

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

415



FROM: County Auditor-Controller

SUBMITTAL DATE:
March 16, 2010

SUBJECT: Internal Auditor's Report 2009-013: The Law Offices of the Public Defender

RECOMMENDED MOTION: Receive and file Internal Audit Report 2009-013: The Law Offices of the Public Defender.

BACKGROUND: The Auditor-Controller completed an audit of The Law Offices of the Public Defender to provide management and the Board of Supervisors with an independent assessment of the adequacy and effectiveness of internal controls relative to expense reimbursements, information security, chargeable services, safeguarding of assets, and the Educational Support Program.

Departmental Concurrence

(Continued)

Robert E. Byrd

Robert E. Byrd
County Auditor-Controller

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	N/A

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30
Requires 4/5 Vote

C.E.O. RECOMMENDATION:

RECEIVE AND FILE

BY: *Rob Rockwell*
Rob Rockwell

County Executive Office Signature

- Policy
- Policy
- Consent
- Consent

Dept's Recomm.:
Per Exec. Ofc.:

Prev. Agn. Ref.: | District: | Agenda Number:

2.9

BACKGROUND continued:

Based upon the results of our audit, we determined the internal controls relative to expense reimbursements, information security, safeguarding of assets, and the educational support program are adequate and effective. A client-level accounting of chargeable services is not performed by the Law Offices of the Public Defender. The management of the Law Offices of the Public Defender believes this action would, to some degree, result in a duplication of the function already performed by the Riverside County Superior Court's Enhanced Collections Division and present an unnecessary financial burden on the department. The department budgeted \$174,425 and \$162,361 revenues from chargeable services for fiscal years 2008/09 and 2009/10, respectively. Based upon the amount of chargeable services, we agree that the benefits which may be derived from additional controls are not significant.



County of Riverside

INTERNAL AUDIT REPORT

2009-013

Law Offices of the Public Defender

March 16, 2010

Office of
Robert E. Byrd, CGFM
County Auditor-Controller

4080 Lemon Street
P.O. Box 1326
Riverside, CA 92502-1326



**RIVERSIDE COUNTY
OFFICE OF THE
AUDITOR-CONTROLLER**

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**COUNTY OF RIVERSIDE
AUDITOR-CONTROLLER
Robert E. Byrd, CGFM
AUDITOR-CONTROLLER**

**Bruce Kincaid, MBA
ASSISTANT
AUDITOR-CONTROLLER**

March 16, 2010

Gary Windom, Public Defender
Law Offices of the Public Defender
4200 Orange Street
Riverside, CA 92501

Subject: Internal Audit Report 2009-013: Law Offices of the Public Defender

Dear Mr. Windom:

We have completed an audit of the Law Offices of the Public Defender. Our objective is to provide management and the Board of Supervisors with an independent assessment of the adequacy and effectiveness of internal controls relative to expense reimbursements, information security, chargeable services, safeguarding of assets, and the Educational Support Program. We conducted the audit during the period November 3, 2008, through February 20, 2009, for operations of July 1, 2006, through December 31, 2008.

We conducted our audit in accordance with the International Standards for the Professional Practice of Internal Auditing. These standards require that we plan and perform the audit to obtain reasonable assurance that our objective as described in the preceding paragraph is achieved. An audit includes examining, on a test basis, evidence about the adequacy and effectiveness of internal controls, compliance with applicable government codes, laws, and regulations, and performing such other procedures as we considered necessary in the circumstances. We believe the audit provides a reasonable basis for our opinion.

Internal controls are processes designed to provide management reasonable assurance of achieving efficiency of operations, compliance with laws and regulations, and reliability of financial information. Management is responsible for establishing and maintaining adequate internal controls; our responsibility is to express an opinion on the internal controls based upon our audit.

In our opinion, internal controls relative to expense reimbursements, information security, safeguarding of assets, and the Educational Support Program are adequate and effective. A client-level accounting of chargeable services is not performed by the Law Offices of the Public Defender. The management of the Law Offices of the Public Defender believes this action would, to some degree, result in a duplication of the function already performed by the Riverside County Superior Court's Enhanced Collections Division and present an unnecessary financial

burden on the department. The department budgeted \$174,425 and \$162,361 revenues from chargeable services for fiscal years 2008/09 and 2009/10, respectively. Based upon the amount of chargeable services, we agree that the benefits which may be derived from additional controls are not significant. This report discusses findings affecting areas where internal controls may be enhanced. These findings are not substantial enough to affect our opinion of the adequacy of internal controls taken as a whole.

During the course of the audit, we discussed the results contained in this report, as well as comments and suggestions of lesser significance, with the appropriate level of management.

We thank the management and staff in the Law Offices of the Public Defender for their cooperation during the audit. Their assistance contributed significantly to the successful completion of this audit.

Robert E. Byrd, CGFM
County Auditor-Controller

A handwritten signature in black ink, appearing to read 'Michael G. Alexander', written over a horizontal line.

By: Michael G. Alexander, MBA, CIA
Deputy Auditor-Controller

cc: Board of Supervisors
Grand Jury

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Executive Summary

Audit Objective

Our objective is to provide management and the Board of Supervisors with an independent assessment of the adequacy and effectiveness of internal controls relative to expense reimbursements, information security, chargeable services, safeguarding of assets, and the Educational Support Program.

Overview

Upon request by a defendant or order by a court, California Government Code Section 27706 mandates the Public Defender to perform the following duties for persons who are not financially able to employ counsel:

- a) Defend a person charged with the commission of any contempt or offense that may be tried in the superior courts.
- b) Prosecute actions for the collection of wages and other demands not exceeding \$100.
- c) Defend a person charged in a civil litigation when, in the judgment of the Public Defender, the person is being persecuted or harassed.
- d) Represent a person in proceedings under Division 4, Section 1400 et seq. of the Probate Code and Division 5, Section 5000 et seq. of the Welfare and Institutions Code.
- e) Represent a person in proceedings under Chapter 2, Section 500 et seq. of the Welfare and Institutions Code.
- f) Represent a person in proceedings pursuant to Section 686.1 of the Penal Code.
- g) Represent a person in proceedings relating to the nature or conditions of detention, restriction, treatment, or punishments resulting from criminal or juvenile proceedings.

The court makes the final determination in each of the above cases as to whether a defendant or person is financially able to employ counsel and qualifies for the services of a Public Defender. The Public Defender shall, however, render legal services for a, b, and c above until such time that a contrary determination is made by the court (Government Code Section 27707).

Private indigent-defense attorneys are used when the Public Defender has a representation conflict, such as in multiple-defendant cases. At present, the county has contracts with three providers for indigent defense services.

According to the most recent Superior Court records (fiscal year 2007/08), 78% of the county's criminal defendants were represented at public expense. The county budgeted \$46.4 million in fiscal year 2009/10 for indigent defense; \$12.7 million of that amount was for private indigent defense.

Audit Methodology

In order to achieve our audit objectives, we performed the following:

- a) Obtained an understanding of applicable policies and procedures, laws, regulations, and ordinances.
- b) Interviewed personnel and conducted a walk-through of current practices.
- c) Evaluated the security over private and confidential information.
- d) Reviewed the accounting process for death penalty cases.
- e) Reviewed the Educational Support Program.
- f) Reviewed the capital and non-capital asset procedures.
- g) Tested transactions for propriety and conformity with established policies, procedures and legal requirements.

Conclusion

In our opinion, internal controls relative to expense reimbursements, information security, safeguarding of assets, and the Educational Support Program are adequate and effective. A client-level accounting of chargeable services is not performed by the Law Offices of the Public Defender. The management of the Law Offices of the Public Defender believes this action would, to some degree, result in a duplication of the function already performed by the Riverside County Superior Court's Enhanced Collections Division and present an unnecessary financial burden on the department. The department budgeted \$174,425 and \$162,361 revenues from chargeable services for fiscal years 2008/09 and 2009/10, respectively. Based upon the amount of chargeable services, we agree that the benefits which may be derived from additional controls are not significant. This report discusses findings affecting areas where internal controls may be enhanced. These findings are not substantial enough to affect our opinion of the adequacy of internal controls taken as a whole.

Results

Expense Reimbursements

Riverside County Board Policy D-1 (Reimbursement for General Travel and Other Actual and Necessary Expenses) establishes the policy, procedures, and standards for reimbursement of necessary and actual expenses incurred by county officers, employees, and other authorized individuals in conducting official county business. The Public Defender reinforces the implementation of Policy D-1 by issuing department-specific policies: Policy 103-Administrative (Training); Policy 103A-Administrative (Training-Related Travel Expenses); Policy 501-Purchasing (Special Services Request Procedures); Policy 503-Purchasing/Fiscal (Purchasing Requisitions); and Policy 601-Fiscal (Petty Cash).

Public Defender employees request expense reimbursements by completing and submitting a county reimbursement form with supporting receipts attached. Supervisory approval is obtained before reimbursement is processed by the accounting staff. Other types of expenditures are processed by submitting a purchase requisition form or a special service request form for management approval. An approval from the department head is required for expenditures over \$2,000.

Finding 1

Department policies are not strictly enforced. Expenses such as subscriptions, memberships, law books and videos were routinely processed without proper documentation and authorization. Of 31 vouchers reviewed, five did not have the required expense justification documented, six did not have supporting documents, and four did not have appropriate supervisory approval. Furthermore, quarterly "surprise" audits of petty cash funds of the Indio and Southwest offices by the Administrative Manager or designee were not performed as required.

Recommendation 1.1 Require all documentation and management approval for all expenses in accordance with county and department policies.

Management Reply **Concur.** "Immediate action has been taken to ensure that each expenditure has Management approval and the required documentation attached."

Recommendation 1.2 Complete the quarterly "surprise" audits of petty cash in the Indio and Southwest offices in accordance with Department Policy 601 (Petty Cash).

Management Reply

Concur. "Department Policy 601 states "The Administrative Manager or designee will conduct a "surprise" audit on a quarterly basis..." The attorney supervisors in the outlying offices will serve as "designees" and perform this function, effective the first quarter of calendar year 2010."

Results

Information Security

Board Policy A-58 (Riverside County Enterprise Information Systems Security) requires the protection of information from unauthorized use, modification, destruction, or disclosure as well as to ensure its authenticity, integrity, and availability. Public Defender Policy/Procedure 304 (Case Assignment and File Management) states that each attorney is responsible for the confidentiality, documentation, maintenance, preservation and closure of every client's file and all information relating to a client is considered confidential as defined by Evidence Code Section 250. County Information Security Office Policy ISO 5.1 (Sensitive Data Protection Policy) classifies Public Defender data as sensitive information requiring restricted access.

The Public Defender's Office maintains the following personal information in electronic and hard copy:

- Court case documents;
 - Memos, reports and e-mails between attorneys, clients, and witnesses; and
 - Personnel information.
-

Finding 2

A terminated temporary employee's system access rights to the PeopleSoft system (county's financial system) remained active because the department did not request the county system administrator to disable the employee's access rights when the employee's employment ended on April 24, 2008. ISO Policy 5.1 states that only personnel with a need to know should be authorized to have access to department-restricted data. (Upon our recommendation, management took action to have the employee's system access disabled on June 9, 2009.)

Recommendation 2

Establish procedures to ensure employees' system access rights are disabled upon termination of employment or when system access is no longer required.

Management Reply

Concur. "Immediate action has been taken to ensure that system access rights are disabled immediately after an employee is terminated from the Department. A draft policy has been developed to address this concern, with the formal policy to be finalized within thirty (30 days of the date of this audit response.

Finding 3

Security roles in the PeopleSoft system are not appropriately segregated in accordance with Auditor-Controller's Office (ACO) Standard Practice Manual (SPM) 104 (Internal Controls) to prevent an employee from having control over multiple key functions. Three

employees have roles enabling each to process vendor codes, process payment vouchers and approve payment vouchers. Two of the three employees have additional roles enabling each to process requisitions, approve requisitions, process purchase orders, and receive the purchased merchandise.

Recommendation 3 Segregate the following PeopleSoft security roles:

- Voucher Preparer and Voucher Approver.
- Requisitioner and Requisition Approver.
- Buyer (Purchase order preparer) and Receiver.

Management Reply

Concur. "Due to funding limitations, the Law Offices of the Public Defender (LOPD) Fiscal Unit is presently understaffed and a clear delineation of the roles identified above cannot be achieved at this time. However, to compensate for this staffing deficit, internal controls have been put into place to minimize any risk exposure from the lack of the required segregation of duties:

- "Currently each Fiscal staff member has the ability to prepare *and* approve vouchers. Our internal control dictates that the person who creates the voucher **cannot** approve this same voucher. If an urgent situation arises and the same person has no choice but to create and approve the same voucher, the voucher must be reviewed by Management and the voucher register must contain Management's approval.
- "Currently some of the Fiscal staff members have the ability to create *and* approve requisitions. Some staff have the authority up to \$2,500 and others up to \$10,000. If the requisition is greater than \$10,000 then it must be approved, in PeopleSoft by Management. Any requisition automatically requires document submission to Central Purchasing to create the purchase order, ergo, our second set of eyes. The only exceptions are requisitions created for our confidential business unit. Due to the sensitive nature of this information, all paperwork relating to a client must remain in this office. Our internal controls, however, do not allow the person who created the requisition to voucher from it, thereby, creating a separation of duties.
- "The LOPD **does not** have a "Buyer". What we do have are Fiscal staff members with the security role to create purchase orders in accordance with County regulations. Lack of the positions necessary to support this segregation of duties (creating a purchase order and receiving the items contained within PeopleSoft system) have initiated internal controls which have the receiver merely

satisfying that step in PeopleSoft. The actual "receiving" of items must be reflected on the face of the invoice with an "okay to pay items received" or on the attached packing slip before any receiving is done in the system.

"The Department plans to fully staff the Fiscal Unit as soon as funding allows. Segregation of duties will be fully implemented at that time."

Results

Chargeable Services

The Public Defender shall keep a record of all services rendered in that capacity (Government Code Section 27710).

Upon a finding by the court that a defendant is entitled to counsel but is unable to employ counsel, the court may hold a hearing or order the defendant to appear before a county officer to determine whether the defendant owns or has an interest in any real property or other assets that a lien may be legally imposed (California Penal Code Section 987.8). Upon conclusion of the criminal proceedings in the trial court, or upon withdrawal of the Public Defender, and after court hearing, the court may make a determination of the present ability of the defendant to pay all or portion of the legal services provided by the Public Defender (Government Code 27712).

The Public Defender's legal cost recoveries during the prior two fiscal years were:

Table 1: Legal Cost Recoveries

Programs	FY 07/08	FY 08/09
SB 90 Mandate Reimbursement Process – Dept. ¹	\$ 240,940	\$ 0
SB 90 Mandate Reimbursement Process – County ¹	268,695	0
Public Defender Services – State Mandated Programs ²	310,314	151,173
Prisoner Defense (Section 4750)	2,501	14,097
Death Penalty Cases (Section 987.9) ³	23,613	0
Other Legal Services (conservatorships, etc.) ⁴	22,397	7,890
Total	\$ 868,460	\$ 173,160

¹This program has been set aside by the Commission on State Mandates beginning 7/1/07 pursuant to AB 138, Statutes of 2005.

²Include programs such as mentally disordered offenders, mentally disordered sex offenders, mentally retarded defendants and sexually violent predators.

³The state has suspended reimbursing costs for death penalty cases since 7/1/07.

⁴The department has stopped providing other legal services beginning 7/1/08.

The SB90 mandate reimbursement process and death penalty cases programs have been suspended by the state. Several reimbursable state mandated programs, such as the mentally disordered sex offenders, mentally retarded defendants, mentally disordered offenders and sexually violent predators programs, continue to reimburse Public Defenders for qualified legal costs.

A client-level accounting of chargeable services is not performed by the Law Offices of the Public Defender. The management of the Law Offices of the Public Defender believes this action would, to some degree, result in a duplication of the function already performed by the

Riverside County Superior Court's Enhanced Collections Division and present an unnecessary financial burden on the department. The department budgeted \$174,425 and \$162,361 revenues from chargeable services for fiscal years 2008/09 and 2009/10, respectively. Based upon the amount of chargeable services, we agree that the benefits which may be derived from additional controls are not significant.

Results

Safeguarding of Assets

As described in ACO SPM, Section 913 (Capitalization Thresholds), tangible or intangible assets with significant value and useful life beyond one fiscal year are capital assets. Capital assets include building structures, land and land improvements regardless of value, as well as vehicles, machineries, and equipment with a cost of \$5,000 or more. Capitalized cost includes the value paid for the asset, sales tax, transportation charges, insurance while in transit and costs associated with preparing the asset for its intended use. The policy requires that capital assets are to be recorded in the PeopleSoft Asset Management module, and its cost depreciated over its useful life. Inexhaustible assets such as land are not depreciated.

As of October 31, 2008, the Public Defender had a total of 29 capital assets costing \$810,960, of which, 18 were purchased during the audit period July 1, 2006 to December 31, 2008.

Non-capital assets are tangible and non-tangible assets costing less than \$5,000. The Law Offices of the Public Defender uses Numara Track-It!, an asset management software, for tracking Information Technology (IT) assets including walk-away items. The walk-away items are distinguished from other non-capital assets as small portable assets that are easily converted to personal use and having a fair market value of at least \$200. Examples include video equipment, two-way radios, cameras, GPS units, and cellular phones.

Our review of existing procedures and test of selected transactions indicated that existing internal controls are adequate to ensure that assets are properly recorded, classified and safeguarded.

Results

Educational Support Program

Under Board of Supervisor Policy C-7 (Support for Employee Training and Education), employees holding positions classified as "difficult to recruit or retain" may be given assistance for paying off their outstanding student loans. In accordance with the policy, the Public Defender offers a student loan repayment program, providing each qualified employee a maximum of \$5,250 reimbursement per year, paid in monthly installments through payroll. The employee application under this program is processed and reviewed by the Public Defender Educational Support Program staff and submitted to the Human Resource Director for approval. Board Policy C-7 requires that reimbursements for training are to be authorized by the Department Head when the tuition or registration is \$500 or less, and by Human Resources and Executive Office when the amount exceeds \$500.

Public Defender Policy 103 (Training) requires that an employee seeking to attend a training to submit a training program application form for approval by his/her direct supervisor, the training coordinator, and the Public Defender.

Our review of existing procedures and test of selected transactions indicated that internal controls are adequate to ensure that employee trainings are authorized and reimbursements for training and educations are in accordance with established policies and procedures.

Appendix

**Law Offices of the Public Defender
Management Reply**

LAW OFFICES OF THE
Public Defender
COUNTY OF RIVERSIDE

GARY WINDOM
PUBLIC DEFENDER

BRIAN BOLES
ASSISTANT PUBLIC DEFENDER

BRYANT VILLAGRAN
ASSISTANT PUBLIC DEFENDER

ROBERT WILLEY
ASSISTANT PUBLIC DEFENDER

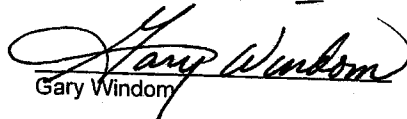


RIVERSIDE MAIN OFFICE
4200 Orange Street
Riverside, CA 92501
Telephone: (951) 955-6000
Facsimile: (951) 955-6025

January 28, 2010

TO: Auditor-Controller
Audits and Specialized Accounting Division
4080 Lemon Street, 11th Floor
Riverside, CA 92502

FROM: Gary Windom, Public Defender
Law Offices of the Public Defender
4200 Orange Street
Riverside, CA 92501


Gary Windom

SUBJECT: Reply to Draft Audit Report – 2009-013: The Law Offices of the Public Defender

Recommendation Number 1.1:

Require all Documentations and management approval for all expenses in accordance with county and department policies

MANAGEMENT POSITION: Concur. Immediate action has been taken to ensure that each expenditure has Management approval and the required documentation attached.

Recommendation Number 1.2:

Complete the quarterly "surprise" audits of petty cash in the Indio and Southwest offices in accordance with Department Policy 601 (Petty Cash).

MANAGEMENT POSITION: Concur. Department Policy 601 states "The Administrative Manager or designee will conduct a "surprise" audit on a quarterly basis..." The attorney supervisors in the outlying

offices will serve as "designees" and perform this function, effective the first quarter of calendar year 2010.

Recommendation Number 2:

Establish procedures to ensure employees system access rights are disabled upon termination of employment or when system access is no longer required.

MANAGEMENT POSITION: Concur. Immediate action has been taken to ensure that system access rights are disabled immediately after an employee is terminated from the Department. A draft policy has been developed to address this concern, with the formal policy to be finalized within thirty (30) days of the date of this audit response.

Recommendation Number 3:

Segregate the following PeopleSoft security roles:

- *Voucher Preparer and Voucher Approver.*
- *Requisitioner and Requisition Approver.*
- *Buyer (Purchase order preparer) and Receiver.*

MANAGEMENT POSITION: Concur. Due to funding limitations, the Law Offices of the Public Defender's (LOPD) Fiscal Unit is presently understaffed and a clear delineation of the roles identified above cannot be achieved at this time. However, to compensate for this staffing deficit, internal controls have been put into place to minimize any risk exposure from the lack of the required segregation of duties:

- Currently each Fiscal staff member has the ability to prepare **and** approve vouchers. Our internal control dictates that the person who creates the voucher **cannot** approve this same voucher. If an urgent situation arises and the same person has no choice but to create and approve the same voucher, the voucher must be reviewed by Management and the voucher register must contain Management's approval.
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- The LOPD **does not** have a "Buyer". What we do have are Fiscal staff members with the security role to create purchase orders in accordance with County regulations. Lack of the positions necessary to support this segregation of duties (creating a purchase order and receiving the items contained within the PeopleSoft system) have initiated internal controls which have the receiver merely satisfying that step in PeopleSoft. The actual "receiving" of items must be reflected on the face of the invoice with an "okay to pay/items received" or on the attached packing slip before any receiving is done in the system.

The Department plans to fully staff the Fiscal Unit as soon as funding allows. Segregation of duties will be fully implemented at that time.