



San Mateo County
BAR ASSOCIATION
SMCBA

RECEIVED

MAY -4 2016

COUNTY MANAGER

April 27, 2016

Honorable Warren Slocum, President
Honorable Don Horsley, Vice President
Honorable Carol Groom
Honorable Adrienne Tissier
Honorable Dave Pine

San Mateo County Board of Supervisors:

This document is the San Mateo County Bar Association's response to the "San Mateo County Private Defender Program Evaluation", dated December 8, 2016 (sic). This Report, presumably issued over four months ago, was only recently presented to the San Mateo County Bar Association on March 9, 2016. A separate response was prepared by the Private Defender Program and submitted on April 11, 2016.

The County Manager's Office, which negotiates the contract between the County and the SMCBA for the PDP's indigent defense, requested a report for "purposes of comparison with other programs for indigent defendants." This Report concluded that "The PDP appears to operate in accordance with the terms of its contractual agreement with the County." Further, it notes "...The overall assessment of the program indicated that the overall quality of representation is adequate and supporting investigative and forensics assistance is excellent, especially in more serious cases." Hidden within a footnote, the Report states "In 2012 the America Bar Association awarded the Private Defender Program its Harrison Tweed award for long-term excellence in providing for the defense of the indigent."

This "long-term excellence" was achieved entirely while under the oversight of the San Mateo County Bar Association and within the current structure of the PDP and the Bar Association.

According to this December 8, 2016 Report the PDP clearly provides services contracted for, at a cost-effective price, with some services "better than many Public Defenders' offices."

The Report appears to exceed the scope of its own mandate of "comparing programs" by providing an analysis of the structure and inner workings of the PDP and the Board of Directors of the San Mateo County Bar Association. The Report alleges overstaffing, lack of oversight, and conflicts of interest without identifying the entity or party with whom any alleged conflict lies. The PDP Chief Defender has already issued a lengthy and thoughtful response to most, if not all, of these issues.

We feel compelled to address the alleged "conflict of interest" issue as it pertains to allowing some PDP members to sit on the Board of Directors of SMCBA. First, SMCBA has always allowed all members in good standing of the San Mateo County Bar Association to be eligible to serve on its Board. That has not changed in 100 years. That had not changed since 1968 when the County first contracted with SMCBA for PDP services. That has also not changed since the co-author of the County Report presided of the

SMCBA Board and served as its President in 1977. The County has also reviewed the PDP before and has approved the PDP structure and the existing oversight by the SMCBA Board.

Understanding of the conflict allegation requires analysis of who the client is for which conflict of interest (or potential conflict) is alleged. All involved should understand that the only duty that the PDP members owe is to their clients, not to the County. The Chief Defender does owe a contractual duty to the County, which is to provide the services agreed to for the price agreed to. There is no doubt that he has fulfilled this contractual duty. His primary duty, however, is, and always has been, to advocate for indigent individuals that the government is prosecuting, not the government.

As stated, it is unclear to whom the County Report purports to direct the conflict of interest and more importantly to whose interests the conflict pertains. If it is in the County's interest to get the lowest rate possible for the best quality indigent services, then it has succeeded. Even the Report acknowledges the County saves millions of dollars each year through its contract with the SMCBA versus establishing a public defender program. And at this relatively low cost the County receives the services for its indigent citizens from an award winning PDP program.

The SMCBA has always looked for ways in which to improve its structure and administration and it will continue to do so now. In the interests of resolving the County's concerns, the SMCBA Board of Directors at its meeting on April 27, 2016, formally resolved to implement a change, already under contemplation, to separate the Chief Defender and SMCBA Executive Director positions. Further, while the SMCBA Bylaws contain conflict policies for the SMCBA Board members, the SMCBA Board voted to establish Standing Rules that will provide that no PDP member who is on the Board of Directors and who receives any referrals of PDP cases may vote on any matter relating to the Private Defender Program, including but not limited to: (1) The overall PDP budget, (2) The performance of the Chief Defender, (3) The compensation of the Chief Defender, and (4) The policies of the PDP panel. It should be noted that the SMCBA Board does not assign cases, set individual fees for attorneys or select attorneys for the PDP panel.

Although we are disappointed in both the content and tone of the County Report, SMCBA hopes that the County understands how fortunate it is to have such a program as the nationally recognized PDP in San Mateo County, as well as the work of the fifteen dedicated, hardworking and conscientious volunteer attorneys who serve on the Board of Directors of the San Mateo County Bar Association.

Sincerely,



S. D. Narayan, Esq.
President
San Mateo County Bar Association