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Deputy County Counsel Joshua Myers
Administrative Analyst Andrew McLaughlin
County of Sonoma
575 Administration Drive
Santa Rosa, California 95403

Re: Executive Summary for Quarterly Period July 1 to September 30, 2024
Request to Re-Open Conflict Contract

Mr. Myers and Mr. McLaughlin,

This report provides a narrative review of the caseload figures for last quarter, a comparison of the annual caseload data (calendar year), a look at the retention accounts, and culminates in a request to re-open the conflict contract negotiations necessary to ameliorate against steadily rising caseloads, increased costs of providing constitutionally required competent legal representation, and recent and anticipated departures of attorneys. Three reports were previously provided for your review: 2022 Baseline Caseload Report, the Caseload Report 2025 – Quarter 1, and Fiscal Year 2025 Retention Report – Quarter 1.

MOST RECENT QUARTER

The Caseload Report provided for Quarter 1 of Fiscal Year 2025, the period consisting of July 1, 2024 to September 30, 2024, continues to illustrate the “new normal” for Sonoma County and its conflict defense program, namely, continuing increases to the most serious cases handled by the panel. These cases are not only taxing on the time, energy, and mental health of the individual panel attorneys, but, as demonstrated in the Fiscal Year 2025 Retention Report, are also costly to the panel as a whole at increasingly unsustainable levels. Two years of caseload and cost increases exceed the panel’s capacity to continue to provide competent client representation and is impacting the ability of the panel to retain its most experienced lawyers.

ANNUAL CONFLICT PANEL CASELOAD DATA:

Caseloads from 2023 and 2024 have increased over the baseline year (2022) numbers in all meaningful categories.

Table 1 below provides a quarter-by-quarter comparison vs. 2022 baseline levels. A high-level view of the data shows that the total number of cases in the baseline year of 2022 was 1,612. In 2023 that number increased by 16% to an overall total of 1,872 cases. Comparing the current year to the baseline year, conflict attorneys were assigned 1,584 up through the end of September

of 2024, while they were assigned 1,185 cases for the same period in 2022. That's an additional

	2023	2023	2023	2023	2024	2024	2024	2024
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
FELONIES								
2022 Baseline	154	149	163	160	154	149	163	160
2023-2024	171	175	165	171	190	172	177	
Δ	11%	17%	1%	7%	23%	15%	9%	
MISDEMEANORS								
2022 Baseline	213	174	219	227	213	174	219	227
2023-2024	187	249	229	250	253	294	238	
Δ	-12%	43%	5%	10%	19%	69%	9%	
JUVENILE FELONIES								
2022 Baseline	20	11	15	11	20	11	15	33
2023-2024	30	26	43	42	59	47	40	
Δ	50%	136%	186%	282%	195%	327%	167%	
JUVENILE MISDOS.								
2022 Baseline	12	14	21	21	12	14	21	
2023-2024	20	29	27	10	29	30	36	
Δ	67%	107%	29%	-52%	142%	114%	71%	
OTHER								
2022 Baseline	6	3	11	7	6	3	11	7
2023-2024	9	4	25	10	8	7	4	
Δ	50%	33%	127%	43%	33%	133%	-64%	
Totals								
2022 Baseline	405	351	429	427	405	351	429	427
2023-2024	417	483	489	483	539	550	495	
Δ	3%	38%	14%	13%	33%	57%	15%	

399 cases so far this year - a whopping 34% increase. Sonoma County and its conflict program are dealing with a “new normal”.

Before analyzing the data regarding the growth of both juvenile and adult felony cases, it is important to note the steady and consistent growth in both adult and juvenile misdemeanor cases. These cases too require more time and funding than they have in the past. Looking at adult and juvenile misdemeanors combined, in 2023 the panel absorbed 100 more cases than in the

baseline year of 2022. In the first three quarters of 2024, the panel has already taken in 227 more misdemeanor cases than in the same period of 2022.

While the misdemeanor increases are substantial, and taxing on panel resources, the fact is that felony charges are more serious, complicated, intense, and time-consuming than misdemeanor charges. Many of the felony cases the conflict attorneys have been appointed to represent the most complex, grave, and arduous criminal matters handled in the Sonoma County justice system. In 2023, conflict attorneys were appointed to 140 additional felony cases (adult and juvenile combined) than in 2022. Through the first three quarters of 2024, conflict attorneys were appointed to 173 felony cases more than they had been in 2022.

Looking for a moment at the juvenile felony category, we were assigned to handle 84 more felony cases in 2023 than 2022. That increase did not subside in 2024. Through the third quarter, juvenile attorneys have been appointed to 146 felony cases. That's 100 cases more than were assigned during the same period of 2022 and exceeds the full-year data for 2022 by 89 and the full year data for 2023 by 3. In juvenile felonies alone, we are on track to handle nearly 200 cases in 2024 – an increase of nearly 250% from the baseline year.

Turning to adult felonies, while the increase is not as dramatic as what has occurred in juvenile, it is more impactful in other ways because of the complexity and seriousness of these cases. Clients with severe addiction, mental illness, anti-social, and/or violent tendencies compound the burden of those increases. In 2022, conflict counsel was appointed to 626 adult felony cases, but in 2023, they were assigned to 682 – an extra 56 matters for the same number of attorneys. We addressed the issue by bringing some misdemeanor attorneys up to handle low level felony cases in the early part of this year. Unfortunately, the 2024 appointments have continued to increase. For the first three quarters of this year, conflict counsel has been appointed to 539 felony matters – an extra 73 cases through the end of September 2024. The effect of these caseload increases on the panel are compounded by a steady stream of modifications to the penal code which have further increased the expenditures of both time and funds.

CHANGES IN THE LAW:

Since 2022 there have been no fewer than eleven substantial changes in Criminal Law and Process that have required attorneys to spend more time, effort, and money in the practice, and often require attorneys to expand their training to areas beyond the law, including but not limited to, social work, investigations, psychiatry and psychology to name a few. Additionally, discovery, alternative court programs, and trial and motion work have been greatly expanded by these changes in the law. Relevant changes in the law since the contract baseline year include but are not limited to:

- AB 1228: Requires a court to release a person on their own recognizance pending probation revocation hearing, absent clear and convincing evidences that conditions or bail are necessary. Changes require more extensive investigation into the social history of the clients as well as the underlying facts of the alleged violations.

- AB 333: Redefines Penal Code section 186.22's "pattern of criminal gang activity" and requires separate trials on the underlying offense and gang enhancement when requested by the defense. Together with extensive caselaw decisions since its enactment AB333 has led to the expanded need for defense investigations, social work, and both gang and sociological experts. Conflict defenders often carry a higher number of cases with gang allegations given the multiple defendants often alleged to have participated in these crimes.
- SB 81: Amends Penal Code section 1385 to require dismissal of enhancements if it is in the furtherance of justice. As demonstrated by amendments to follow, the interests of justice analysis often require extensive social work and investigation time.
- SB 567, AB 124, AB 1540: Amend sentencing rules, provide more lenience to victims of human trafficking, intimate partner violence, or sexual violence who have been arrested or convicted and specify procedures following a court's receipt of a recommendation to recall and resentence a defendant.
- SB 775: Modifies Penal Code section 1170.95 by, inter alia, expanding its application to attempted murder and manslaughter, codifying the holding of *People v. Lewis* (2021) 11 Cal.5th 952, outlining what evidence is admissible at the (d)(3) hearing, and reaffirming the proper burden of proof at the (d)(3) hearing.
- SB 1209: Allows veterans to petition for resentencing if they suffered trauma or a condition related to their military service
- AB 256: Modifies Penal Code section 745 and makes the Racial Justice Act retroactive. The Racial Justice Act requires unparalleled time and resource expenditures including that of social workers, investigators, and sociologists.
- AB 600: Expands sentence recall procedure under Penal code section 1172.1 to permit court to act on its own motion
- Prop 36: Makes several key changes related to punishments for theft and drug crimes by increasing punishments, creating new treatment-focused court processes, and increases priorability of these offenses. Overall, Prop 36 is likely to increase workload for local prosecutors and public defenders given that felonies usually take more time to resolve than misdemeanors. Also, treatment-mandated felonies would increase workload for defenders who are required to follow their clients through the treatment process.

A DEEPER UNDERSTANDING OF WHAT DEFENSE REQUIRES:

The National Public Defense Workload Study conducted by the Rand Corporation and published in 2023 notes, "The rules of professional conduct require lawyers to limit their workloads to ensure competent representation. Clear standards for public defender workloads are essential to policymakers' ability to fund and staff the defense function at appropriate levels, to public defense authorities' ability to monitor and manage caseloads, and to attorney's ability to provide their clients with effective assistance of counsel as guaranteed by the Sixth Amendment to the

U.S. Constitution.” Excessive caseloads they note are “proscribed by legal ethics rules because they inevitably cause harm. Overloaded attorneys simply cannot give appropriate time and attention to each client. They cannot investigate fully or in a timely manner. They cannot file the motions they should. Cases are delayed, and evidence and witness lists are lost. Almost no cases go to trial. They must triage, choosing which cases on which to focus, while allowing others to be resolved without appropriate diligence. Such difficult decisions not only negatively affect public defense clients and their families, they also negatively affect victims by contributing to delay and uncertainty in the process. Furthermore, systems burdened by triage risk unreliability, denying all people who rely on them efficient, equal, and accurate justice.”

Ultimately, the National Public Defense Workload Study settled on a method to determine the average time needed to provide reasonably effective assistance of counsel and establish national workload standards in adult criminal cases finding:

The average time needed to represent an individual in an adult criminal case ranged from 286 hours to 13.5 hours, depending on case type:

- High-severity felony cases required the most time, on average:
 - o Life without parole (LWOP) 286 hours
 - o Homicide cases 248 hours
 - o Sex crimes cases 167 hours
 - o Other high severity felony cases 99 hours.
- Mid-level severity felonies 57 hours
- Low-severity felony cases 35 hours
- High-severity DUI misdemeanors 33 hours
- Low-severity DUI misdemeanors 19 hours
- High-severity misdemeanor (non DUI) 22.3 hours
- Low-severity misdemeanor (non DUI) 13.8 hours
- Probation or parole violation 13.5 hours

The NPDSW study assumed that every attorney had a maximum availability of 2,080 hours per year for all case related work. With total yearly hours and average recommended hours per case type above, the study found that attorneys could handle a range of as many as 59 total low-level felonies, 36 mid-level felonies, 21 high-level felonies, 12 high-level sex cases, 8 murder cases, or 7 LWOP cases a year. With these numbers in mind, a look at the current caseloads of the seven full time felony attorneys eligible to take the most serious cases shows that after deducting the demand required to competently handle their most serious cases, their current caseloads substantially exceed the caseload hours available for the entire year:

Atty	Current Cases	High Level Fels	High Lvl Case Info	Max. Hours Per Yr.	Hours Req'd For Serious Cases	Hours Left For All Other Cases	If All Other Cases Were Low Level ¹ Felony	Atty Case Load Max.	# over Case Load Recs
EZ	68	3	187 x 2, Life 288(b)	2080	663	1417	35 hrs. per	40	25
GQ	68	2	187 x 2, 1w/288	2080	663	1471	35 hrs. per	40	26
JS	88	2	187x2	2080	496	1584	35 hrs. per	45	41
OV	79	2	187	2080	248	1832	35 hrs. per	52	25
RB	69	2	261, 451 w/2 stks	2080	198	1882	35 hrs. per	54	13
RM	86	2	187 x 1, 269	2080	415	1665	35 hrs. per	48	36
TS	70	3	187 x 2, 664/187	2080	595	1485	35 hrs. per	42	25

Felony caseloads often consist of clients with multiple open cases of varying severity as well as probation and parole violations and/or trailing misdemeanor cases making it difficult to set a baseline average number of total cases available in a given year. Using the range above, however, and accounting for a hypothetical caseload of only low-level felonies, every felony attorney currently exceeds the recommended totals, for a total overage of 207 cases. Based on the NPDSW recommendations the panel would need an additional three and a half felony lawyers felony to cover the overage in this hypothetical low-level felony caseload scenario.

ANCILLARY ACCOUNT

The Fiscal Year Retention Reports previously provided illustrate the substantial increase in costs associated with both the increases in caseload discussed above, but also, as noted in The National

¹ This caseload data does not count misdemeanor cases that felony clients have. It does include VOPs and many of these cases are other "high-severity" or mid-level severity felonies. We have no doubt that the average time demand required for these caseloads is **under-represented** by the figures in this chart.

Public Defense Workload Study, the fact that modern defense practice is characterized by a tremendous expansion of digital discovery from body worn cameras, cell phone data, and social media data; the increasing use of forensic evidence; and the expanding scope of a criminal defense lawyer's obligations, such as advising clients on the collateral consequences that attend criminal convictions.

While most costs remained relatively stable across Fiscal Years 2023 and 2024, there were substantial increases in private investigator, expert witness, and social worker costs reflective of both the increases in felony cases and the requirements of modern defense practice as noted above. In FY 2023 and FY 2024, the cost of investigations remained relatively stable, however, Quarter 1 alone of FY 2025 is already more than 36% of the two previous yearly totals. Expert Witness costs meanwhile increased by 64% from FY 2023 to FY 2024, and already sit at 46% of FY 2024's total in the first quarter of FY 2025 alone. Finally, Social worker costs increased more than 195% from FY 2023 to FY 2024, and as of the end of Q1 of 2025 have already surpassed the total from FY 2023 and are more than 44% of FY 2024's total. Currently, outstanding authorizations and submitted payments for these three categories in Q2 of FY 2025 put the retention account operating budget at a negative balance of - \$24,707.10 were those bills all to come due today. Again, these large and consistent increases represent the "new normal" of conflict defense funding needs in order to provide competent client representation in the modern era.

	2025 Quarter 1			Current
	Total: (7/1/22 - 6/30/23)	Total: (7/1/23 - 6/30/24)	(7/1/24- 9/30/24)	Authorizations/2025 Q2 Payments
Ancillary Services				
Local P.I.	\$63,681.75	\$65,892.94	\$24,320.60	\$20,582.00
Expert Witnesses	\$40,474.16	\$66,426.00	\$30,700.25	\$72,890.00
Social Workers	\$6,625.00	\$19,525.00	\$8,625.00	\$4,250.00

If 2025 Q1 numbers continue follow this trend for the remainder of FY2025 as expected, these three categories alone will amount to a total increase of more than \$100,000 in retention account expenditures over the FY 2024 numbers.

CONTRACT RE-OPENER PROVISION AND CONCLUSION:

Re-opener Provisions:

The parties recognize that additional impacts or events, not foreseen and addressed in this agreement, such as change in law or other unforeseen circumstances that fundamentally change the assumptions made in entering into this agreement. Pricing must remain firm for a minimum Of 2 years. The contract costs may be subject to negotiated adjustments ("re-openers") if:

1. the number of case appointments increase or decrease by more than 10% in two consecutive quarters as compared with the Baseline Year of January 1, 2022 -December 31, 2022. The contract shall be eligible for a re-opener by individual subcategory of case -- adult felonies, adult misdemeanors, and juvenile delinquency; or

2. the annual Consumer Price Index (CPI) for the San Francisco Area increases or decreases by more than 5% from the prior year and Consultant demonstrates this has resulted in a significant problem of retention or recruitment for the program.

Re-openers must be requested by the re-opening party in writing, supported by data, and specifying the amount of the cost increase/decrease being sought. The responding party shall answer within 30 calendar days and formal negotiations shall conclude by no later than 60 days after the re-opener was requested. If a cost adjustment is agreed upon, the start date shall be subject to negotiation.

As indicated above, over the last two years, the caseload increases exceed the requirements of the contract re-opener provision.

CONCLUSION

Conflict defense panel case appointments have grown in consecutive quarters over the 2022 baseline year multiple times in each category over the last two years. In some categories, those increases occur in nearly every comparative quarter. Additionally, these increases consist primarily of the most complex felony cases requiring substantial increased expenditures of time, energy and funding. At this time, consistent with the provisions of the contract, we have no choice but to exercise the re-opener demand provision. At the outset, and because time is of the essence, the data indicates that we need four additional felony attorneys. The average compensation rate for competent felony attorneys is \$12,800 per month. Relatedly, additional retention and emergency funds must increase by a commensurate amount, specifically an additional 10% and 1% of the increased funding, respectively.

Very truly yours,

Kristine Burk

Kristine M. Burk, Administrator



Nathan A. Poulos, Assistant Administrator