

COUNTY OF SACRAMENTO  
CALIFORNIA

**APPROVED**  
BY RESOLUTION #2006-0012 For the Agenda of:  
BOARD OF SUPERVISORS January 17, 2006

JAN 17 2006

By Cindy H. Turner  
Clerk of the Board

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To: Board of Supervisors  
From: Conflict Criminal Defenders  
Subject: Memorandum Of Understanding With The Sacramento County Bar Association  
Contact: Fern Laethem, Executive Director, Conflict Criminal Defenders 874-6535

**Overview**

United States and California constitutional provisions and statutes obligate Sacramento County to provide indigent individuals charged with criminal conduct counsel, at all phases of proceedings. The Office of the Public Defender provides primary representation. Since 1994 secondary representation has been provided by private attorneys who are members of a Sacramento County Bar Association panel, through a Memorandum of Understanding between Sacramento County and the Sacramento County Bar Association. The current Memorandum of Understanding was executed in 1997.

**Recommendation**

Approve the attached Memorandum of Understanding and resolution authorizing County Executive Terry Schutten to execute the attached Memorandum of Understanding, (which has been approved by County Counsel), with the Sacramento County Bar Association, on behalf of Sacramento County.

**Measures/Evaluation**

Sacramento County is obligated to provide secondary indigent criminal defense services. County studies in 1992, 1997, and 2002, of the various methods for delivering secondary indigent defense services, all resulted in findings that the current system, with the structural changes and modifications made over the years, is the most effective and efficient way to provide for secondary indigent defense representation.

**Fiscal Impact:**

The agreement does not deal with or make changes that impact on budgetary matters. Attorneys on the Sacramento County Bar Association Indigent Defense Panel are paid on an hourly basis with rates last approved by your Board on February 5, 2002. Funds for attorney costs are available within Conflict Criminal Defenders Legal Services Account in the Fiscal Year 2005-06 Adopted Final Budget.

**BACKGROUND:**

On July 1, 1997, Sacramento County and the Sacramento County Bar Association executed a Memorandum of Understanding, to provide for the delivery of secondary indigent defense services. Since that time significant structural changes have taken place both in the County and the Court that renders the 1997 Memorandum of Understanding, for all practical purposes obsolete.

Memorandum of Understanding with The Sacramento County Bar Association

Page 2

Beginning in 2004, Sacramento County entered into negotiations with the Sacramento County Bar Association for the purpose of drafting a revised Memorandum of Understanding. These negotiations resulted in the attached Memorandum of Understanding.

Approving the Memorandum of Understanding and authorizing the County Executive to sign the Memorandum of Understanding on behalf of Sacramento County will enable Conflict Criminal Defenders and the Sacramento County Bar Association to operate within a Memorandum of Understanding that reflects current practice in the Court and Conflict Criminal Defenders.

**DISCUSSION:**

The 1997 Memorandum of Understanding does not reflect current practice, structure, and procedures, both in the Court and Conflict Criminal Defenders. It is also not reflective of changes in attorney classification approved by your Board in 2002.

Approval of this agreement will provide a contractual structure that accurately reflects current practice as well as incorporating needed changes to the 1997 agreement. The Memorandum of Understanding will be reviewed from time to time as required by the needs of the County and/or the Sacramento County Bar Association.

**Measures/Evaluation:**

As demonstrated by three previous studies, the delivery of secondary indigent defense services is most effectively and efficiently performed under the current system. Sacramento County is providing and will continue to provide effective and cost-effective representation to those individuals unable to afford counsel, however within an agreement that accurately reflects current practices.

**FINANCIAL ANALYSIS:**

The agreement does not deal with or make changes that impact on budgetary matters. No additional expenses will be incurred in the performance of this agreement.

Respectfully submitted,

APPROVED:

\_\_\_\_\_  
FERN M. LAETHEM  
Executive Director  
Conflict Criminal Defenders

\_\_\_\_\_  
TERRY SCHUTTEN  
County Executive

By:

\_\_\_\_\_  
PENELOPE CLARKE  
Administrator  
Countywide Services Agency

- Attachments: Resolution  
Memorandum of Understanding  
Memorandum of Understanding Exhibit A  
Memorandum of Understanding Exhibit B  
Memorandum of Understanding Exhibit C

RESOLUTION NO. 2006-0042

BE IT RESOVED AND ORDERED that Terry Schutten, Sacramento County Executive, be and is authorized and directed to execute the Memorandum of Understanding in the form hereto attached, on behalf of the COUNTY OF SACRAMENTO, a political subdivision of the State of California, with the Sacramento County Bar Association.

On a motion by Supervisor Collin and seconded by Supervisor Nottoli, the foregoing Resolution was passed and adopted by the Board of Supervisor of the County of Sacramento this 17th day of January, 2006, by the following vote, to wit:

- AYES: SUPERVISORS, Collin, Nottoli, MacGlashan
- NOES: SUPERVISORS, None
- ABSENT: SUPERVISORS, Dickinson, Peters

*Roberta Hooker*  
 Chair of the Board of Supervisors  
 of Sacramento County, California



In accordance with Section 25103 of the Government Code of the State of California a copy of the document has been delivered to the Chairman of the Board of Supervisors, County of Sacramento on  
**JAN 17 2006**

By *Beth Julechir*  
 Deputy Clerk, Board of Supervisors

ATTEST: *Cindy H. Turner*  
 Clerk, Board of Supervisors

**FILED**

JAN 17 2006

BOARD OF SUPERVISORS  
 BY *Cindy H. Turner*  
 CLERK OF THE BOARD

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding to refer qualified attorneys for indigent defense (the "MOU") is entered into this 17th of January, 2006, to be effective the 17th day of January, 2006, by and between the COUNTY OF SACRAMENTO, a political subdivision of the State of California (the "COUNTY") and the SACRAMENTO COUNTY BAR ASSOCIATION, a California non-profit mutual benefit corporation (the "SCBA") with reference to the following facts.

RECITALS

- A. COUNTY is obligated by United States and California constitutional provisions as well as by certain California Statutes, to provide indigent individuals legal counsel at all phases of a proceeding.
- B. COUNTY established the Office of the Sacramento County Public Defender (the "Public Defender") within the COUNTY for the purpose of providing all necessary legal counsel to individuals as appointed by the California State Courts of the County of Sacramento. (the "Court")
- C. COUNTY established the Office of the Sacramento County Conflict Criminal Defenders (the "Conflict Criminal Defenders") within the COUNTY for the purpose of administering the provision of all necessary legal counsel to individuals that the Public Defender is unable to represent as appointed by the California State Courts of the County of Sacramento.
- D. SCBA is prepared to provide qualified attorneys to Conflict Criminal Defenders (CCD) on the terms and conditions set forth in this MOU and the Exhibits that are a part of this MOU.

NOW, THEREFORE, in consideration of the promises, covenants, and conditions herein contained, the parties hereto agree as follows:

1. TERM

This MOU shall be effective beginning January 1, 2006, and shall be reviewed from time to time as required by the needs of the County and/or the Sacramento County Bar Association.

2. NOTICE

Notice shall be deemed to have been served when it is deposited in the United States mail, postage prepaid and addressed as follows:

TO COUNTY:

Penelope Clarke, Administrator  
Countywide Services Agency  
700 H Street, Suite 7650  
Sacramento, CA. 95814

TO SCBA:

Carol Prosser, Executive Director  
Sacramento County Bar Association  
901 H Street, Suite 101  
Sacramento, CA. 95814

3. AGENCY ADMINISTRATOR

As used in this MOU, "Agency Administrator" shall mean the Countywide Services Agency Administrator of COUNTY.

4. APPLICABLE LAWS

SCBA shall provide services in accordance with applicable federal and state statutes, regulations, and directive any changes or amendments thereto. The laws of the State of California shall govern this MOU.

5. STATUS OF SCBA

- a. It is understood and agreed that the SCBA (including the SCBA's employees) is an independent contractor and that no relationship of employer-employee or agency exists between the parties hereto. The SCBA and the SCBA's assigned personnel shall not be entitled to any benefits payable to employees of COUNTY. As an independent contractor, the SCBA hereby indemnifies, defends, and holds COUNTY, its officers, agents, and employees harmless from any and all claims, losses, liabilities, or damages arising from any contention by a third party that an employer-employee or agency relationship exists by reason of this MOU.
- b. It is further understood and agreed by the parties hereto that the SCBA, in the performance of the SCBA's obligation hereunder, is subject to the control or direction of COUNTY merely as to the designation of tasks to be performed and the results to be accomplished by the services hereunder agreed to be rendered and performed and not as to the means and methods for accomplishing the results.
- c. If in the performance of this MOU, any third persons are employed or contracted by the SCBA, or such person shall be entirely and exclusively under the direction, supervision, and control of the SCBA. All terms of employment or contract, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment, contract, or requirement of law, shall be determined by the SCBA, and COUNTY shall have no right or authority over such persons or the terms of such employment or the terms of such contract.
- d. The services performed by the SCBA hereunder shall be under the coordination of Agency Administrator or his/her designee. The SCBA shall, for any and all relevant purposes, be deemed to be an independent contractor of COUNTY, and not an officer, employee, or agent thereof. The SCBA shall not be covered by workers' compensation nor shall the SCBA be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by COUNTY to employees of COUNTY.

6. DESCRIPTION OF SERVICES

The SCBA shall refer qualified attorneys to CONFLICT CRIMINAL DEFENDERS (CCD) in the form and manner described in Exhibit "B", attached hereto. COUNTY shall authorize no change to the services unless first approved in writing by COUNTY. Additionally, the SCBA shall ensure and require that all attorneys referred to CCD as members in good standing on the Indigent Defense Panel, agree in writing to abide by the rules, policies, and procedures of CCD. A copy of the attorney contract is attached hereto as Exhibit C, and may not, during the course of this MOU, be amended without prior written consent of the

COUNTY, which consent shall not be unreasonably withheld, the parties hereto recognizing that said contract may require amendment from time to time.

Specifically, the SCBA shall perform the following services while adhering to the CCD program description. (See Exhibit B, attached hereto)

- a. Recruit, evaluate, classify, and maintain a panel of qualified attorneys that can be assigned to Conflict Criminal Defender cases.
- b. Secure agreement of attorneys to the current fee schedule the amounts of which shall be determined by the Sacramento County Board of Supervisors after consultation with the COUNTY, SCBA, CCD and the COURT. The total amount of compensation and expenses to be paid shall be within the amount of funds allocated the department by the Board of Supervisors of the COUNTY in the annual budget process.

All compensation payments by COUNTY shall be direct to attorneys, for compensation and expenses, and shall be subject to an appropriation limit as defined by the annual budget process. Attorneys' claims shall be submitted to CONFLICT CRIMINAL DEFENDERS for review and approval, and then to the COUNTY for payment. If the COURT so requests, claims may be reviewed by a judicial officer after review by CONFLICT CRIMINAL DEFENDERS and before submission to the COUNTY for payment. COUNTY shall use its best efforts to insure timely payment of claims.

- c. In consultation with CONFLICT CRIMINAL DEFENDERS develop policies and guidelines pertaining to ATTORNEY levels of classification, case classification, and attorney performance standards, to ensure that ATTORNEY'S ability, training, and experience match the complexity of the cases for which he/she is eligible to be assigned, and which shall be reviewed from time to time, and amended as necessary. It is understood that requests by CONFLICT CRIMINAL DEFENDERS to modify policies and guidelines pertaining to attorneys are merely recommendations and not binding on either the SCBA or its attorneys.
- d. Evaluate, review, and classify ATTORNEYS based upon knowledge, experience, skill, past performance, training, efficiency, and the minimum grade qualifications established by the SCBA.
- e. Conduct an evaluation and review of all members of the Indigent Defense Panel and classify them based upon their knowledge, experience, skill, past performance, training, efficiency, and the most current minimum grade qualifications established by the SCBA. The reclassification of all members shall be completed by July 1, 2006.
- f. Conduct periodic review and evaluations of an individual ATTORNEY'S performance when requested by the SCBA Indigent Defense Panel Peer Review Committee, CONFLICT CRIMINAL DEFENDERS, or the Court. Such review and evaluation must be based upon their knowledge, experience, skill, past performance, training, efficiency, and the most current minimum grade qualifications established by the SCBA and must ensure the attorney is appropriately classified and performing at the level at which he/she is classified; Take action as appropriate to reclassify said attorney if it is determined that he/she is not performing at the level at which he/she is classified. Establish procedures for downward re-classification that include notice to the attorney, investigation, evaluation, and hearing, with the right to appeal.

- g. Establish a complaint process for the PUBLIC, the COURT, CLIENTS, the INDIGENT DEFENSE PANEL COMMITTEE, and CONFLICT CRIMINAL DEFENDERS, which includes an investigation and review procedure and provides for the removal of attorneys from the panel or lesser disciplinary measures for violation of CONFLICT CRIMINAL DEFENDER and/or SCBA rules, including failure to provide competent representation; Said procedures must include notice to the attorney, investigation, evaluation, and hearing, with the right to appeal.
  - h. Secure agreement by attorneys to attend all continuing legal education training required by CONFLICT CRIMINAL DEFENDERS in consultation with the IDP Panel Committee. Reimburse all level 1 – 4 ATTORNEYS for the tuition costs of their attendance at required continuing legal education programs in an amount not to exceed \$150.00 per attorney, per year. Reimburse all level 5 and 6 ATTORNEYS for the tuition costs of their attendance at required continuing legal education programs in an amount not to exceed \$150.00 per attorney, per year and for the tuition costs of either the CPDA/CACJ annual death penalty training or the annual Napa Homicide training program. Provide a membership to the California Public Defenders Association Clarinet Program to every member in good standing on the Indigent Defense Panel.
  - i. Strongly Encourage ATTORNEYS to obtain their minimal continuing legal education hours as required by the California Bar in the area of criminal law.
  - j. Ensure that ATTORNEYS obtain and maintain Professional Liability Insurance as described in Exhibit A. Immediately notify CCD of any cancellation, lapse, or non-coverage of any ATTORNEY.
  - k. Ensure that ATTORNEYS are active members in good standing of the State Bar of California.
  - l. Provide members to serve on the IDAC, as described in Exhibit B.
  - m. Maintain records of attorney classification and performance and provide reports to CONFLICT CRIMINAL DEFENDERS, and the COURT, as requested, unless client confidentiality or judicial direction prevents such disclosure.
  - n. Provide copies of trial performance evaluations, upon receipt from the Trial Judge, to CCD, unless client confidentiality or judicial direction prevents such disclosure.
7. COUNTY at its sole expense and in its sole discretion shall select and contract with, or employee, an individual to administer CCD, the Executive Director, whose duties and responsibilities shall be stated in a written agreement.

8. CONFLICT OF INTEREST

The SCBA and the SCBA's employees shall have no interest and shall not acquire any interest, direct or indirect, which will conflict in any manner or degree with the performance of services required under this MOU.

9. NON-DISCRIMINATION IN SERVICES AND BENEFITS

a. The SCBA certifies that any services provided pursuant to this MOU shall be without discrimination based on race, color, creed, national origin, religion, sex, age, sexual orientation, physical or mental disability in accordance with Title VI of the Civil Rights Act of 1964, U.S.C. Section 2000d et seq., rules and regulations promulgated pursuant thereto,

including California Code or Regulations Title 9, Sections 526 and 527, or as otherwise provided by state and federal law. For the purpose of this MOU, distinctions on the grounds of race, color, creed, or national origin include, but are not limited to, the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this MOU; subjecting a participant to segregation or separate treatment in any manner related to the receipt of any service; restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed by other receiving any service or benefit; treating a participant differently from others in determining whether he/she satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided service or benefit; the assignment of times or places for the provision of services on the basis of race, color, creed, or national origin of the participants to be served.

b. All complaints alleging discrimination in the delivery of services by the SCBA because of race, color, creed, national origin, religion, sex, sexual orientation, age, or physical or mental disability shall be resolved through the Countywide Services Agency Administrator.

#### 10. INDEMNIFICATION

The SCBA shall indemnify, defend, and hold harmless COUNTY, its officers, agents, and employees, for and against any and all claims, losses, liabilities, or damages, demands, and actions, including payment of reasonable attorney's fees, arising out of or resulting from the performance of this MOU, caused in whole or in part by any negligent or willful omission of the SCBA or anyone directly or indirectly employed by the SCBA, regardless of whether caused in part by a party indemnified hereunder.

#### 11. INSURANCE

a. Without limiting the SCBA's indemnification, the SCBA shall maintain in force at all time during the term of this MOU and extensions or modifications thereto, insurance covering its operations. The types of insurance to be secured and the amount of coverage shall be specified in Exhibit "A".

b. The Countywide Services Agency Administrator is authorized to execute amendments and waivers, with or without conditions, by letter to the insurance requirements of this MOU, subject to the concurrence of the Risk Manager of COUNTY.

#### 12. REPORTS AND RECORDS

The SCBA shall maintain and provide such records and reports as may reasonably be required by COUNTY. Upon termination of this MOU, all such records and reports shall be retained by the SCBA in accordance with the terms and conditions as set forth from time to time by the Countywide Services Agency Administrator.

#### 13. ASSIGNMENT

This MOU is not assignable by the SCBA in whole or in part, without the express written consent of the Countywide Services Agency Administrator.

#### 14. ALTERATION

Except as provided hereto, no alteration or variation of the terms of this MOU shall be valid unless made in writing and signed by both parties.

15. TIME

Time is of the essence in this MOU.

16. INTERPRETATION

No interpretation of any provisions of this MOU shall be binding upon COUNTY unless agreed in writing by Countywide Services Agency Administrator and approved by the Attorney of COUNTY.

17. DISPUTES

An impartial arbitrator selected by the American Arbitration Association (AAA) shall decide any disputes arising under this MOU. The decision of the arbitrator shall be binding and final. Pending a final decision of dispute hereunder, both parties shall proceed diligently with the performance of the MOU.

18. TERMINATION

a. Either party may terminate this MOU, without cause, upon ninety (90) days written notice served upon the other party. Notice shall be deemed served on the date of mailing.

b. The COUNTY may terminate this MOU, if after thirty (30) days written notice of a failure to provide services required hereunder served upon the SCBA, should the SCBA fail to perform any of the covenants contained in this MOU, in the time and manner specified. In the event of such termination the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

c. The COUNTY may terminate or amend this MOU immediately upon written notice served upon the SCBA stating that funds are not available from the State, or other sources, or if funds in the yearly proposed final budget are not appropriated by COUNTY for Conflict Criminal Defenders or any portion thereof.

19. PRIOR AGREEMENTS

All prior agreements regarding this subject matter between COUNTY and the SCBA are hereby terminated effective December 31, 2005, prior to the term beginning date of this MOU.

20. EXTENT OF DOCUMENTS

This MOU shall consist of this basic document and the following Exhibits attached hereto and incorporated into this MOU:

- Exhibit "A" - Insurance Requirements
- Exhibit "B" - Description of Services and Program
- Exhibit "C" - Attorney Agreement for Legal Services