

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



ITEM
3.25
(ID # 7917)

MEETING DATE:

Tuesday, October 23, 2018

FROM : PUBLIC DEFENDER:

SUBJECT: LAW OFFICES OF THE PUBLIC DEFENDER: Approval of One Immigration Subject Matter Expert Attorney, and One Support Staff Paralegal for Legal Assistance to Non-Citizen Clients. Approve and Direct the Auditor-Controller to Adjust the Budget According to Schedule A, and Amend Salary Ordinance No. 440 pursuant to Resolution No. 440-9092 submitted herewith; All Districts. [\$301,334 total - General Fund Contingency 100%, Ongoing Cost] (4/5 required)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and direct the Auditor-Controller to make the budget adjustments on the attached Schedule A.
2. Amend Salary Ordinance No. 440 pursuant to Resolution No. 440-9092 submitted herewith. Per the Resolution, add the following positions:

Ord. 440	Class Code	+/-	Class Title	Salary Plan	Grade	Salary
24001	78553	+1	Dep. Public Defender III	DAT	106	\$98,182 - \$146,690
24001	78506	+1	Paralegal II	SEU	378	\$45,515 - \$71,738

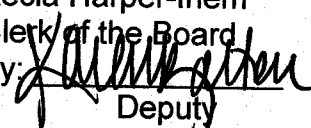
ACTION: (4/5 Vote Required) 4/5 Vote Required, Position Added


Steven Harmon, Director Public Defender 10/11/2018

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended and that Resolution 440-9092 is adopted as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
Nays: None
Absent: None
Date: October 23, 2018
xc: Public Defender, HR, Auditor

Kecia Harper-Ihem
Clerk of the Board
By: 
Deputy
3.25

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 226,001	\$ 301,334	\$ 301,334	\$ 301,334
NET COUNTY COST	\$ 226,001	\$ 301,334	\$ 301,334	\$ 301,334
SOURCE OF FUNDS: General Fund Contingency 100%			Budget Adjustment:	Yes
			For Fiscal Year:	18/19

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Law Offices of the Public Defender (LOPD) has a constitutional obligation to render effective legal assistance to its noncitizen clients. Pursuant to the United States Supreme Court decision in *Padilla v. Kentucky*, 559 U.S. 356 (2010), constitutionally adequate assistance of counsel includes giving specific and accurate advice to clients about the immigration and deportation consequences of criminal convictions. Adequate legal assistance also includes defending against those consequences including during plea negotiations in order to avoid or mitigate these consequences.

In California, the obligation to provide accurate advice about the immigration consequences of a criminal disposition is statutory as well as constitutional. In 2015, the California Legislature enacted Penal Code section 1016.3(a), which codified the constitutional requirement that defense counsel must “provide accurate and affirmative advice about the immigration consequences of a proposed disposition, and when consistent with the goals of and with the informed consent of the defendant, and consistent with professional standards, defend against those consequences.”

Defendants who are misadvised or not advised at all of the immigration consequences of criminal convictions may often suffer irreparable harm to their present or future immigration status. This harm can also potentially include mandatory detention, deportation, and permanent separation from close family members. Once a person is deported, especially after a criminal conviction, it is extremely unlikely that he or she is ever permitted to return. Moreover, from a constitutional and statutory perspective, any failure by the Law Offices of the Public Defender to deliver timely and accurate expert immigration advice to its noncitizen clients could result in malpractice claims alleging ineffective assistance of counsel. Such claims, whether individual or collective, could result in lawsuits and severe financial consequences.

There is a broad consensus among experts that providing indigent criminal defense immigration subject matter specialists are an indispensable aspect of effectively representing noncitizen indigent criminal defendants. So-called “criminal-immigration” law – the law governing the immigration consequences of crimes – is highly technical and complex. Particularly since federal immigration reforms enacted in 1996, U.S. immigration laws have become more deeply

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entwined with criminal statutes, and the law continues to develop in its complexity. Criminal defense attorneys, including Deputy Public Defenders, have broad experience in criminal law but generally lack the expertise required in this difficult area of the law to make them truly effective advocates for their noncitizen clients. They receive trainings and reference materials in immigration law but this is not enough. The Law Offices of the Public Defender services thousands of clients per year including many who are noncitizens with potentially avoidable immigration consequences. Fulltime immigration expertise from immigration law specialists as needed in order for LOPD to meet the baseline needs of its attorneys and clients is hence required.

Dedicated immigration subject matter experts in Public Defender Offices serve a number of crucial roles. In individual cases, they help attorneys research and identify potential immigration consequences so as to identify ways to mitigate them. This is particularly important in complex and time-consuming cases or cases that deal with unusual immigration issues. Immigration subject matter experts also help to educate the Office as a whole through timely trainings, updates in the law, and ensuring staff have sufficient and current reference materials on criminal-immigration issues. Finally, immigration subject matter experts develop and implement office-wide protocols to ensure that noncitizen clients are adequately represented. This includes establishing systems to improve office practices, conduct intakes, and secure expert consultation in particularly difficult cases.

At the present time, the Law Offices of the Public Defender has a protocol in place that has a specific attorney staff member in each of its branch offices (Riverside, Riverside Juvenile, Southwest, Banning, and Indio) assigned to research and advise other attorneys on immigration issues. However, all of these staff members have other obligations and are not fulltime immigration specialists by virtue of training, background, or expertise. The Law Offices of the Public Defender, consistent with its legal and ethical obligations, hence seeks to bolster its immigration expertise and practice by requesting a budget adjustment in order to add one Deputy Public Defender III position at this time who will be dedicated specifically to immigration law. In addition, one Paralegal II position is requested to provide staff support for the dedicated immigration attorney position.

This will be an ongoing cost of \$301,334 in future fiscal years however, this fiscal year 18/19 it's less due to the late start of the program.

Impact on Residents and Businesses

If accurate legal advice regarding immigration consequences of a criminal case disposition is not provided, potentially members of this county would be subject to deportation proceedings which would remove them from their families and jobs, greatly impacting those families and businesses.

Attachments

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
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- 1 - Schedule A
- 2 - Resolution 440-9092

SCHEDULE A. BUDGET ADJUSTMENT FY18/19

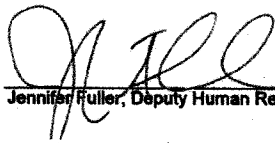
Decrease appropriations:		
10000-1109000000-581000	Appropriations for contingency	\$226,001
Increase unassigned fund balance:		
10000-1109000000-370100	Unassigned fund balance	\$226,001
Increase appropriations:		
10000-2400100000-510040	Regular salaries	\$163,821
10000-2400100000-518100	Budgeted benefits	<u>62,180</u>
	Total	\$226,001
Use of unassigned fund balance:		
10000-2400100000-370100	Unassigned fund balance	\$226,001


Sandy Armijo

10/12/2018


Ryan Carter, Principal Management Analyst

10/16/2018


Jennifer Fuller, Deputy Human Resources Director

10/11/2018

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2
3 RESOLUTION NO. 440-9092

4 BE IT RESOLVED by the Board of Supervisors of the County of Riverside, State of California, in
5 regular session assembled on October 23, 2018, that pursuant to Section 4(a)(ii) of Ordinance No. 440, the
6 Public Defender is authorized to make the following listed change(s), operative on the date of approval, as
7 follows:

<u>Job Code</u>	<u>+/-</u>	<u>Department ID</u>	<u>Class Title</u>
78553	+ 1	2400100000	Deputy Public Defender III
78506	+ 1	2400100000	Paralegal II

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12 ROLL CALL:

13 Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley
14 Nays: None
15 Absent: None

16 The foregoing is certified to be a true copy of a resolution duly
17 adopted by said Board of Supervisors on the date therein set forth.

18 KECIA HARPER-IHEM, Clerk of said Board

19 By 

20 Deputy

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27 /tc
10/11/2018
28 440 Resolutions\TC

10.23.18 3.25