyed numerous counties and reviewed numerous documents.

Materials Reviewed

- California Government Codes 27750
- Penal Code sections 987.5 and 987.8
- SJC Budgets Sections:
 - 2021300000- Court Assigned Counsel
 - 2021274000 County Support to Courts
 - 2020400000 Public Defender
- Gideon v Wainwright (1963)
- Lawyer Referral Service Contract (MOU) for provisions of Indigent Defense
- SJC Public Defender's Web Site

Interviews Conducted

- Lawyer Referral Service
- Public Defender
- Treasurer Tax Collector
- County Administrator
- Complainant

Sites Visited

- San Joaquin County Felony Court Arraignments

Discussions, Findings and Recommendations

Government Code section 27750 states:

“The board of supervisors of any county may designate a county officer to make financial evaluations of defendants and other persons liable for reimbursable costs under the law. A county officer so designated shall be known as the county financial evaluation officer, whose duties shall be to determine, according to the standards set by the board of supervisors and at the direction of the court, the financial ability of parties who have incurred, or will incur, attorney's fees or other court-related or court-ordered costs, which costs by law must be waived or the services provided free of charge if the party is indigent.”

The Grand Jury surveyed numerous counties requesting data regarding the cost of indigent defense for each county (see chart below). The survey also asked who collects the assessed fees, who determines

indigence and if the county has a Chief Financial Evaluation Officer or designee. San Joaquin County does not have a Chief Financial Evaluation Officer and does not verify the financial information supplied in the Pre-Trial Packet. The Public Defender’s Office does not track payments and is dependent on the court order to collect registration or final attorney fees.

Results of Grand Jury Survey Fiscal Years ending 2013, 2014 and 2015

County	Population	Three Year PD Budget	Cost Per Capita	Money Recovered	Percentage Recovered	Who Collects Fees
Alameda	1,510,000	\$122,084,198	\$53.18	\$1,172,000	1.5	County Evaluation Officer
Contra Costa	1,111,300	\$64,343,764	\$57.90	\$907,232	1.4	Probation Collection Unit
Fresno	930,000	\$48,849,267	\$57.63	\$252,930	0.5	County Auditor-Controller
Sacramento	1,482,000	\$115,066,821	\$77.64	\$808,760	0.7	Dept. Revenue & Recovery
San Joaquin	685,000	\$52,474,825	\$76.60	\$187,577	0.36	Public Defender
Stanislaus	532,000	\$27,744,279	\$52.15	\$508,067	0.95	County Evaluation Officer
Santa Barbara	420,000	\$14,970,000	\$35.64	\$237,711	1.6	Public Defender thru Court
San Mateo	711,000	\$52,513,188	\$73.85	\$1,947,407	3.7	County Evaluation Officer
Sonoma	478,000	\$34,978,175	\$73.17	\$342,438	1.0	Auditor Controller Tax Collector
Merced	254,000	\$16,109,409	\$63.42	\$541,243	3.4	Public Defender thru R&R

Anyone arrested in San Joaquin County is required to appear in court for arraignment. The judge informs the defendant of the following:

- What the charges are
- What his or her constitutional rights are
- If he or she cannot afford an attorney, one will be appointed
- A \$50 fee per Penal Code Section 987.5 will be assessed
- At the end of the trial the defendant may be required to reimburse the Public Defender’s Office for attorney fees in the amount of \$125 for misdemeanor or \$175 for felony cases.

The Grand Jury learned the courts are responsible for determining indigence from the information provided by the defendant in the Pre-Trial Packets. Pretrial financial information is self-reported and unverified. At the courts discretion, they may inquire into the accuracy of the information reports. If the defendant is out of custody the judge could continue the case at arraignment to see if the defendant can make an agreement with an outside attorney. The defendant then is required to fill out a financial information form. After reviewing that information, the judge may make a finding of indigence and appoint a Public Defender or in some cases a private attorney under contract with the County.

Grand Jury members attended several felony arraignments in the County courthouse. All defendants observed were in custody. All were informed of the charges against them, their constitutional rights and asked if they could afford an attorney. The response from all defendants we observed was “no”, they could not afford an attorney. The judge then told the defendants a public defender would be appointed and moved on to the next case. During the arraignments, the defendants were not informed of the assessed \$50 fee. No one informed the defendants regarding the flat fee for a misdemeanor or felony case.

The Grand Jury cannot confirm whether any judges assess the indigent defendant’s ability to pay or if they advise the defendants of the flat fee the same way. There are no procedures in place for the court, public defender or county administrator to confirm what information has been given to the defendants, who has been vetted financially or how much the defendant is required to pay.

The Grand Jury confirmed SJC is not tracking the collection of assessed fees from indigent defendants. The courts have no means of collecting and tracking payments for county fees as the courts are entities of the state. The Public Defender’s Office is responsible for collecting and tracking payments. The Public Defender’s Office contends it does not have the personnel or the time to track whether defendants pay.

Findings

F 1.1 There are no established policies or procedures to assess indigent defendants’ ability to reimburse the Public Defender’s Office for court appointed counsel.

F1.2 There is no communication and oversight among the Public Defender’s Office, the County Administrator’s Office and the Courts for the collection of the fees assessed to the indigent defendants.

F1.3 Financial information required to determine indigence in the County is not being verified.

Recommendations

R 1.1 By September 1, 2016 the Board of Supervisors conduct a feasibility study to determine if the county can support a Chief Financial Evaluation Officer or designee to vet defendants’ ability to pay, and track and collect public defender fees.

R1.2 By December 31, 2016 the Board of Supervisors develop policies and procedures to vet defendants, track and collect fees due the county from the indigent defendants for court appointed counsel.

R1.3 By December 31, 2016 the Board of Supervisors implement a policy to vet defendants, track and collect assessed fees from the indigent defendants.

R1.4 By December 31, 2016 the Board of Supervisors develop a MOU with the court to inform all defendants of the assessable fees.

Conclusion

In San Joaquin County the total cost for the Public Defender and Court Assigned Counsel for fiscal year 2014-15 was nearly \$18.3 million. In that same period, the county only recovered \$21,520 from defendants assigned court appointed counsel.

The Public Defender's Office handled 3,710 felony cases and 2,750 misdemeanor criminal cases in FY2014-15 (see Appendix C). Had the County collected the \$50 fee and the \$125 attorney fees for just one-quarter the misdemeanor cases (687) that year, the county treasurer would have received more than \$120,000, nearly five times the amount actually collected. And that's just the misdemeanor cases.

The 6th Amendment guarantees indigent defense counsel. Clearly not all defendants are able to pay, but the Board of Supervisors has an obligation to the taxpayers to make sure the Public Defender's Office is reimbursed for court appointed counsel when the defendant is able to pay. If a defendant's ability to pay is properly vetted and county officials communicate among themselves to make sure there is follow through, this can be accomplished.

Acknowledgements

The 2015-2016 Grand Jury appreciates the steps the County Administrator has taken to review the Public Defender's process and all County departments responsible for collecting fees from citizens, clients and defendants.

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 sections 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).

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. The San Joaquin County Board of Supervisors shall respond to each finding and recommendation.

Mail a hard copy of the response to:

Honorable José L. Alva, Presiding Judge
San Joaquin County Superior Court
P.O. Box 201022
Stockton, CA 95201

Or hand deliver to:

222 E. Weber Ave., Room 303
Stockton, CA 95202

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

Appendices

Appendix A

PENAL CODE SECTION 987.5

Penal Code section 987.5 concerns a registration fee (\$50) that shall be assessed at the time a public defender is appointed by the court and states:

“(a) Every defendant shall be assessed a registration fee not to exceed fifty dollars when represented by appointed counsel. Notwithstanding this subdivision, no fee shall be required of any defendant that is financially unable to pay the fee.

“(b) At the time of appointment of counsel by the court, or upon commencement of representation by the public defender if prior to court appointment, the defender shall be asked if he or she is financially able to pay the registration fee or any portion thereof. If the defendant indicates that he or she is able to pay the fee or a portion thereof, the court or public defender shall make an assessment in accordance with the ability to pay. No fee shall be assessed against any defendant who asserts that he or she is unable to pay the fee or any portion thereof. No other inquiry concerning the defendant’s ability to pay shall be made until proceedings are held pursuant to Section 987.8.

“(c) No defendant shall be denied the assistance of appointed counsel due solely to a failure to pay the registration fee. An order to pay the registration fee may be enforced in the manner provide for enforcement of civil judgments generally, but may not be enforced by contempt.

(d) The fact that a defendant has or has not been assessed a fee pursuant to this section shall have no effect in any later proceedings held pursuant to Section 987.8, except that the defendant shall be given credit for any amounts paid as a registration fee toward any lien or assessment imposed pursuant to Section 987.8.

(e) This section shall be operative in a county only upon the adoption of a resolution or ordinance by the board of supervisors electing to establish the registration fee and setting forth the manner in which the funds shall be collected and distributed. Collection procedures, accounting measures, and the distribution of the funds received pursuant to this section shall be within the discretion of the board of supervisors.

Appendix B

PENAL CODE SECTION 987.8(b)

Penal Code section 987.8(b) addresses the issue of the ability of a defendant to pay for legal representation by the County Public Defender and states:

“In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the criminal proceeding in the trial court, or upon the withdrawal of the public defender or appointed private counsel, the court may, in its discretion, hold on such additional hearing within six months of the conclusion of the criminal proceedings. The court may, in its discretion, order the defendant to appear before a county officer designed by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided.”

Section 27750 of the California Government Code states:

“The board of supervisors of any county may designate a county officer to make financial evaluations of defendants and other persons liable for reimbursable costs under the law. A county officer so designated shall be known as the county financial evaluation officer, whose duties shall be to determine, according to the standards set by the board of supervisors and at the direction of the court, the financial ability of parties who have incurred, or will incur, attorney's fees or other court-related or court-ordered costs, which costs by law must be waived or the services provided free of charge if the party is indigent.”

Appendix C

Public Defender's Office Workload data

	Workload Data				
	Actual			Est./Act.	Projected
	2011-12	2012-13	2013-14		
<i>Special Circumstances</i>	6	5	7	4	4
<i>Felony</i>	3,403	4,586	4,723	3,710	3,600
<i>Superior Court Direct/Grand Jury</i>	42	43	42	32	40
<i>Violations of Probation-Felony</i>	1,496	1,597	1,653	1,536	1,400
<i>Violations of Probation-Misdemeanor</i>	665	879	1,282	1,070	1,200
<i>Misdemeanor</i>	1,348	1,746	2,282	2,750	3,000
<i>Traffic</i>	775	902	1,118	1,024	1,110
<i>Juvenile Dependency</i>	431	438	456	260	400
<i>Juvenile Delinquency</i>	1,009	921	940	776	775
<i>Habeas Corpus</i>	181	195	207	209	210
<i>Mental Health</i>	322	364	390	267	270
<i>Special Proceedings</i>	557	821	837	806	810
<i>Guardianship & Conservatorship</i>	185	139	183	336	335
<i>Expungement/Cert. of Rehabilitation</i>	2	3	2	0	0
<i>Proposition 63</i>	104	129	127	160	160
<i>Homeless Court</i>	0	40	0	64	65
<i>Section 6500</i>	8	19	13	6	10
<i>Civil Contempt</i>	66	69	73	69	69
<i>Motions</i>	155	266	435	409	410
<i>Writs</i>	28	40	29	24	25
<i>Violations of Community Supervision</i>	317	686	1,282	1,070	1,000
<i>Conditional Release Program</i>	N/A	9	2	3	3
<i>Parole Violations</i>	N/A	N/A	765	1,024	1,100
<i>Proposition 47</i>	N/A	N/A	N/A	1,764	3,000
<i>CHCF (Medical Facility)</i>	N/A	N/A	N/A	7	10
<i>Veterans' Court</i>	N/A	N/A	N/A	20	48
<i>Total</i>	11,100	13,897	16,848	17,400	19,054