

**County of Ventura
AUDITOR-CONTROLLER
MEMORANDUM**

To: Duane Dammeyer, Public Defender

Date: March 8, 2010

From: Christine L. Cohen

Subject: AUDIT OF CHANGE IN DEPARTMENT HEAD FOR THE PUBLIC DEFENDER

EXECUTIVE SUMMARY

We have completed our audit of the change in department head for the Office of the Public Defender. Our overall objective was to determine whether appropriate actions had been taken to accomplish the transfer of accountability and administrative functions from the preceding to the succeeding department head. The audit was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing* promulgated by the Institute of Internal Auditors. Our findings are summarized below with details provided in the attached report.

Overall, the Public Defender satisfactorily transferred accountability and administrative functions from the preceding to the succeeding department head. For example, we verified that a *Statement of Economic Interests* was completed by the succeeding Public Defender and that relevant notifications of the change in department head were made as required. We confirmed that expenses reimbursed to the prior department head were appropriate and that controls over sensitive non-fixed assets were in accordance with the County of Ventura Administrative Policy Manual. We also confirmed that procedures for billing and collecting mental health fees were adequate.

However, opportunities were available to improve the transition process and strengthen certain department operations. Specifically, we found that actions were needed to:

- Verify that attorney and registration fees were properly accounted for and collected by:
 - Confirming the reasonable accuracy and completeness of fees remitted by the Superior Court.
 - Ensuring that attorney fees for conservatorship cases have been petitioned for payment as deemed appropriate.
 - Verifying the accuracy of attorney fees charged to conservatorship clients.
 - Segregating duties in the proper handling of direct payments.

- Improve the accountability and reporting of fixed assets as required by the Government Code.

- Update signature authorizations in a timely manner.

Public Defender management initiated corrective action to address our findings. Corrective action is planned to be completed by March 26, 2010.

Duane Dammeyer, Public Defender

March 8, 2010

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We appreciate the cooperation and assistance extended by you and your staff during this audit.

Attachment

cc: Honorable Kathy Long, Chair, Board of Supervisors
Honorable Linda Parks, Vice Chair, Board of Supervisors
Honorable Steve Bennett, Board of Supervisors
Honorable Peter Foy, Board of Supervisors
Honorable John C. Zaragoza, Board of Supervisors
Marty Robinson, County Executive Officer

**AUDIT OF CHANGE IN DEPARTMENT HEAD
FOR THE PUBLIC DEFENDER**

BACKGROUND:

The Public Defender's Office provides mandated legal representation to indigent defendants and juveniles in all court proceedings and seeks to provide quality services at the least possible expense to the County. The office functions in collaboration with participants from the criminal justice system to insure efficient operation while protecting the constitutionally guaranteed rights of accused persons. The office also represents persons alleged to be mentally ill, developmentally disabled, or in need of conservatorship.

Public Defender services are compensated through the payment of criminal legal fees, criminal registration fees, mental health fees, and conservatorship fees. The attorney rate applicable to criminal legal and conservatorship representation for fiscal year (FY) 2008-09 was \$143.50 per hour, as approved by the Ventura County Board of Supervisors. Criminal registration fees were charged at a flat rate of \$25 per client as adopted through a Board Resolution dated June 3, 1997. Representation in mental health proceedings was charged at a flat rate of \$50 per certification as determined by the Public Defender.

The current Public Defender, Duane Dammeyer, was appointed to replace Kenneth Clayman as the Public Defender effective March 22, 2008. The Public Defender was authorized 87 positions for FY 2008-09 and budgeted revenues and appropriations of \$3.2 million and \$14.3 million, respectively, for a net County cost of \$11.1 million.

SCOPE:

Our overall audit objective was to determine whether appropriate actions had been taken to accomplish the transfer of accountability and administrative functions from the preceding to the succeeding department head. Specifically, we:

- confirmed that appropriate employee exit procedures took place upon the change in department head;
- verified that authorization for department approvals was transferred from the outgoing to the incoming department head;
- confirmed that expenses incurred by the outgoing department head in the months before the department head's retirement were appropriate;
- confirmed that fixed assets were accounted for properly and evaluated controls over sensitive non-fixed assets (e.g., laptop computers, etc.);
- verified that the trust fund was accounted for properly;
- verified that attorney fees were properly accounted for and collected.

We performed audit tests and evaluations using documents provided by Public Defender Administration and the Auditor-Controller's Office. The audit was performed in conformance with the *International Standards for the Professional Practice of Internal Auditing* promulgated by the Institute of Internal Auditors. For our audit, we used documents and records for the period July 2007 through October 2009.

FINDINGS:

Overall, we found that the Public Defender's Office satisfactorily transferred accountability and administrative functions from the preceding to the succeeding department head. For example, we verified that a *Statement of Economic Interests* was filed by the succeeding Public Defender as required by the Conflict of Interest Code amended on September 23, 2008. We confirmed that relevant notifications of the change in department head were made as required and that expense reimbursements received by the prior department head were appropriate. In addition, controls over the safeguarding, recording, and tracking of sensitive non-fixed assets were in accordance with the County of Ventura Administrative Policy Manual. Further, we confirmed that procedures for the billing and collecting of mental health fees were adequate.

However, we identified several areas where actions were needed to improve the accountability of departmental assets and strengthen certain department operations. Specifically, procedures were needed to enhance the oversight, tracking, and collection of attorney and registration fees to facilitate the fiscal viability of the department. In addition, proper accountability needed to be established over fixed assets annually and upon a change in department head in accordance with the Government Code. Procedures were also needed to ensure that signature authorizations were updated in a timely manner.

Following are details of the areas where improvements were needed. Public Defender management initiated corrective action during the audit as noted.

1. **Attorney and Registration Fees.** Improvements were needed to better account for and collect attorney and registration fees. The Public Defender recognized approximately \$325,000 from these fees during FY 2008-09, which exceeded the budgeted amount of \$225,700 by 44 percent. However, because the Superior Court collected the majority of these fees for the Public Defender, procedures were needed to ensure that Superior Court collection remittances were accurate and complete. In addition, verifying that attorney fees were petitioned for payment on appropriate conservatorship cases would help to confirm that collection was pursued as necessary. Further, attention was needed to verify that conservatorship fees were accurately charged and to establish segregation of duties in the proper handling of direct payments.
 - A. **Criminal Legal and Registration Fees.** The Public Defender did not have adequate records to verify the totality of criminal legal fees (i.e., attorney fees) and registration fees assessed, collected, and remitted by the Superior Court. The Superior Court remitted nearly \$254,000 in these fees to the Public Defender during FY 2008-09, consisting of approximately \$107,000 in attorney fees and \$147,000 in registration fees. We recognize that the Superior Court, not the Public Defender, assesses and collects these fees and that the Superior Court determines the amount to be paid to the Public Defender. However, the Superior Court did not provide any detail on the collection remittances, such as the amount distributed to the Public Defender for each case. As a result, the Public Defender did not have a viable means to evaluate the adequacy of the Superior Court's remittances or to ensure that attorney and registration fee rates were applied properly.

Management Action. Public Defender management stated:

"The County contracts with the Court Collections unit to collect attorney fees ordered in criminal cases. The Public Defender's office has attempted to obtain details of Superior Court remittances;

however, we were told that detailed reports could not be generated without major programming changes to the Court's system. Reports have been developed in the Public Defender component of the Ventura County Integrated Justice Information System (VCIJIS) to capture when either registration fees or attorney fees are ordered by the court. These reports are currently being reviewed and tested for accuracy, and should be available by March 26, 2010. These reports will give the Public Defender the ability to track trends in the assessment of attorney fees.

"The process of collecting fees is complex, and it could be many months or years before the entire order for attorney fees is collected. Tracking fees received against fees ordered would be challenging, at best, and require additional resources for the Courts and the Public Defender, as well as programming changes to VCIJIS and an amendment to the existing contract between the County and the Court."

Auditor's Comment. We appreciate the Public Defender's action to track trends in the assessment of attorney fees. We also recognize that the lack of detail regarding the Superior Court's remittances may stem from lack of specific language in the County's contract with the Superior Court for collection services. Without such detail, the County is unable to confirm that the Superior Court is remitting all collections that should be allocated to the County. Therefore, we will address this concern with the County Executive Office.

- B. **Conservatorship Fees.** Improvements were needed to ensure that attorney fees were petitioned for conservatorship cases as appropriate and to ensure the accurate petitioning of conservatorship fees.
- i. **Petition for Attorney Fees.** The Public Defender did not have procedures to ensure that petitions for payment of conservatorship fees were pursued as deemed appropriate by the assigned attorney. At the conclusion of a conservatorship case, the Public Defender may petition the Court to order the conservator's payment of attorney fees directly to the Public Defender. This petition is based on a *Fee Petition Request* form prepared by the attorney detailing the date, service, and time spent on the case. Cases are petitioned for payment of attorney fees upon the attorney's evaluation of the client's ability to pay. Although the Public Defender tracked Court-ordered fees to subsequent payment, the Public Defender did not verify that attorneys had submitted all *Fee Petition Request* forms for cases intended to be petitioned for payment. As a result, the Public Defender did not have adequate assurance that the \$30,765 in conservatorship fees recognized during FY 2008-09 was a complete accounting of conservatorship fees due.

Management Action. Public Defender management stated: "The Public Defender utilizes an Access database to track probate conservatorship cases. The attorneys handling these cases use the database to manage their caseload, track scheduled court hearings, and to make sure required court documents are being timely filed. We will expand our database to include information on whether a fee petition was considered and not filed, or if a fee petition was prepared and submitted by our attorney. Reports will be generated and reviewed to ensure that, during the annual accounting, attorneys are evaluating the viability of filing a fee petition and that fee petitions are pursued for all cases deemed appropriate."

- ii. **Fee Petition Discrepancies.** The Public Defender's petitions for payment of conservatorship fees were not always accurate. Our review of six cases ordered for payment during FY 2008-09 disclosed that five (83%) were inaccurately charged based on inaccurate fee petitions. Specifically, two cases were undercharged a total of \$205.50, or an average undercharge of 9 percent on those cases, while three were overcharged a total of \$158.59, or an average overcharge of 4 percent. Implementing procedures to verify attorney calculations would improve the Public Defender's fiduciary responsibility to properly charge conservatorship clients.

Management Action. Public Defender management stated: "A procedure will be developed and implemented utilizing Excel and Word to minimize errors and verify calculations on Petitions for Fees. An excel spreadsheet will be created, replacing the handwritten Fee Petition Request form currently being used. The spreadsheet, which will include formulas to automatically calculate fees, will be imported into the Petition for Fees."

- C. **Segregation of Duties.** Duties were not properly segregated to ensure proper handling of incoming payments. Because the same person who received the payments also recorded and deposited the payments, the payments were at risk of misappropriation. For example, receipt documents and logs could be altered to conceal theft without controls to deter and detect such actions. In addition, a \$300 error on the FY 2008-09 Probate Conservatorship Check Log likely would have been discovered and confirmed had the recording and depositing functions been separated. Management could improve procedures by assigning the recording of incoming payments to the fiscal assistant and assigning the depositing of payments to the fiscal manager to facilitate appropriate checks and balances.

Management Action. Public Defender management stated: "A procedure will be implemented to create segregation of duties when handling incoming payments. Checks will be received and recorded by the fiscal assistant, and deposited by the fiscal manager."

2. **Fixed Asset Accountability.** Accountability was not always properly established for over \$353,000 in fixed assets. Government Code Section 24051 requires: 1) all department heads to file fixed asset inventories under oath no later than July 10 of each year; and 2) transfer of fixed asset accountability with a signed receipt from the preceding to the succeeding department head. However, the FY 2006-07 *Affidavit of Annual Inventory of County Property* was improperly signed by a fiscal manager rather than by the department head, and the FY 2007-08 *Affidavit* was not submitted to the Auditor-Controller. In addition, fixed asset accountability was not transferred with a signed receipt upon the change in department head in March 2008. Therefore, proper accountability over fixed assets was not established for 2 consecutive fiscal years until the Public Defender properly certified the fixed asset inventory on July 9, 2009.

Management Action. Public Defender management stated: "Check lists have been created to ensure compliance. A fiscal year end checklist, with due dates and instructions regarding required signatures, will be used for all fiscal year end activity, including the *Affidavit of Annual Inventory of County Property*. Likewise, a check list has been created to ensure the transfer of accountability over fixed assets when there is a change in Department Head."

3. **Signature Authorizations.** Signature authorizations were not updated in a timely manner after the retirement of the prior department head on March 21, 2008. The *Authorized Department Document and Function Signatures* form is required by the Auditor-Controller to authorize individuals to sign and/or receive designated documents, such as for approval of journal vouchers and claims for payment. The form lists the authorized individuals and is approved by the department head. However, this form was not updated for the Public Defender until July 30, 2008, or 4 months after the change in department head. Failure to update signature authorizations promptly could allow for unauthorized transactions resulting in misappropriation of assets.

Management Action. Public Defender management stated: "A check list has been created to ensure that signature authorizations are updated in a timely manner when there is a change in Department Head."

AUDITOR'S EVALUATION OF MANAGEMENT ACTION: We believe that management actions taken or planned were responsive to the audit findings. Management planned to complete corrective actions by March 26, 2010.

We appreciate the cooperation and assistance extended by you and your staff during this audit.