

928

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



**FROM:** Executive Office

**SUBMITTAL DATE:**  
February 8, 2010

**SUBJECT:** Indigent Defense Trust Account Audit

**RECOMMENDED MOTION:** Receive and File

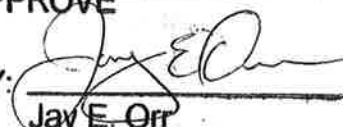
**BACKGROUND:** The Board contracts with conflict panels to provide indigent defense when the Public Defender declares a conflict. These agreements require the county to deposit funds into a trust account for so that the contractor may pay for specialized and professional services for criminal cases assigned to them. The contract also requires that the trust accounts be audited by an outside auditing firm. The Executive Office solicited bids for the trust fund audit and received four bids. The contract was awarded to lowest, responsive bidder, Harvey M. Rose Associates, LLC.

The audit found that all three contractors had adequate protocols and controls in place to ensure proper expenditure from the trust accounts. However, the audit also highlighted a number of opportunities for improvement in the management of the trust accounts, many of which the contractors have implemented. The indigent defense contracts are being amended to incorporate the recommendations from the audit.

  
Dean Deines, Deputy County Executive Officer

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

<b>SOURCE OF FUNDS:</b> N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:** APPROVE  
BY:   
Jay E. Orr

**County Executive Office Signature**

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

Departmental Concurrence

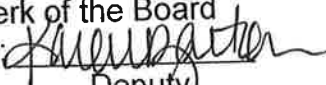
- Policy
- Policy
- Consent
- Consent

Dept Recomm.:  
Per Exec. Ofc.:

**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Stone, seconded by Supervisor Buster and duly carried, IT WAS ORDERED that the above matter is received and filed as recommended.

Ayes: Buster, Stone, Benoit and Ashley  
Nays: None  
Absent: Tavaglione  
Date: February 23, 2010  
xc: E.O.

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

Prev. Agn. Ref.: | District: | Agenda Number: **3.57** b

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

# HARVEY M. ROSE ASSOCIATES, LLC

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public sector management consulting



January 22, 2010

Mr. Dean Deines  
Deputy County Executive Officer  
Riverside County Executive Office  
4080 Lemon Street  
Riverside, CA 95201

Dear Ms. Deines:

Harvey M. Rose Associates, LLC is pleased to submit this Audit of Specialized and Professional Service Costs Incurred by Riverside County's Three Contract Indigent Defense Service Providers.

This report contains findings, conclusions and recommendations resulting from our review and analysis of the three indigent defense contractors' protocols and controls over County funds used to pay for specialized and professional services. Sample approval, invoicing and payment records were reviewed for each of the three contractors and used as the basis for our conclusions.

All three contractors were found to have adequate protocols and controls in place to ensure the proper expenditure of County funds though opportunities for improvement were identified the each of the contractors in ensuring compliance and enforcement of those protocols and controls. No evidence of fraud or inappropriate use of County funds was found in our review.

We would like to thank the County Executive Office and the principals and staff of the three contractors for their assistance and input in conducting this audit.

Thank you for this opportunity to serve the County of Riverside. Please contact us at any time if you have questions about this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "Fred Brousseau", written in a cursive style.

Fred Brousseau  
Principal

**Audit of Specialized and Professional Service Costs  
Incurred by Riverside County's Three Contract  
Indigent Defense Service Providers**

**Prepared for:**

**County Executive Office  
Riverside County**

**Harvey M. Rose Associates, LLC  
January, 2010**

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## Executive Summary

All three of Riverside County's contract indigent defense service providers have protocols and controls in place to ensure that County funds spent on specialized and professional specialized services are accounted for properly. Though the three contractors require the attorneys working for them to follow such protocols and provide certain information in their Requests for Approval and invoices for services provided for their cases, deficiencies and opportunities for improvement were found in compliance with, and enforcement of, the contractors' requirements in sample cases reviewed. It should be noted that, though deficiencies were identified, no evidence of fraud or inappropriate use of County funds intended for specialized and professional services were found.

The contractors have not established a consistent and complete set of directions and standards for information to be included in attorney Requests for Approval and vendor invoices for specialized and professional specialized and professional services. Formal written policies and procedures need to be established and disseminated to all attorneys and their vendors by all contractors to ensure greater control and accountability and to establish remedies if the attorneys and vendors do not comply with the requirements. Written agreements between the contractors and their attorneys and between the attorneys and their vendors would provide greater assurance of compliance with various billing protocols for these services.

Requirements are currently in place, though not through written agreements or formal policies and procedures for all three contractors, include requirements that: attorneys and vendors provide certain information on their Request for Approval forms and invoices; attorneys sign invoices indicating that the services have been provided; and, vendors bill in tenth of an hour increments (Barbara Brand and JDP only). These requirements are not being consistently followed by all attorneys, vendors and contractors. Further, other information should be provided as part of the approval and payment processes to provide greater assurance that vendors are being paid the correct amounts for legitimate services provided.

The contractors' written policies and procedures should include: (a) examples of expenditures that do not qualify as appropriate specialized and professional specialized and professional services to be paid for by the County Trust Account Funds, particularly for administrative tasks such as indexing files, setting up files, and placing discovery into binders; (b) written procedures for questioning unauthorized work billed and/or reimbursements for double charging, and over- and/or under-payments; (c) details on required information for initial and supplemental Requests for Approval and invoices; and, (d) average hours required for investigative tasks regularly performed by their attorneys' investigators, to be used as internal guidelines for contractor reviews of Requests for Approval and invoices.

Key information is currently not required in Request for Approval forms and invoices submitted to the contractors that could reduce the risk of duplicate or incorrect payments. Specifically, information that should be on the forms includes: complete case

identification; the number of the request (on supplemental request forms); the number of hours already approved, used, and remaining; and, travel time and start and end locations on invoices that include mileage reimbursements.

While all contractors review invoices prior to issuing checks to vendors and frequently find errors, there are still insufficient controls for detecting double charging and over/under payments. In particular, JDP does not verify the vendors' calculated totals for all invoices and there are no systematic reviews by any of the contractors to verify that the vendor is not charging for a specific activity performed on a single date in multiple invoices (double charging). In the absence of clear standards, consistent practices, thorough documentation, and sufficient internal controls, there is a risk of vendors abusing the invoicing and payment procedures for specialized and professional specialized and professional services through over billing and/or double charging.

Without written agreements between the contractors and vendors, remedies are not available to the contractor to utilize if and when abuse or an impropriety is identified. The contractors report that they have been able to adjust billing amounts prior to payment, have received reimbursements, and/or have discontinued using service providers suspected of overcharging or over-billing for hours, despite the lack of written agreements between the contractors and attorneys or vendors. Signed written agreements, however, would provide the contractors and the County with a stronger basis for questioning invoices and obtaining reimbursements for any unauthorized or inappropriate expenditures paid, should a vendor be uncooperative.

Because all contractors either (a) do not keep sufficient records to be able to track the total cost per case over several months (as opposed to the cost per case in one particular month), or (b) do not submit monthly reports with their specialized and professional specialized and professional expenditures by case, the contractors are not in compliance with their County contract requirement for providing information that allows the County to determine the cost for individual cases. While all three contractors are able to trace payments to individual cases manually, the management of information on specialized and professional specialized and professional service expenditures could be improved by utilizing electronic systems more efficiently. The ability to track total and average expenditures by case type (e.g. felony, misdemeanor, special circumstance, juvenile), service charge type (e.g. investigator, expert, etc.) and by vendor; as well as the average number of hours requested, approved, and used, by case type, can help establish and control costs per case.

## **Introduction: Audit Objectives, Scope and Methods**

Harvey M. Rose Associates, LLC was retained by the County Executive Office of the County of Riverside to conduct this *Performance Audit of Specialized and Professional Service Costs Incurred by the County's Three Contract Indigent Defense Service Providers*. This report was prepared in accordance with the powers and duties prescribed for the County Executive Officer in County Ordinance 442.3.

### **Objectives and Scope**

The County Executive Office initiated the audit to determine if the three contractors used for indigent defense services, in cases where the Public Defender's Office has a conflict of interest, are using the funds for specialized and professional services in accordance with all contractual requirements and that proper internal controls and documentation standards are in place to ensure that the funds are being appropriately used for their intended purpose.

To accomplish these objectives, the scope of the Performance Audit included an assessment of management policies and practices and a review of all specialized and professional service transactions for each contractor for Fiscal Years 2007-2008 and 2008-2009.

### **Methodology**

The audit team conducted this performance audit in accordance with *Government Auditing Standards, July 2007 Revision* by the Comptroller General of the United States. In accordance with these standards and best practices for conducting performance audits, the audit team conducted the following key tasks:

1. The audit team held an entrance conference with representatives of the County Executive Office and each contractor to introduce audit team members, describe the performance audit process and protocol, and request general information on their services and procedures.
2. The audit team reviewed the written procedures of each contractor and the written County requirements governing invoicing and payment procedures for specialized and professional services.
3. The audit team reviewed the contracts and interviewed each contractor to obtain an overview of their systems and procedures for their specialized and professional services trust account funds. A walkthrough of their electronic or manual accounting and recordkeeping systems was provided by each contractor, including: invoice documentation requirements and recordkeeping; methods for tracking costs by case; bank statement reconciliation procedures; and, procedures for dealing with questionable or poorly documented expenses. Follow up inquiries were made on the status of previous audit findings and recommendations.

4. The audit team obtained summaries of all transactions for each contractor for Fiscal Years 2007-2008 and 2008-2009 through trust account expenditure reports and bank statements. The audit team reconciled each contractor's accounting records and balance sheets with their bank statements and found that there were no significant problems in the contractors' attempts to record and track cleared transactions.
5. The audit team also reviewed the bank statements and accounting records to test if expenditures not associated with specialized and professional services for specific cases, such as bank service charges, were being reimbursed to the County's Trust Account. The audit team found that the contractors generally reimbursed the County for such fees, and only a minimal amount still required reimbursement. One contractor noted that they would reimburse the County for some outstanding bank fees charged to their account.
6. The audit team also obtained statistical data on open and closed cases for each contractor during the two fiscal years. After reviewing the data, the audit team developed a more detailed plan for conducting subsequent performance audit tests and activities.
7. The audit team developed a sampling approach and conducted a review of 66 cases as part of its in-depth field work. The audit team developed a data collection instrument to record observations made during review of invoice documentation requirements and recordkeeping over the course of five on-site visits.
8. The audit team conducted the sample review of invoice documentation requirements and recordkeeping to gather evidence pertaining to whether each contractor has adequate: (1) written policies and procedures governing billing and payment for specialized and professional services; (2) controls for authorizing specialized and professional services; (3) controls for reviewing invoices and bills, (4) capabilities for tracing payments to individual cases; and, (5) capabilities for tracking expenditures by case.
9. At the conclusion of field work activities, the audit team prepared and submitted a draft report with the findings, conclusions and recommendations to the County Executive Officer's Office and three contractors for review and to ensure factual accuracy, prior to the report being finalized. Changes to the draft report were made based on the input received, a subsequent draft report was provided to the same parties for review, and the final report was submitted to the County Executive Office.



## Overview: Three Indigent Defense Service Contractors

The County has a contract with: (1) Criminal Defense Lawyers (CDL); (2) Burns and Oblachinski, APC, doing business as Juvenile Defense Panel (JDP); and, (3) Barbara M. Brand Esq. (Barbara Brand) to provide indigent defense services for cases where the Public Defender's Office has a conflict of interest.

In accordance with provisions in their contracts, the County has established trust funds for each of the three contractors, which are used to pay for investigative services, medical and psychiatric examinations, expert testimony, language interpretation, forensic services, discovery costs, court reporter's transcripts and related case support costs. The contractors each receive monthly payments for this purpose until their funds exceed a fixed amount. The total monthly amounts deposited to the trust funds for all three contractors, and assuming that the funds were being consistently spent down and did not exceed cap amounts established in each contractor's agreement with the County, amounted to \$70,400 per month in FY 2007-08 and \$72,900 in FY 2008-09 due to a midyear adjustment to CDL's total contract amount. The total monthly amount will be \$85,400 in FY 2009-2010 when the full effect of CDL's FY 2008-2009 midyear increase is realized. If all allowable funds were spent by the three contractors each year, maximum expenditures allowed by their contracts would have been \$844,800 in FY 2007-2008, \$874,800<sup>1</sup> in FY 2008-2009 and will be \$1,024,800 in FY 2009-2010, realizing the full effect of CDL's FY 2008-2009 increase.

**Table 1**  
**Riverside County Indigent Defense Contractors**  
**Total Caseload and Specialized and Professional Expenditures**

Fiscal Year	Cases Opened			Specialized and Professional Services Expenditures		
	Contract Annual	Actual	Over / (Under) Contract	Contract Annual	Actual	Over / (Under) Contract**
FY 2007-2008	11,236 - 13,744	12,905	n/a	\$844,800	\$821,119	(\$23,681)
FY 2008-2009	10,536 - 13,544	10,702	n/a	\$874,800*	\$923,514	\$48,714

Sources: Reports on open cases and Trust Account Funds from CDL, JDP, and Barbara Brand.

\*The increase is due to an adjustment to CDL payments approved by the Board of Supervisors, effective May 2009, with monthly payment amounts increased from \$30,000 to \$40,000 per month for Riverside cases for two months of that year and from \$30,000 to \$35,000 for Southwest cases for two months of that year.

\*\* The County reports that the contractors are allowed to use unspent funds from prior years to pay for costs in excess of their annual allotment. Information was not provided on how much or from what years any amounts over contract maximums were covered by unspent funds from prior years.

<sup>1</sup> According to CDL, the monthly contract amount was increased to \$40,000 for Riverside and \$35,000 for Southwest beginning in May 2009. Therefore, the maximum expenditure amount increased from \$844,800 in FY 2007-2008 to \$874,800 in FY 2008-2009.

While specialized and professional services costs are highly variable, depending on caseload, types of cases, and the Court's practices, the contract annual maximum expenditures serve as a control for escalating costs. According to the County, it has been a long practice to allow the contractors to spend prior year funds that have been deposited in their trust accounts, unless the balances become excessive, allowing them to spend more than the annual maximum expenditure. Further, if and/or when the contractors incur more costs than could be paid from the trust account balances, bills from vendors are paid late. Though these practices serve as controls for costs, the County and contractors may require additional controls for escalating costs.

### **Criminal Defense Lawyers (CDL)**

Under the terms of Criminal Defense Lawyer's current contract with the County, CDL is required to represent adult indigent defendants in the Riverside and Mid-County (Southwest) courts, including capital, felony, violation of probation, misdemeanor and miscellaneous cases. Therefore, CDL maintains two trust accounts, one for each court, with both entitled to receive deposits of \$30,000 per month from the County for 22 of the 24 months reviewed for this audit, unless the balance in either account exceeded \$45,000. According to CDL, beginning in May of 2009, the County increased the amount to be deposited into each trust account, with the Riverside account receiving \$40,000 per month, instead of \$30,000, and the Southwest account receiving \$35,000 per month instead of \$30,000.

**Table 2**  
**CDL Contract vs. Actual Opened Cases by Case Type and Court**

	<b>Contract Annual</b>	<b>FY 2007-2008 Actual</b>			<b>FY 2008-2009 Actual*</b>			
		<b>Riverside</b>	<b>Southwest</b>	<b>Over/(Under) Contract Total</b>	<b>Riverside</b>	<b>Southwest</b>	<b>Total</b>	<b>Over/(Under) Contract</b>
Felony	2,563-3,132	2,084	1,106	3,190	1,905	711	2,616	0
Misdemeanor	1,823-2,228	1,320	855	2,175	1,292	855	2,147	0
Violation of Probation	2,422-2,960	1,323	1,146	2,469	784	970	1,754	(668)
Miscellaneous	Indeterminate	0	0	0	0	61	61	0
<b>Total</b>	<b>6,808-8,320</b>	<b>4,727</b>	<b>3,107</b>	<b>7,834</b>	<b>3,981</b>	<b>2,597</b>	<b>6,578</b>	<b>(230)</b>

Source: Criminal Defense Lawyers monthly reports to the County on opened cases

\* All FY 2008-2009 statistics for felony, misdemeanor, and violation of probations include "overload" cases, or cases in which the Public Defender has declared unavailability due to caseload.

**Table 3**  
**CDL Contract vs. Actual Specialized and Professional Expenditures by Court**

	<b>Riverside Actual</b>	<b>Contract Annual</b>	<b>Over/(Under) Contract</b>	<b>Southwest Actual</b>	<b>Contract Annual</b>	<b>Over/(Under) Contract</b>	<b>Combined Over/(Under) Contract**</b>
FY 2007-2008	\$417,910	\$360,000	\$57,910	\$280,988	\$360,000	(\$79,012)	(\$21,102)
FY 2008-2009	\$530,094	\$380,000*	\$150,094	\$285,185	\$370,000*	(\$84,815)	\$65,279

Source: Criminal Defense Lawyers monthly reports to the County on Trust Account Funds

\*Beginning in May of 2009 the Board of Supervisors approved an increase in the monthly amounts paid to CDL from \$30,000 to \$40,000 for Riverside and from \$30,000 to \$35,000 for Southwest. According to CDL, the County has not provided a copy of the addendum to the contract indicating the increased amount.

\*\* The County reports that the contractors are allowed to use unspent funds from prior years to pay for costs in excess of their annual allotment. Information was not available on how much, or from what years, the amounts shown over the contract maximums were covered by unspent funds from prior years.

**Juvenile Defense Panel (JDP)**

In accordance with its current contract with the County, Juvenile Defense Panel is required to represent juvenile indigent defendants in the Riverside and Mid-County (Southwest) courts in juvenile court proceedings (602 cases) and legal guardianship cases. The County deposits \$4,400 per month into JDP’s trust account, except when the balance of the trust account exceeds \$20,000. According to JDP, legal guardianship cases were included in their caseload in June of 2008 and the County instructed JDP to use funds from the 602 Trust Account to pay for specialized and professional services related to legal guardianship cases. The table below and the cases reviewed for the audit only reflect caseload data and expenditures for 602 cases.<sup>2</sup>

**Table 4  
JDP Contract vs. Actual  
Cases Opened and Specialized and Professional Expenditures**

Fiscal Year	Cases Opened			Specialized and Professional Services Expenditures		
	Contract Annual	Actual	Over / (Under) Contract	Contract Annual	Actual	Over / (Under) Contract
FY 2007-2008	1,328 - 1,624	1,392	0	\$52,800	\$29,585	(\$23,215)
FY 2008-2009	1,328 - 1,624	1,366	0	\$52,800	\$26,730	(\$26,070)

Source: Juvenile Defense Panel reports on open cases and Trust Account Funds

**Barbara M. Brand Esq. (Barbara Brand)**

Under the terms of the current contract with the County, Barbara Brand, Esq. is required to represent adult and juvenile (602 cases) indigent defendants in the Desert Region, including Blythe, Indio, and Palm Springs. The adult proceedings include felony, misdemeanor, violation of probation and miscellaneous cases. In accordance with the contract, Barbara Brand must maintain two separate accounts, one for adult criminal proceedings and the other for juvenile proceedings. However, the County deposits \$6,000 per month into the adult criminal proceedings account only, except when the trust account balance exceeds \$40,000. When the balance of the juvenile proceedings account

<sup>2</sup> According to Juvenile Defense Panel, from June 1, 2008 through June 30, 2009, JDP has been appointed to 198 legal guardianship cases. JDP further notes that all legal guardianship cases require investigative services, which include travel to the home of the guardian or potential guardian, photographs of the minor, and background checks on the potential guardians. According to JDP, during the audit review period, the investigator had to travel out of state at least 15 times to physically review the home and well-being of the minor. The 198 legal guardianship cases have incurred a total cost of \$31,990 for investigative services through June 30, 2009, or an average cost of \$161.57 per case. According to the contractor, JDP has been able to absorb the costs of the legal guardianship cases under the 602 Trust Account because of a decline in the 602 caseload.

falls below \$2,000, Barbara Brand may transfer funds from the adult criminal proceedings account to the juvenile proceedings account in \$2,000 increments.

**Table 5**  
**Barbara Brand Contract vs. Actual**  
**Cases Opened and Specialized and Professional Expenditures**

Fiscal Year	Cases Opened			Specialized and Professional Services Expenditures		
	Contract Annual	Actual	Over / (Under) Contract	Contract Annual	Actual	Over / (Under) Contract*
FY 2007-2008	3,100 – 3,800	3,679	0	\$72,000	\$92,636	\$20,636
FY 2008-2009	2,400 – 3,600	3,290	0	\$72,000	\$81,505	\$9,505

Source: Barbara Brand reports on opened cases and Trust Account Funds

\* The County reports that the contractors are allowed to use unspent funds from prior years to pay for costs in excess of their annual allotment. Information was not available on how much, or from what years, the amounts shown over the contract maximums were covered by unspent funds from prior years.

Table 6 below provides estimates of the average cost of specialized and professional expenditures per case based on the total caseload and expenditure data provided by the contractors.

**Table 6**  
**Average Cost Per Case for Specialized and Professional Expenditures, by Contractor**

	FY 2007-2008			FY 2008-2009		
	Actual Caseload	Actual Specialized and Professional Expenditures	Average Cost Per Case	Actual Caseload	Actual Specialized and Professional Expenditures	Average Cost Per Case
CDL	7,834	\$698,898	\$89	6,578	\$815,279	\$124
JDP	1,392	\$29,585	\$21	1,366	\$26,730	\$20
Barbara Brand	3,679	\$92,636	\$25	3,290	\$81,505	\$25

Sources: Reports on open cases and Trust Account Funds from CDL, JDP, and Barbara Brand.

## Summary of Previous Audits

In previous audits, the auditor noted that it was difficult to track checks made to the individual invoices that were being paid. Therefore, the auditor recommended that contractors write what invoices are being paid on check stubs/vouchers and check numbers on individual invoices. The same auditor also recommended that each contractor

require attorneys to (a) provide written Requests for Approval of investigative services that included the number of hours requested, previously approved, and finally approved for the subject request and (b) review and approve all invoices prior to submission to contractors for payment. Further, another auditor was concerned with cases that had multiple requests for investigations and recommended that the contractors record a chronological log number for each investigation request for a particular case. Finally, previous audits recommended that all investigators use a standard billing increment of one-tenth of an hour.

## **Acknowledgements**

Harvey M. Rose Associates, LLC would like to thank the management and staff from the County Executive Office and the three contractors that participated in this performance audit. In particular, the audit team would like to thank staff from each of the three contractors who took considerable time to discuss their billing procedures and provide much detailed information to the audit team. Throughout the audit, these individuals were cooperative and ensured that auditor requests for information were met.

## **Finding #1: Written policies, procedures and protocols needed**

- **Written procedures governing approvals, invoicing and payment for specialized and professional services have not been consistently documented by the three contractors nor systematically disseminated to all attorneys and their vendors Countywide.**

Clear written policies and procedures with expectations and standards for requesting and billing for specialized and professional services is one way to control and prevent attorneys from requesting and vendors from providing services that are not authorized or appropriate under the terms of the contract. Only the County's contract with Juvenile Defense Panel (JDP) contains a requirement for formalized policies and procedures. The other two contractors are not contractually obligated to maintain or distribute such a document though both have developed standardized request, approval and invoicing forms. Barbara M. Brand, Esq. ("Barbara Brand") does have written policies and procedures that are distributed to attorneys and investigators. Criminal Defense Lawyers (CDL) does not have formal written policies and procedures though they have developed standardized forms for use by the attorneys and their vendors.

In accordance with its contract with the County, Juvenile Defense Panel (JDP) has developed a written policy for the documentation of specialized and professional service expenditures that is disseminated to all JDP attorneys and investigators. The handbook on specialized and professional service expenditures are not provided to other service providers, such as those that provide polygraph services or psychiatric evaluations. The policy includes a description of categories of specialized and professional services, procedures for requesting approval for services, procedures and standards for billing services, and copies of all required forms. The standards include a requirement that vendor time must be billed in tenths of an hour and a set rate for mileage reimbursement.

Unlike the County's contract with JDP, the contracts with Criminal Defense Lawyers (CDL) and Barbara M. Brand Esq. ("Barbara Brand") do not require that these two contractors prepare or disseminate written policies, procedures and requirements for specialized and professional service expenditures, documentation, invoicing, and payments. However, Barbara Brand's office has developed written procedures that include detailed expectations and procedures for requests and billing, such as billing in one tenth of an hour increments. CDL has prepared a standardized approval form that is used by vendors but has not developed written procedures specifying the level of detail to be included in the approval forms or in invoices. During the audit review period, CDL did not have a standard in place regarding billing time increments.<sup>3</sup>

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<sup>3</sup> According to CDL, as of December 9, 2009, a memo was issued to all attorneys and investigators noting that all bills for investigation services must be billed in tenths of an hour increments. Implementation of the billing method will commence on January 1, 2010.

The three contractors report that they do not maintain written agreements with specialized and professional service vendors as those vendors work directly for the attorneys, not the contractor organizations. Further, they do not believe that the attorneys have agreements with the vendors defining service performance requirements and billing, invoicing and payment procedures, and dispute resolution mechanisms.

Without written agreements, the contractors' expectations about the quality of services to be provided are not formally communicated and vendors have no formal obligation to follow standard approval, invoicing and documentation procedures. Further, there are no formal reimbursement remedies in place, such as repayment to the contractor, in the event that improper billing or over- or under-payments occur. The contractors have reported that they have no obligation to use any individual vendors and could simply discontinue use of any vendors that have, for example, billed for services not actually provided or other such problems.

Written agreements could be established between the contractors and vendors, or the contractors' attorneys could be required to enter into agreements with their vendors. At a minimum, such agreements should state that the vendor: (a) has read and understands the approval, invoicing and payment policies; (b) will respond to requests for more information from the contractor to verify work; and, (c) understands that they may not get paid for the full amount of the invoice or may be required to reimburse the contractor for the payment of unauthorized or inappropriate work.

## **Recommendations: Finding #1**

- 1.1 The County of Riverside should amend its contracts with its indigent defense service provider contractors to:
  - (a) Include a requirement that all contractors develop and maintain written policies and procedures explicitly stating their information and other requirements for specialized and professional service approvals, invoicing and payment, and, that they disseminate these policies and procedures to all attorneys that they engage.
  - (b) Include a requirement that all contractors require their attorneys to provide all of their investigator and other specialized and professional service vendors with the contractors' written policies and procedures pertaining to approval, invoicing and payment.
  - (c) Mandate that attorneys engaged by the contractors maintain on file written documents signed by their specialized and professional service vendors indicating that each vendor: (a) has read and understands the written policies and procedures pertaining to Requests for Approval, reporting and invoicing; (b) understands that they must respond to all inquiries by the attorney, contractor and/or County regarding billings and payments protocols, and (c) understands that they may not get paid the full amount included in the invoice and/or may be required to reimburse the County for inappropriate or unauthorized expenditures.



**Finding #2: Contractor controls over authorizing work and fees are not consistently followed by attorneys and their vendors.**

Based on the caseload data provided by each contractor, we reviewed a random sample of 66 cases— 34 cases from CDL, 16 cases from Barbara Brand, and 16 cases from JDP<sup>4</sup>— that incurred specialized and professional service costs in Fiscal Years 2007-08 and 2008-09, the two year review period for this audit. We reviewed the contractors’ controls over:

- a) Requests for Approval;
- b) Service and fee authorizations; and,
- c) Supplemental Requests for Approval.

To the extent possible, we selected cases that were opened and closed within the audit period to capture the entire cost per case. This approach was not entirely possible because, as is typical of these types of cases, death penalty and felony homicides with special circumstances remained open for periods in excess of the audit review period.

For each of the 66 sample cases selected, we reviewed all supporting documentation associated with their expenditures, including the initial request and approval for services, vendors’ invoices, and supplemental requests for additional services, where applicable. Table 7 presents a summary of our sample including the number of vendors, invoices, Requests for Approval and supplemental request forms associated with our 66 sample cases.

**Table 7  
Results of Review of Randomly Selected  
Cases with Specialized and professional Service Expenditures**

<b>Contractor</b>	<b># Cases Reviewed</b>	<b>Total Vendors</b>	<b>Total Invoices</b>	<b>Total Requests for Approval</b>	<b>Total Supplemental Requests</b>
CDL	34	24	126	71	39
JDP	16	4	18	17	5
Barbara Brand	16	8	31	22	6
<b>Total</b>	<b>66</b>	<b>36</b>	<b>175</b>	<b>110</b>	<b>50</b>

Source: Sample invoices and Request for Approval forms from CDL, JDP and Barbara Brand.

<sup>4</sup> The audit team selected a greater number of cases for review to obtain a sample of 35 cases from CDL, 20 cases from Barbara Brand, and 15 cases from JDP, based on the proportion of each contractor’s total caseload. Based on each contractor’s actual number of cases with costs incurred during the review period and the availability of documentation (e.g. one sample case from CDL was missing documentation), only 66 cases from the three contractors were reviewed.

## 2.a: Requests for Approval

- **Attorneys are required to obtain approval from the contractor engaging them before they procure specialized and professional services from vendors and before any payments are made to those vendors. While this control reduces the possibility of vendors providing unnecessary services, or overbilling, the information provided by the attorneys on the required Request for Approval forms is inconsistent, and many attorneys provide little detail on the services they will be procuring, particularly for investigations.**
- **Barbara Brand and JDP explicitly require their attorneys to provide details about the services they plan to procure on their Request for Approval forms. CDL does not have formal procedures requiring what information must be provided in their Requests for Approval. Regardless of their information requirements, all three contractors receive Requests for Approval lacking details on services to be provided, rendering the contractors less able to assess the reasonableness of the requested services and number of proposed hours.**

Each contractor requires attorneys to complete a Request for Approval form when a case requires specialized and professional services, including information on the case requiring work (e.g. client name, case number, attorney assigned), a description of the work to be performed, the number of hours requested for investigative work, and/or an estimated dollar amount for other specialized and professional services (e.g. transcription, expert testimony, psychiatric evaluations, polygraphs). The forms are submitted to the contractor for review and approval prior to the services being provided. When the attorney requires additional work to be completed by a vendor already approved for services, the attorney must complete and submit separate supplemental request forms.

In our review of 110 attorney Request for Approval forms for specialized and professional services for our 66 sample cases, the majority of investigation Request for Approval forms submitted to the three contractors did not contain specific information about the investigative services to be provided. This is inconsistent with the written policies of Barbara Brand and JDP. As previously noted, CDL does not disseminate written policies and procedures for how to complete their standardized forms; instead, the level of detail on services to be provided in the Request for Approval is left to the attorney's discretion.<sup>5</sup>

General language such as "Review discovery" or "Interview witnesses" were common in the CDL and Barbara Brand Requests for Approval reviewed. Some requests were more specific, however, providing details on witnesses to be interviewed and/or their location,

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<sup>5</sup> According to CDL, they will mandate that a more descriptive explanation be provided for any services to be rendered. This policy would be consistent with Barbara Brand and JDP's policies and procedures for Requests for Approvals. The audit team believes attorneys and investigators should be as descriptive as possible in the Requests for Approvals so that any denials of hours by the contractors do not jeopardize the adequacy of the investigation, as could be determined in an appealed case.

crime scenes to be visited, and their location, and other information enabling the contractors to assess the appropriateness of the requested number of hours. Some of the Barbara Brand requests reviewed contained pages of details whereas others had only two bullet points of information on the form. Even though different cases require different activities for investigations, cases with similar charges and a similar amount of hours approved should have the same level of details in the Request for Approval forms.

Of the JDP sample cases reviewed for which investigative services had been procured, half of the cases were not formally requested by the attorney representing the minor, but were automatically generated as part of a six-month review of the well-being of the minor. According to JDP, under California Court Rule 5.662, a minor's counsel is also charged with "advocating, within the framework of the delinquency proceedings, that the child receive care, treatment, and guidance consistent with his or her best interest." Therefore, for every minor in a court-ordered placement, JDP's investigative services include conducting a semi-annual review of the child's placement, whether in group homes or with a guardian, and progress made under the terms of their probation. The automatic Requests for Approval for these investigative services do not contain any detail for services to be provided, in accordance with JDP's written policies. Other than those cases, JDP's attorneys' Requests for Approval for investigative work contained more specific details than those provided in the CDL and Barbara Brand cases reviewed.

We did find examples of contractors requesting more information before approving requests in some cases when the initial information provided was not sufficiently detailed. One of the Requests for Approval forms in our sample of 71 CDL requests included a note from the contractor requesting that more details be provided in subsequent request forms. The attorney for the case did provide more detailed information in subsequent requests. However, most of the other CDL request forms lacked specifics and did not have a request from CDL requesting additional details. We did not find any such requests for more information in the Barbara Brand and JDP sample cases.

## 2.b: Authorization

- **Most attorneys' requests for services are approved by the contractors but, in some of our sample cases, the contractors reduced or added to the number of investigation hours and fees requested. While this shows that the contractors are assessing the reasonableness of the requests submitted, seemingly comparable requests do not appear to always be subject to the same standards by the contractors. Though the contractors report having internal standards for such decisions and for reasonable time and cost allocations for routine investigative services, such standards are not articulated in written policies and procedures for staff, or future auditors, reviewing the reasonableness of specialized and professional services expenditures. In some of the cases reviewed, hours were added by the contractors to those requested by the attorney for reasons that were not presented in the documents reviewed.**

After the contractors have reviewed the attorneys' Requests for Approval for specialized and professional services, they authorize a number of hours for investigative work or an estimated dollar amount for other services, and then contractor staff signs the document. At CDL, only the director or one of the partners may authorize work. At JDP, only the partners may authorize specialized and professional services. At Barbara Brand's office, either Barbara Brand or her executive assistant may authorize work.

The specialized and professional services documents reviewed for 51, or most of the 66 sample cases reviewed for this audit, were for investigative services. Within the sample of 34 cases from CDL, the services linked to 29 cases were investigative; the services for the other five cases were transcription or duplication. In the sample of 16 cases from Barbara Brand, 15 had investigative services; services for the other one case was a polygraph examination. Of the 16 sample cases from JDP, services for seven were automatically generated as part of the six-month review for minors in placement, described above, two utilized psychiatric evaluation services and the remaining seven had standard investigative services.

Of the 51 sample cases with investigative services, 23 had supplemental Requests for Approval, ranging from one additional request to 13 requests for additional investigative hours on a case. Unlike the other two contractors, the CDL sample cases included misdemeanor cases with 8 to 12 hours of investigative services each. Further, CDL's sample cases included 8 vertical cases with at least 20 hours of investigative services each. Table 8 below contains summary statistics of the hours requested and approved for investigative services.

**Table 8**  
**Results of Review of Randomly Selected**  
**Cases with Requests for Approval for Investigative Hours**

	Total Hours Requested		Average Total Hours Requested	Average Total Hours Approved	Average Initial Hours Requested	Average Initial Hours Approved
	Minimum	Maximum				
<b>CDL</b> n=29	3	140	29.1	28.6	15.7	15.2
<b>Barbara Brand</b> n=15	2	53	13.2	13.4	8.7	10.5
<b>JDP</b> n=7	5	10	7.3	8.1	6.7	7.6

Source: Sample Request for Approval forms from CDL, JDP and Barbara Brand.

**Number of hours for investigations requested by attorneys are not always approved by contractors**

The contractors may approve the same, more or fewer hours than the number of hours requested by the attorney. In the sample cases reviewed for this audit, the contractors generally approved the number of hours requested by the attorney. However, in two of the 71 CDL sample Requests for Approval reviewed, the contractor approved fewer hours than requested. The attorney for the first case requested 12 hours to interview and serve two subpoenas, but CDL only approved 5 hours and noted that the 12 hours requested, seemed too “high to serve subpoenas.” A separate attorney requested 20 hours for a misdemeanor charge for resisting, delaying, or obstructing an officer. However, CDL only approved 8 hours, noting that 20 hours was too much for the specific type of charge.

A review of 22 sample Requests for Approval from Barbara Brand included two juvenile cases with fewer hours approved than requested, one from 5 hours requested to 4 hours approved and the other for 15 hours requested to 10 hours approved. No explanations were provided on the request forms for these reductions in hours. Out of our sample of 16 cases, there were no examples of JDP approving fewer hours than requested.

In the sample of CDL and Barbara Brand Requests for Approval reviewed, there was one instance each where the contractor approved more hours than requested. Each case was provided two additional hours for investigation, from 6 to 8 hours. For three juvenile cases in our sample of 16 cases, JDP approved more hours than requested. In each instance, the vendors requested less than 10 hours. According to JDP, 10 hours is the standard number of hours for such type of investigative requests, and therefore, 10 hours were approved. No such standard was reported by the other two contractors.

The ability of contractors to adjust the hours approved for investigative work is important to controlling costs and ensuring an adequate investigation. While the nature of cases and

investigative activities vary, there should be some internal standards or guidelines disseminated to staff reviewing Requests for Approvals and bills from vendors, outlining reasonable amounts of investigative hours per activity and case type. These standards could be associated with internal codes documented on each Request for Approval containing a number of approved hours that deviate from the number of hours requested. Such standards and coding could be helpful for the County and future auditors reviewing the reasonableness of specialized and professional services expenditures.

The average number of hours requested in initial Requests for Approval for the 21 CDL sample felony cases reviewed was 17.2 hours. Removing the three cases with the lowest and highest number of initially requested hours (3, 35, and 40 hours requested) results in an average of 15.8 hours requested in the initial Requests for Approval for CDL felony cases.

The average number of hours requested in the initial Requests for Approval for the eight CDL misdemeanor sample cases reviewed was 11.5 hours. Removing the outlier case with 20 hours requested in the initial Request for Approval results in an average of 10.3 hours for misdemeanor cases. Analysis such as these could be conducted by each contractor and the results used as the basis for standards or guidelines for investigation services hours. Such analyses could be further refined by analyzing regular investigative activities such as witness interviews, report preparation, etc. and used to assess the reasonableness of hours presented in Requests for Approval.<sup>6</sup>

### **Dates of approval not always recorded**

To ensure that specialized and professional services have been approved by the contractors prior to work being performed, two of the three contractors, CDL and JDP, include a space on their initial and supplemental Request for Approval forms<sup>7</sup> to record the date approval is granted. All the Request for Approval forms reviewed from CDL included an approval date, whereas only 5 of the 17 JDP Request for Approval forms reviewed, or 29.4 percent, included the approval date. Barbara Brand's Request for Approval forms do not include a space for dates of approval, though a staff member for that contractor inputs the dates of the initial approval in an electronic case database.<sup>8</sup> However, approval dates for supplemental Requests for Approval submitted to Barbara Brand's office are neither on supplemental request forms nor recorded in the electronic database. Without a way to track the date of approval for hours, the contractors could potentially pay for work performed prior to authorization.

The contractors report that some clients have had their cases opened and closed multiple times. For example, an adult client may have their case dismissed by the court, and then brought back to the court. When the case returns to court, it is assigned a new case

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<sup>6</sup> CDL cases were used for this analysis because they were the only contractor for which our sample contained a mix of felonies and misdemeanors.

<sup>7</sup> Supplemental approval forms are required when an attorney determines that hours are needed beyond those already approved for a particular case.

<sup>8</sup> Barbara Brand reports that the date of approval is now included in Requests for Approvals.

number. If investigative services were performed before the case was dismissed and after the case was reopened, CDL and Barbara Brand will track expenditures for adult cases separately under the corresponding case numbers.

The requesting attorney must submit a new Request for Approval form with the new case number, even if the same investigator is used. Having the date of approval on required forms is thus an important control for tracking expenditures in cases opened and closed multiple times. If the contractor receives a bill for work performed before the approval date under the reopened case number, the contractor could then review the invoices filed under the former case number to ensure that the vendor is not charging for work previously performed and paid for. The date of requests and approvals become more important for verifying authorized work in juvenile cases because a juvenile is assigned the same case number for all petitions and charges until they become an adult.

Because cases could be opened multiple times with different case numbers, investigators could work on multiple cases at the same time for different, or even the same, defendants, or a case could have multiple defendants, consistently having identifying information on all forms is another important control for verifying authorized services and hours. The indentifying information should include: the client first and last name, case number, internal file number (if applicable), and the attorney assigned to the case.

### **Multiple page approval forms at CDL can get separated from each other**

Attorneys working for CDL must submit three pages of forms with each Request for Approval for investigative work. The third page is an Investigation Log Sheet (required for supplemental Requests for Approval) that records the hours requested, approved, used, and remaining for investigative services. These three pages are also submitted with the vendors' invoices so that the contractor may review the requested, approved, and running total of previously approved hours with the work being billed.

The majority of our sample of 71 Request for Approvals reviewed did not provide all case identifying information such as the client's first and last name, attorney, case number, and internal file number on all of the pages. Most provided information required on the first page of the CDL forms, but the second and third pages frequently did not contain case identifying information. This proved problematic in three of our sample cases, where the approval forms did not appear to match the case listed in the other documents, either because the number of hours reported worked or approved did not match the hours recorded as approved in CDL's internal reporting system or the file numbers were different.

The lack of complete case identification on Request for Approval forms could allow the vendor to charge more hours than CDL initially approved if this is not caught by the contractors. While CDL reports that staff will contact investigators when the amount of hours billed do not seem to match the number of hours authorized on forms or in CDL's internal database, requiring that all identifying information be provided on all forms

would save the contractors' administrative time in indentifying and correcting billing mistakes.

### **2.c: Supplemental Requests for Approval**

- **When requesting additional hours for an investigation, CDL and JDP require that attorneys report the number of hours used to date and number of hours still available for the case. In our sample of cases reviewed, this information was not consistently provided by the requesting attorneys, was not always accurate when provided and, in some instances, was not provided at all. Though the Barbara Brand office does not require this information in supplemental Requests for Approval, that contractor does keep a record of such information.**

The contractors' information requirements for supplemental Request for Approval forms vary. CDL and JDP require that their attorneys provide the number of hours they have worked to date on the case. Barbara Brand's office does not require that the attorneys provide this information with their supplemental Request for Approval forms though they track this information separately in their own records.

In our review of 39 CDL sample supplemental Request for Approval forms, the status of vendor hours to date was not provided in a standard way. In some cases, the attorney or vendor provided total hours worked to date only; in other cases, the vendor provided a running tally of the number of hours approved separately in each request previously submitted and approved. In three CDL cases, the number of hours reported as worked to date was greater than the sum of total hours worked and billed in previous invoices plus hours reported worked and billed in the current invoice.

Even though there is a place on the JDP supplemental Request for Approval form for the attorney or investigator to provide the number of hours worked to date, these were left blank in all five supplemental Request for Approval forms in the sample.

As mentioned, Barbara Brand's supplemental Request for Approval forms do not require attorneys or investigators to include the current status of their previously approved hours. However, that information is available to the contractor from previously submitted request forms, which Barbara Brand staff attach to every invoice, including hours worked to date and approved hours remaining. Barbara Brand's office can easily review (a) how many request forms had been submitted and (b) the total hours approved for the case to date.

While Requests for Approval forms, authorization documents and required Investigation Log Sheets submitted to CDL with each invoice for a case are supposed to contain details on the status of case hours, the attorneys and vendors do not consistently comply with this requirement. As with Barbara Brand's records, CDL staff can obtain at least some of this information electronically because they attempt to maintain it on their Paradox



database to the extent they receive such data from the attorneys and their vendors. Information on the number of requests submitted and the total hours approved for the case to date is not compiled by JDP or reviewed with supplemental Requests for Approval.

Having an accurate record of hours approved and worked to date at the contractors' disposal when they are approving supplemental requests is an important control for preventing attorneys from requesting an unnecessary amount of hours. For instance, if supplemental work only requires five additional hours of investigation and the vendor still has three hours authorized and available for use, the attorney should only request two additional hours, rather than five.

If vendors overstate their hours worked and get more hours approved accordingly, it provides an opportunity for them to bill for all approved hours rather than only those necessary for the work to be completed. To address this risk, CDL maintains other forms and electronic databases to verify the actual number of hours worked and approved, discussed further in a subsequent section. The other contractors do not have such electronic systems in place. They can obtain this information manually by reviewing invoices, or in Barbara Brand's office, by reviewing the record of approved and used hours handwritten by staff on attached request forms. However, requiring attorneys to routinely report the status of their approved and worked hours as part of the supplemental request form would save contractor time in verifying bills and approving the appropriate amount of hours and would ensure that contractor, attorney, and vendor are all in agreement about the status of hours and fees.

## **Recommendations: Finding #2**

- 2.1 The County should require that each contractor's written policies and procedures include the following information requirements for all initial and any supplemental attorney Requests for Approval for specialized and professional services:
  - (a) Itemized planned activities (e.g. review discovery, crime scene investigation, review police reports, etc.);
  - (b) Whether or not a written report is required;
  - (c) Names or initials of witnesses to be contacted and interviewed, if available;
  - (d) Anticipated location of planned interviews;
  - (e) Consistent case identifiers on all pages, including: defendant first and last name, case number, internal file number, and attorney;
  - (f) The number of the request;
  - (g) Vendor hours approved and worked to date on the case (for supplemental requests); and,
  - (h) Other pertinent information

2.2 All contractors should adopt the following internal controls, to be codified in their written policies and procedures:

- (a) Reasons for approving fewer or more hours than requested will be documented;
- (b) Dates initial and any supplemental requests were approved will be recorded on the request forms and in contractor's electronic case tracking systems; and,
- (c) The number of requests made, total number of hours approved, hours used, and hours remaining will be tracked and recorded for each case.

### **Finding #3: Contractors frequently find invoice errors and many vendors do not provide required invoice information.**

- **Two of the contractors routinely check, find errors in, and adjust vendor invoices before paying them, according to our review of a sample of 175 invoices from 66 cases.**
- **Some invoices with errors not detected by the contractors were also found in our review of paid invoices, including one double payment for the same service.**
- **The information vendors are supposed to provide with their invoices varies by contractor and is often not provided, though such invoices are paid anyway. Standardized invoicing requirements and more easily accessible information maintained by each contractor about the status of each case would help reduce the error rate and contractor staff time spent correcting invoices.**

We reviewed a sample of 175 invoices and supporting documentation, representing 66 cases and 36 vendors as part of this audit, or an average of 2.7 invoices per case. Most of these invoices were for investigative services. Each invoice was compared to related Request for Approval forms and other documentation on file.

#### **3.a. Detecting invoice errors**

- **Of the 175 sample invoices reviewed from the three contractors, 44 submitted to CDL and Barbara Brand had mistakes in their calculations and amounts billed, the majority of which were corrected by the contractors before being paid. However, one instance of double-charging was found in a CDL invoice that had not been detected or corrected by staff.**
- **Overcharging identified in two JDP invoices reviewed had not been identified or corrected by the contractor. Though the amounts were small, if the problem is common, it could be significant when extrapolated to all cases. While the contractors should continue double checking all invoices received, the high level of error in invoices, particularly those received by CDL and Barbara Brand, is an indication of the need for more formalized attorney and vendor invoicing requirements.**

As required by all three contractors, attorneys must sign invoices verifying that the vendors' work was completed and necessary for the case. As an indicator of contractor diligence in the review of invoices, in one case from our sample, a staff member at CDL reportedly noticed that the invoice was not signed by an attorney, and sent it back to the attorney requesting review and signature and placed both the signed copy and original unsigned invoice in the file for billing.

In accordance with JDP and Barbara Brand's policies and procedures, unless otherwise specified by the attorney in the initial Request for Approval, vendors must provide attorneys with a report summarizing their activities to date with each bill prior to the attorney signing off on the invoice and submitting it to the contractor. This allows the attorney to compare the results of the activities billed to the work initially requested by the attorney. According to CDL, each individual attorney decides if a written report is necessary for the case and/or for verification that the work requested was completed.

Of the 126 invoices from CDL reviewed, the amount to be paid by CDL was adjusted by the contractor on 33 invoices, or 26 percent of the documents reviewed. According to CDL, these adjustments were made when:

- a. the wrong mileage or hourly billing rate was used;
- b. the vendor miscalculated total amounts;
- c. the number of hours billed exceeded the total hours approved;
- d. work was completed after the case was closed;
- e. the vendor charged for work that CDL does not believe it should pay for, particularly administrative work such as "setting up a file," "indexing," and "organizing and placing discovery into binders;" and/or,
- f. the bill was for both Riverside and Southwest cases (mostly invoices for duplication services) and CDL paid the invoice with two smaller checks, one from each trust account.

In the review of CDL invoices, we found one instance of double charging that had not been identified by contractor staff. Two separate invoices from one vendor for the same case, one dated October 31, 2007 and the other dated November 15, 2007, included an activity with the same date (November 1, 2007), activity description, and time spent (1.75 hours). This type of double charge is difficult to catch unless all invoices for a case are reviewed side by side.<sup>9</sup>

None of the contractors keep records or manage information in a way that would allow for systematic review for double-charging. Currently, all contractors sort invoices by month, vendor and/or check number. Even with electronic systems that can sort expenditures by case, the total invoice amount is difficult to use as a control for double billing because a vendor may perform various activities for one invoice, and therefore, the total current invoice amount will probably be different from previous invoice amounts. The only set of controls available to contractors at this time is to check to make sure the date of the activities fall within the invoice billing period. Contractors could attach all previous invoices to the current invoice, or input all activities itemized in invoices for a case into an electronic database to make it easier to identify double charging. Ideally, individual activities, dates of the activities, mileage and time spent on each activity should be input into an electronic system and tracked by case. However,

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<sup>9</sup> CDL reports that, after our audit field work was concluded, the double-charge error in the amount of \$43.75 was repaid by the offending investigation firm, with an apology.

given the contractors' limited availability of such electronic systems and the time it would take to input each activity, a more feasible solution is to attach copies of all previous invoices to the current invoice being reviewed.

Of the 31 sample invoices reviewed from Barbara Brand's office, eight, or 25.8 percent, were adjusted by the contractor for (a) using the wrong mileage rate, (b) billing more hours than authorized, and (c) billing more time for activities than considered reasonable. For instance, one vendor charged .2 hours for phone calls made to witnesses with only messages being left. Barbara Brand reduced the time charged for these activities to .1 hours.

Of the 18 sample invoices reviewed from JDP, we found two examples of overcharging, by way of incorrect arithmetic, to the benefit of the vendor. JDP staff do not check the arithmetic and totals on all of their invoices, but instead, spot check two to three invoices per month and review the general reasonableness of work performed. After the review of invoices, JDP confirmed speaking to the vendor in question, who said they would be more careful with their totals for future invoices.

### **3.b: Information provided by vendors in invoices**

- **Each contractor requires different information on their vendor invoices. For example, only CDL requires that investigators provide an Investigation Log Sheet with detail on hours previously approved, used and still available. While potentially a good control, our review of a sample of invoices shows that many CDL vendors do not provide all required information in the Investigation Log Sheet. However, the vendors are still paid because the information requested in the Investigation Log Sheet can be obtained or calculated from information on CDL's electronic database, Paradox.**
- **All three contractors need standards regarding reporting mileage and travel time and case identification to ensure that billings are being attributed to the correct cases.**

Each vendor submits one invoice per case per billing period, which can be monthly or semi-monthly, or over multiple months depending on the timing of the investigation. Our review of 175 invoices from 36 vendors showed that the information provided on invoices is not standard across vendors.

Vendors had at least one piece of identifying information on the invoices such as a defendant name or case number, but not all of the identifying information such as the defendant's first and last name, attorney, court case number, and internal contractor file number. This poses a problem given that some defendants have multiple cases and/or some cases have multiple defendants. Invoices should, therefore, include at least the case number, internal case number (if applicable), first and last name of defendant, and attorney. Without this information, vendors could possibly bill for services that did not

receive required approval. For example, one CDL case reviewed had 15 defendants, but not all of the attorneys requested investigation services. Further, the vendor did not always include the names of defendants for whom the services were provided, making it difficult for the contractor to verify that the services had been previously requested and approved.

All of the investigator vendors included dates for when work was performed, a description of the activity performed, time spent on each activity and miles traveled, if necessary. However, not all investigator vendors included a start and end location when there was a charge for mileage, nor did all vendors separate out travel time. Without requiring such information, vendors could misrepresent their start location and put mileage starting from their office when they were coming from a location closer to the crime scene, client or witness location. Investigators could also already be in the same city for another case and charge travel time and mileage for both cases. There were two examples from CDL, in which the contractor noted that they were splitting travel time and mileage between two cases or were charging all mileage and travel time on another case.

A detailed review of CDL invoices showed that total miles, total hours, and total dollar amounts for the invoice were included by most, but not all, vendors, requiring the contractors to calculate some of the totals to ensure proper payment for the vendors that don't provide this information. Of the 126 invoices reviewed from CDL, 89, or 70.6 percent of the invoices included total miles, total hours, and total dollar amounts per case within a billing period. Only 85 invoices, or 67.5 percent of the sample of 126 CDL invoices reviewed, included total hours authorized, used, and hours remaining on their invoices. Such information serves as an important control for paying vendors no more than previously approved amounts, or preventing unnecessary approval for more investigative hours. Vendors for all contractors should include this information to save the contractors from having to calculate the totals twice while verifying invoices for payment, once to get the totals the first time and then again to catch mistakes in calculations. JDP and Barbara Brand invoices were not reviewed for this level of detail.

CDL investigator vendors are supposed to include an Investigation Log Sheet with their invoices that includes the following information for all invoices:

- date of request for hours billed;
- date of approval for hours billed;
- hours requested and approved;
- hours used;
- hours remaining; and,
- date or invoice number.

Only one CDL investigator vendor in our sample completed all Investigation Log Sheet information requested, including the invoice date or number corresponding to the current

invoice and previous invoices. At present, CDL inputs reported hours approved, date of approval, and hours used in their internal Paradox database. The date and hours requested are available on the Request for Approval. Though all of the information requested on the Investigation Log Sheet is available in the Paradox database or the Request for Approval, with the exception of the number of hours remaining, the Investigation Log Sheet still serves as a good tool to control costs because it shows a running tally of hours requested, approved, used and remaining. If the Investigation Log Sheet is completed accurately, the contractor could, at a glance, notice patterns of (a) an attorney requesting more hours than typically approved, (b) an attorney requesting more hours when there is sufficient hours remaining, and (c) investigator vendors billing for more hours than approved and/or remaining. Therefore, CDL should require investigator vendors to complete the Investigation Log Sheet in order to receive payment.

All investigator vendors should include this information on all of their invoices so that the contractors can identify any discrepancies between the running total of hours as calculated by the vendor and as calculated by contractor staff. As previously mentioned, Barbara Brand handwrites the total hours used and remaining on copies of request forms attached to each bill for review. Currently, JDP does not track the total hours used and remaining electronically nor on forms when there are multiple invoices for one case. The County should consider requiring all contractors to use a tool similar to CDL's Investigation Log Sheet to record the hours approved, used, and remaining.

Previous audits suggested that vendors should bill by tenths of an hour. The written policies and procedures from JDP and Barbara Brand have included these standards, while there is no similar standard in CDL's policies and procedures. Barbara Brand also requests billing by quarter hour increments if that results in a lower amount than billing in tenths of an hour so that, if an activity took only 15 minutes, the vendor would bill .25 hours as opposed to .3 hours. It is clear from the JDP sample that vendors are following this standard of billing time. A majority of the vendors in the Barbara Brand sample followed that office's guidelines. In contrast, vendors in the CDL sample used various methods of billing time, and billing by quarters or half of an hour was more common than billing by tenths of an hour.<sup>10</sup>

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<sup>10</sup> As previously noted, CDL reported that the implementation of tenths of an hour billing increments will commence on January 1, 2010.

### **Recommendations: Finding #3**

- 3.1 The County of Riverside should require that all indigent defense service contractors, their attorneys and vendors adhere to the following policies and procedures regarding invoices for specialized and professional services:
- (a) Review all invoices to ensure that the work performed is consistent with what was described in the Request for Approval and the number of hours approved and was conducted after the date of approval and before the case was closed;
  - (b) Verify that all calculations on the invoices are correct, including use of the correct mileage and hourly rates for investigations;
  - (c) Verify that the dates of each activity are within the billing period for the invoice;
  - (d) Judge the reasonableness of time spent on each activity relative to contractor adopted guidelines and standards, particularly for routine investigation activities; and,
  - (e) Bill in increments of tenth or quarter hours, whichever is lower.
- 3.2 The County of Riverside should require that all indigent defense service contractors require that the attorneys they engage adhere to the following policies and procedures regarding invoices for specialized and professional services:
- (a) Invoices will include all case identifiers described above; travel time, start and end locations when requesting reimbursement for miles; accurate total miles, total hours, and total dollar amounts; billing by the tenths or quarter of an hour, whichever is less; and total hours authorized, used and remaining on the case.
  - (b) Attorneys are to ensure by their signature on the invoice that the work performed was consistent with what was described and authorized in the corresponding Request for Approval and that the dates for which hours are billed were after the date of approval for investigative work and before the case was close.
  - (c) Examples of investigative activities that would not be subject to payment by the contractors include: (i) work performed over the number of hours approved; (ii) worked performed after the date a case was closed; and, (iii) administrative activities that are not considered investigative, such as setting up files, filling out required paperwork for the contractor, indexing, or placing discovery into binders.



**Finding #4: Contractor monitoring and reporting of specialized and professional service expenditures could be improved.**

- **The County requires each contractor to maintain sufficient records to enable the County to identify the total cost of representing each individual. While each contractor maintains records on the number of cases opened and closed and their total expenditures for specialized and professional services for each month, only CDL currently tracks total expenditures per case in an electronic database.**
- **All contractors are not submitting reports in a format that allows the County to track costs per case. As part of determining costs per case, individual payments for services can be manually traced to individual cases by all contractors, but tracking and monitoring individual payments, by case, could be expedited through more efficient use of electronic cost tracking systems.**
- **None of the contractors maintain sufficient records to easily track average costs per case, by case type (e.g. felony, misdemeanor, special circumstance, and juvenile). Though the County currently does not require this information, specialized and professional service expenditure data per individual case could be combined with attorney fees per case to determine the average cost per case, by case type. The data could serve as a benchmark for (a) reviewing outlier cases with above average expenditure costs for the type of case, (b) comparing specialized and professional costs across contractors and with other counties, and (c) making adjustments to contract amounts.**

Once the services recorded in each invoice have been verified and the billing amount has been accordingly adjusted, each contractor then writes a check to the vendor using funds from their County Trust Account Fund(s) for specialized and professional services. Information on the payment made to vendors is then tracked differently by each contractor.

### **Contract Requirements for Records and Reports**

A review of the contracts between the County and the three contractors indicates that the County required the same caseload statistics and fiscal recordkeeping and reports for Fiscal Years 2007-2008 and 2008-2009. Under Section 11 of each contract, the County requires each contractor to “keep sufficient records to enable [the] County to establish the cost of representing each individual in court proceedings and allow [the] County of Riverside to attempt to recover such costs from whoever may be obligated to reimburse the County.” Though their contracts require the contractors to submit monthly reports with the information detailed below, the County reports that they no longer require monthly submission of these reports. The contractors are reportedly required to maintain

caseload and expenditure data and must provide the detailed data below to the County only upon request.

- *Caseload Statistics*
  - Open and Closed Cases
    - Name of defendant
    - Case number
    - Charge
    - Disposition
    - Whether attorneys represented the defendant in a trial
  
- *Expenditures of Trust Account Funds*
  - Expenditures for Specialized and Professional Services
    - Vendor
    - Type of expense (e.g. investigation, expert, etc.)
    - Client/Case identifier (not name and/or case number of defendant)
    - Amount of expense
    - Current balance of account

In order to determine the cost to the County to provide specialized and professional services for each individual in court proceedings, the audit team requested the monthly reports submitted to the County on open and closed cases and expenditures of trust account funds. Only CDL provided caseload and expenditure data by month. The caseload information provided by CDL contained the name of the defendant, case number, open and closed dates, and whether the case went to trial.

Barbara Brand and JDP did not provide the monthly reports submitted to the County, but provided summary total caseload and expenditure data for the audit review period. The caseload data provided by Barbara Brand were for juvenile cases, adult felonies, misdemeanors, violation of probation, and other miscellaneous cases and contained the case number, charge, open and closed dates. JDP provided caseload data for juvenile cases that included the case number, last name of the minor, attorney, charge, and the date the case was opened.

## **Tracking Systems Used for Payments and Cases**

A review of each contractor's recordkeeping for payments found that all contractors enter payment information into an electronic accounting system or ledger. The information included in the ledger by all contractors are: (a) date of payment; (b) check number; (c) name of vendor/payee; (d) type of service; and, (e) the payment amount.

### *Tracing payments to individual cases and vice versa*

As noted above, all vendors submit individual invoices for each case. Because vendors may be working on multiple cases in one billing period and contractors write checks monthly or bi-monthly, vendor payments can cover multiple cases. As a result, with the

existing accounting and record systems of each contractor, it can be difficult to trace payments to individual cases.

A review of the three contractors' recordkeeping revealed that, currently, the contractors can only trace payments to individual cases by going through paper files of invoices. At CDL, a check voucher is attached to at least one invoice. If the payment requested from CDL is for multiple cases, the check voucher is attached to a cover sheet for the billing period listing all the cases billed for that period, along with a copy of each individual case invoice. Barbara Brand's office includes a check number written on the top invoice in a stapled stack of invoices paid off by one check. There is no itemized sheet listing all cases and billed amounts for each case paid by one check at Barbara Brand's office. Similar to CDL and Barbara Brand, JDP keeps all of the invoices paid by one check together. Notes attached with total payments for multiple invoices are provided on the top page of the invoices attached together. These notes, however, do not include a check number and can only be traced back to the ledger based on the amount, vendor name, and an assumption of when the check was made.

Checks paid to individual vendors should be tied to individual cases to reduce the risk of having an invoice go unpaid, or inadvertently making multiple payments for the same invoice. Therefore, JDP should include the check number for payments with the associated paper invoices. Further, JDP should discontinue its current system of recording payment notes on post-its and attaching them to the invoices because these can easily be lost or misplaced, as occurred for one case reviewed for the audit.

Like CDL, JDP should have vendors attach a cover sheet itemizing all cases included in the invoice and the total amount(s) for the billing period so the invoices can be easily traced to the payment on the electronic ledger. Because Barbara Brand vendors submit invoices for different cases at different times, and Barbara Brand may choose to pay multiple invoices from that vendor at one time, the vendor would not likely submit a cover sheet listing all the cases to be included in one payment. As previously mentioned, Barbara Brand's office handwrites the total for all invoices paid by one check on the top invoice of the stack of associated invoices. Given the relatively smaller number of cases with expenditures and fewer vendors at Barbara Brand's, as compared to the other contractors, this method appears to be sufficient for Barbara Brand.

Only one contractor, Barbara Brand, included client/case identifier information in their electronic accounting system or ledger, in accordance with the requirements in the contract to track costs per case. The client/case identifier information is an internally generated file number (e.g. 2008-111, 2009-17), such that the County would not be able to identify the name or case number of the defendant. However, if needed, Barbara Brand could obtain the name and case number of the defendant for each case that required specialized and professional services and expenditures by referring to an internal database that includes the internally generated file number. Further review of the ledger, however, revealed that the client/case identifier information was not input consistently for all checks issued by Barbara Brand. The ability to electronically trace checks paid to individual cases is significant because over time, paper files may either be placed in less

accessible storage units or completely misplaced. Electronic systems are recommended for back up and long term tracking and monitoring of expenditures.

### *Tracking and Reporting Expenditures by Case*

As previously discussed, the County is interested in establishing the cost to represent each individual, and, as part of that, specialized and professional expenditures per case. At present, CDL is able to track all specialized and professional services and expenditures by case through its electronic Paradox database. Information input into the database includes:

- *Client/Case identifiers*
  - Defendant first and last name
  - Case number
  - CDL internal file number
  
- *Requests for Specialized and professional Services (Initial and Supplemental)*
  - Date of request
  - Type of service requested (e.g. investigator, expert, etc.)
  - Vendor name
  - Hours and/or amount approved
  - Notes/comments if more information regarding the service was required prior to approval
  - Date of approval
  
- *Invoices for Specialized and professional Services*
  - Date of invoice
  - Type of service (e.g. investigator, expert, etc.)
  - Vendor/payee name
  - Hours used
  - Hourly rate for service
  - Amount billed for hourly service
  - Amount billed for other expenses (e.g. mileage reimbursement, transcription, etc.)
  - Total amount billed in invoice
  - Details regarding expenditures (e.g. number of miles, mileage rate, number of copies, rate for copies, etc.)

With the above information input into their electronic system, CDL is able to run billing summary reports that includes the following for each case to date: (a) expenditures, (b) number of hours approved, and (c) number of hours used.

Barbara Brand's office reports that they currently do not track expenditures by case electronically. The contractor uses Excel software to generate and keep track of internal file numbers for cases with expenditures. This Excel database includes the following information:

- *Client/Case identifiers*
  - Defendant first and last name
  - Case number
  - CDL internal file number
  - Attorney
  
- *Requests for Specialized and professional Services (Initial Only)*
  - Vendor Name
  - Hours and/or amount approved
  - Date of approval
  
- *Invoices for Specialized and professional Services*
  - None

Because the Excel database does not include information on supplemental Requests for Approval for specialized and professional services or the information recorded on invoices, Barbara Brand's office is unable to track total expenditures by case through this database. According to Barbara Brand, Quicken, the office's electronic accounting system, is capable of tracking expenditures by case, but is unable to do so for the purposes of this audit because of the way data is currently input. However, Barbara Brand notes that their office can arrange data in the program, such that reports of expenditures per case may be retrieved for subsequent audits.

At present, JDP does not track expenditures by case. According to JDP, it is difficult to track and report expenditures by case because each juvenile's case can be opened and closed several times. Although the courts do not assign juveniles a different case number with each subsequent petition until they become adults, this does not preclude JDP from assigning internal file numbers for each separate petition per defendant, much like adults are provided a separate internal CDL file number for each separate case per client. The internal file number could be input into an electronic database and used to track expenditures per juvenile client, per petition.

In the absence of sufficient data on expenditures per case, neither the contractors nor the County can easily: (1) determine the average cost per case by case type (e.g. felony, misdemeanor, special circumstance, and juvenile); (2) identify outliers with expenditures above the average cost per case type; or, (3) adjust contract amounts for specialized and professional expenditures for each new contract or contract renewal based on actual costs. Use of readily available, inexpensive computer software, such as Microsoft Excel, that can aggregate and sort case and expenditure data could expedite the County's ability to determine the average cost per case by case type.

## **Recommendations: Finding #4**

4.1 The County should require that each contractor:

- (a) Assign, record, and track internal file numbers for each case with specialized and professional expenditures by defendant and case. For juvenile defendants, a separate internal file number should be generated for each separate petition and each semi-annual review of the minor's well being.
- (b) Include the internal file numbers as a case identifier in the monthly reports of expenditures of Trust Account Funds, in addition to the vendor, type of service, amount of expense, and current balance of the account.
- (c) Include in the paper documents associated with each payment from Trust Account Funds: (a) individual invoices for each case paid by the check; (b) a coversheet that includes the cases, amount for each case, and total amount paid or to be paid to the vendor by the contractor; and (c) the check number for the final payment to the vendor.
- (d) Input into an internal electronic system for each case with specialized and professional expenditures, at a minimum: (a) case identifiers such as the defendant's first and last name, case number, internal file number, attorney, and type of case (e.g. felony, misdemeanor, special circumstance, juvenile); (b) information on requests for specialized and professional services such as the dates of the request and approval, type of service (e.g. investigator, expert, etc.), vendor name, number of requests, number of hours or dollar amount approved; and (c) separate entries on expenditures made on the case that include the date of the invoice, type of service, vendor, hours used, amount of other expenses, total amount billed on the invoice, and the check number for payment.
- (e) Utilize a readily available, inexpensive electronic software that is able to run reports using the above information and provide: (a) the total expenditures, number of requests, hours approved, used, and remaining on a particular case; (b) average cost per case and/or by case type (e.g. felony, misdemeanor, special circumstances, juvenile); (c) total and average cost per service charge type (e.g. investigator, expert, etc.); (d) total and average expenditure per vendor; and (e) average number of hours requested, approved and used per case type.