

PUBLIC DEFENDER'S OFFICE

A California attorney, proposed the establishment of a Public Defender's Office to balance the Office of the Public Prosecutor at the 1893 Chicago's World Fair. The nation's first public defender agency was founded in LA in 1913. The Tulare County Grand Jury investigated and reported on the operations, budget, and record of the Public Defender's Office. The Tulare County Public Defender's exceeds the standards set by the United States Department of Justice on Standards for Both Felony and Misdemeanor caseloads/attorney.

The Tulare County Grand Jury and Tulare County Public Defender's Office responded to the Grand Jury's findings and recommendations with the following:



County of Tulare

September 9, 2014

BOARD OF SUPERVISORS

The Honorable Judge Gary Paden
Tulare County Superior Court, Room 303
221 South Mooney Boulevard
Visalia, CA 93291

Allen R. Ishida
District One

Dear Judge Paden:

Pete Vander Poel
District Two

On behalf of the Board of Supervisors, the following is the Board's responses to the findings and recommendations included in the 2013/2014 Tulare County Grand Jury Report titled *Public Defender Case Load*. We have consulted with the Tulare County Public Defender's Department to assist with these responses.

Phillip A. Cox
District Three

Finding 1

J. Steven Worthley
District Four

The Tulare County Public Defender's Office exceeds the standards set by the United States Department of Justice on Standards for both Felony and Misdemeanor caseloads per attorney.

Mike Ennis
District Five

Response: The Board of Supervisors agrees with the finding.

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Finding 2

BOARD STAFF

The current pay scale has not been increased for several years.

Julieta Martinez

Response: The Board of Supervisors disagrees with the finding.

Allison Pierce

In FY 2008/09, attorneys received a 3% increase that was blended from attorneys I through V. In FY 2013/14, attorneys received another 3% increase.

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Recommendation 1

CLERK OF THE BOARD

Despite the additional burden of 200 Misdemeanor cases, there is no evidence that the Public Defender may not adequately represent their clients; however, the Tulare County Grand Jury recommends that staff be hired to accommodate the additional case loads

Michelle Baldwin
Chief Clerk

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Administration Bldg.
2800 West Burrel
Visalia, CA 93291

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Response:

The recommendation has not yet been implemented but will be considered for future implementation as allowed by budgetary considerations. All County departments experienced budget cuts during the recession which resulted in position allocations being held vacant, and step and merit increases being suspended. The Board of Supervisors restored step and merit increases in FY 2011/12 and provided a 3% increase to attorneys in FY 2013/14. The Public Defender has one attorney position held vacant for budgetary purposes. The ability to unfreeze the vacant position and/or add new position allocations will be determined by future County revenues. With unknown potential impacts of the drought on future property tax revenues, a specific timeframe cannot be provided at this time.

Recommendation 2

The Tulare County Grand Jury recommends that the current pay scale be increased.

Response:

The recommendation has not yet been implemented but will be considered for future implementation as allowed by budgetary considerations. In FY 2008/09, attorneys received a 3% increase that was blended from attorneys I through V. The Board of Supervisors restored step and merit increases in FY 2011/12, and provided a 3% increase to attorneys in FY 2013/14. Additionally, attorneys receive step and merit increases that are accelerated as compared to other positions in the County; they are eligible to receive salary increases every six months between an Attorney I, Step 1 through an Attorney V, Step 2 level.

Sincerely,



Philip A. Cox, Chairman
Tulare County Board of Supervisors

CC: Tulare County Grand Jury



LAW OFFICES OF THE PUBLIC DEFENDER

County of Tulare

Lisa Bertolino
Public Defender

Thomas McGuire
Assistant Public Defender

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Visalia, CA 93291
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Fax: (559) 713-3229

July 17, 2014

Tulare County Grand Jury
5963 S. Mooney Blvd.
Visalia, CA 93277

The Honorable Judge Gary Paden
County Civic Center, Room 303
Visalia, CA 93291

Tulare County Board of Supervisors
2800 W. Burrel Ave.
Visalia, CA 93291

To the Honorable Judge Gary Paden, Tulare County Grand Jury Members and Tulare County Board of Supervisors:

First I would like to thank the Grand Jury members for choosing to investigate the workings of the Office of the Public Defender for your 2013/14 report. The services that our office provides to the citizens of Tulare County are a critical component of our justice system, and I am proud of the quality representation that this office provides.

Following is my response to the findings and recommendations made in the 2013/14 report pursuant to Penal Code sections 933(c) and 933.05:

Findings

1. The Tulare County Public Defender's Office exceeds the standards set by the United States Department of Justice on Standards for both Felony and Misdemeanor caseloads per attorney.

The Public Defender agrees with the finding.

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I do not dispute the need for additional staff to be hired to accommodate the increased caseloads we have experienced over the past years. I will request additional staffing to reduce average caseloads per attorney.

There are some factual conclusions that I do not believe are accurate, so I am providing you with the facts as I find them to be.

Stated in your report is that each attorney has a caseload of 600 misdemeanor cases and 175 felony cases. I believe a more accurate statement is that for the year 2013 our misdemeanor attorneys were assigned approximately 833 cases per attorney, felony attorneys handled approximately 250 felony cases per year, and juvenile division attorneys were assigned approximately 210 cases per year.

The work in our office is divided between felony, misdemeanor, juvenile and civil case assignments. These assignments take into consideration an attorney's experience, skills, and prior assignments. While there is some flexibility with more experienced attorneys; newer attorneys are assigned to misdemeanor cases.

The Office opened 16,843 cases in 2013. Included in this amount are 7,236 felony cases; 7,496 misdemeanors; 1,049 juvenile delinquency; 867 civil; and 195 other kinds of cases, including Penal Code section 1203.3 and 1203.4 petitions, traffic and infraction matters. We currently have 9 misdemeanor attorneys, 29 felony attorneys, 5 juvenile attorneys and 2 that are assigned to both civil and criminal matters. Some of the civil cases are also assigned to misdemeanor and felony attorneys.

Due to the experience and skills necessary to defend felony cases, they cannot be assigned to inexperienced attorneys. We have seen increases in felony filings as well as active murder cases recently. While the average number of active murder cases was 30 in 2013, we now are currently at 34.

The number of cases that have been filed alleging special circumstances, which allows the prosecutor to seek a death penalty sentence, has increased by 100% between fiscal years of 2012/13 and 2013/14. Currently we have ten cases in which the District Attorney has indicated they will be seeking death, or the decision has not yet been made. The workload demands of capital cases are unique: the duty to investigate, prepare, and try both the guilt/innocence and mitigation phases requires an extensive amount of time and work. In other special circumstance cases where the death penalty is not sought, the punishment, if found true, is life in prison without the possibility of parole. We have seven cases currently in our office.

I believe the work of the Public Defender has been allocated and distributed in a way that makes us very effective and efficient, making it possible to adequately represent individuals in a greater number of cases than the national standards, but that can only be stretched so far. If the frozen attorney position and investigator positions were filled, that would be good initial start to alleviate this concern.

2. The Tulare County Grand Jury recommends that the current pay scale be increased.

The Public Defender disagrees in part with the finding.

I agree that increasing the pay scale is critical for retaining the experienced attorneys that are necessary for defending many of the cases we have. Salaries paid to the professionals of our office must be competitive with other counties, or we simply are unable to retain them in adequate numbers. However, the finding that the current pay scale has not been increased for several years is not accurate. In the year 2008/09, attorneys received a 3% increase that was blended from attorneys I through V, and in year 2013/14 there was another 3% increase.

I will continue with efforts to obtain increases in the current pay scale.

Recommendations

1. Despite the additional burden of 200 Misdemeanor cases, there is no evidence that the Public Defender may not adequately represent their clients; however, the Tulare County Grand Jury recommends that staff be hired to accommodate the additional case loads.

The recommendation has not been implemented but is actively being pursued. Considering the current department's budget and other departmental needs, I have hired the maximum number of attorneys. Increasing my department's budget to secure additional positions is not within my control, is subject to the monetary and budgetary constraints of the County and the approval of the Board of Supervisors and the Chief Administrators office. As mentioned previously, I will request additional staffing to reduce the average caseloads per attorney. In the interim I will continue to effectively and efficiently allocate the work of the Public Defender's office.

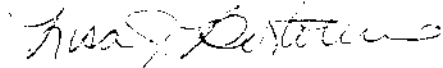
2. The Tulare County Grand Jury recommends that the pay scale be increased.

The recommendation has not been implemented but is actively being pursued. Increasing my department's budget to secure salary increases is not within my control, is subject to the monetary and budgetary constraints of the County, and the approval of the Board of Supervisors and the Chief Administrators office.

As mentioned previously we have seen an increase in felony filings as well as active murder cases. The number of cases that have been filed alleging special circumstances, which allows the prosecutor to seek a death sentence, has increased by 100% between the fiscal years of 2012/13 and 2013/14. Increasing the attorney's pay scale is critical for retaining and attracting to our office the experienced attorneys that are necessary for defending this growing and serious caseload.

Again, thank you very much for your interest and examination of the Office of the Public Defender.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa J. Bertolino".

Lisa J. Bertolino
Tulare County Public Defender