

JUDICIAL COUNCIL RESOLUTION NO.JC04-009

**RELATIVE TO APPROVING THE PROPOSAL OF THE
PUBLIC DEFENDER SERVICE CORPORATION TO CREATE
THE ALTERNATE PUBLIC DEFENDER OFFICE**

WHEREAS, providing legal representation to indigent defendants has cost the Judicial Branch millions of dollars per year for the past several years;

WHEREAS, the Subcommittee on Indigent Defense ("Subcommittee") under the chairmanship of Associate Justice Frances Tydingco-Gatewood, has been actively researching ways to improve and decrease the costs of indigent defense;

WHEREAS, the Subcommittee researched the establishment of an "Alternate" Public Defender Office ("APD") to receive cases which the Public Defender Service Corporation ("PDSC") rejects due to conflicts of interest, and found that significant savings of up to half of the present costs are possible;

WHEREAS, the Subcommittee recommended the establishment of the APD;

WHEREAS, on April 21, 2004 the PDSC Board of Trustees, in Resolution No. 08-04, approved a proposal to establish the APD as a division of the PDSC and submitted the proposal, a copy of which is attached hereto and marked Exhibit "A", to the Judicial Council;

WHEREAS, the Settlement Agreement entered into by the Judicial Council and Associated Defense Advocates P.C. to provide legal representation to indigent defendants will expire on September 30, 2004;

WHEREAS, under the PDSC's proposal, the APD will be able to handle the case load presently assigned to the Associated Defense Advocates with significant savings;

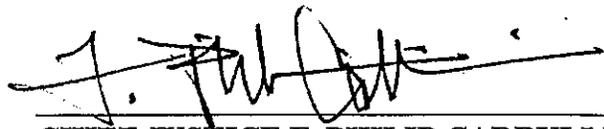
WHEREAS, the PDSC also submitted a proposed budget for the APD's first year of operation, a copy of which is attached hereto and marked Exhibit "B";

NOW, THEREFORE, BE IT RESOLVED, that the Judicial Council hereby accepts the proposal of the PDSC to provide legal services for indigent defense in accordance with its proposal marked Exhibit "A";

BE IT FURTHER RESOLVED, that the Judicial Council hereby approves the budget of the APD in the amount not to exceed SIX HUNDRED TWELVE THOUSAND AND SEVENTY DOLLARS (\$612,070.00) in accordance with Exhibit "B"; and

BE IT FURTHER RESOLVED, that the Judicial Council hereby authorizes the Administrator of the Courts to enter into an agreement with the PDSC for the provision of legal services for indigent defendants to be effective October 1, 2004..

DULY ADOPTED this 30th day of April, 2004 at a duly noticed meeting of the Judicial Council of Guam.

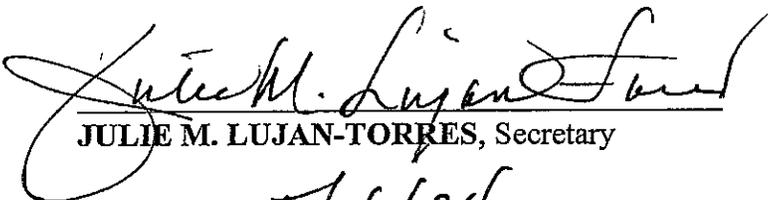


CHIEF JUSTICE F. PHILIP CARBULLIDO,
Chairman

Date: _____

5/6/04

ATTEST:



JULIE M. LUJAN-TORRES, Secretary

Date: _____

5/6/04

EXHIBIT "A"

**Proposal
For The
Establishment Of The
Office Of The**

**ALTERNATE
PUBLIC
DEFENDER**

Revised
April 20, 2004

**Proposal for Establishment
of the Office of the
ALTERNATE PUBLIC DEFENDER
a separate subsidiary of the
PUBLIC DEFENDER SERVICE CORPORATION
(Revised April 15, 2004)**

BACKGROUND:

At a meeting of the Indigent Defense Sub-Committee on February 10, 2004, Associate Justice and Sub-Committee Chairwoman Frances Tydingco-Gatewood requested that the Public Defender Service Corporation (PDSC) develop a proposal for an Office of the Alternate Public Defender (APD), to include a cost analysis of the staffing, financing and other administrative needs necessary for the establishment of this body.

The original Proposal for Establishment of the Office of the Alternate Public Defender was presented to the PDSC Board of Trustees at its regular meeting on March 26, 2004. This meeting was continued to March 29, 2004, whereupon the original Proposal was approved with the following modifications:

1. **Personnel Services:**

Added: One (1) Attorney III
 One (1) Legal Secretary I
Replaced: One (1) Clerk Typist III
 with
 One (1) Legal Clerk II

2. **Office Space Rental:**

Increased square footage requirement from 1,500 to 2,000 square feet of office space

3. **Establishment of the Office of the Alternate Public Defender:**

All applicable laws, rules and regulations governing the **Reorganization Process** for the government of Guam must be adhered to. (The Public Defender Service Corporation will be the entity undergoing reorganization, which will essentially add a subsidiary—the Alternate Public Defender.)

Additionally presented to the PDSC Board of Trustees on March 26, 2004 was a California court decision, *People v. Christian*, 48 Cal. Repr. 2d 867 (1996) which, while citing other California cases, found no fault in the lawyering or ethical conflict in the arrangement of the two divisions (i.e.,

the main Public Defender and the Alternate Public Defender), representing the two defendants who implicated each other in the case. Furthermore, a telephonic discussion between PDSC Director Kathleen E. Maher and a Chief Deputy Public Defender in Santa Clara County revealed that there have been no problems, and the organizational plan, of which the proposed Guam Alternate Public Defender is similar to, has worked well with all staff members being county employees under the main Public Defender.

PURPOSE:

In part, the purpose of the Office of the Alternate Public Defender is to address the growing financial obligations confronting the Superior Court of Guam with respect to delays in payments to the private bar for court-appointed counsel when required. Additionally, the Office of the Alternate Public Defender will be responsible for receiving cases which the PDSC must withdraw from due to conflicts of interest as established in the Corporation's General Administration Standard Operating Procedures No.001-FY2004 and 002-FY2004.

The total annual cost of the Alternate Public Defender would be \$612,070 for the first year of operations (including rent, utilities, housekeeping services and parking), which is one-half the cost of current expenditures by the Associated Defense Advocates (ADA) to the Court of more than \$1.2 million annually. There will still be a need for a small panel of private lawyers to serve the smaller number of cases which involve multiple defendants or other sorts of conflict situations.

Summarily, the APD will provide legal representation to indigent defendants that the PDSC is unable to represent because of a conflict of interest, often because more than one defendant is charged, or the PDSC represents the victim in another pending legal matter. However, the two entities shall not have access to each other's clients' files, as specific clientele information must be kept separate and confidential, pursuant to ethical and legal mandates.

PROPOSAL:

A. ORGANIZATIONAL STRUCTURE:

As depicted on the attached Organizational Chart, the APD, like the Public Defender Service Corporation, will be under the governance of the PDSC Board of Trustees and the PDSC Director for administrative purposes only. All other attorneys and staff of the APD are answerable to the Supervising Attorney of the APD. The PDSC Board of Trustees would review the performance of the APD Supervising Attorney.

The office of the Alternate Public Defender will exist separate and apart from the site of the PDSC's main operations.

Administrative resources which may be shared by the PDSC and the APD include the areas of Fiscal/Financial Operations, and the Computer and Personnel Services. *It must be noted here that in order to adequately and efficiently meet the electronic/automation needs of both the main PDSC and the APD, the position of Computer Systems Analyst I which was requested by the PDSC for Fiscal Year 2005, must receive legislative approval and funding.* Current general functions, duties and responsibilities of these sections do not pose any obvious breaches of confidentiality or conflicts of interest when shared with the APD.

The APD would act independently for the purposes of case management. The Director of the PDSC would be nominally in charge of both the PDSC and the APD, however she would not be involved in the day-to-day operations of the APD, and could not initiate any promotional or disciplinary actions. Only upon specific recommendations of the APD Supervising Attorney may the Director of the PDSC make changes in the salary or working conditions of persons working at the APD. Although the APD would be formally a branch of the PDSC, it would operate autonomously, with a separate supervising attorney who is responsible for directing, coordinating and evaluating the work of attorneys and staff employed by the APD.

The PDSC Director and Administrative Director would be limited to reviewing and acting upon recommendations of the APD Supervising Attorney. The attorney in charge of the APD would report to the PDSC Board of Trustees in conjunction with the Director of the PDSC and personnel decisions affecting the APD supervising attorney would be reviewed by the Board of Trustees directly. The two offices would remain physically apart, the attorneys and staff would have no access to each other's files and the computer case management system would be separate. The PDSC and the APD would adhere to a well-known policy and written Standard Operating Procedures of keeping all legal activities completely separate. All attorneys and other staff employees assigned to the APD would be classified employees of the government of Guam.

There would be no duplication of efforts and wasted time separately addressing indigent defense issues by the PDSC Board of Trustees and the Court with an expansion of the PDSC under one administrative umbrella.

B. BUDGETING AND FINANCE:

There are a couple of options for funding of the APD. In the first option, the Judicial Council would transfer approximately \$612,070 from its budgetary allocation for the year to the APD. In the second option, the APD would be funded directly through the Judicial Client Services Trust Fund for indigent defense counsel which is replenished by legislative appropriation for attorney fees for services provided to the indigent in court-appointed cases and court fees. Funds would be transferred to an account established and maintained solely for the use of the APD by the PDSC Chief Fiscal Officer. The account shall be under the name of the APD, but part of the "Public Defender Service Corporation Fund" as authorized in 12 G.C.A. §11113. The statute requires that all monies from whatever source derived be placed in the "Public Defender Service Corporation Fund" and all expenditures be made therefrom. Payroll and expenditures for APD shall be handled in the same

manner as the PDSC. Legislative reports on expenditures and sources of funding of the "Public Defender Service Corporation Fund" are required quarterly pursuant to the PDSC enabling legislation and the current budget law, PL 27-29.

The attorney in charge of the APD would submit a separate budget to the Judicial Council for funding utilizing the aid and assistance of the Director and administrative staff of the PDSC. A Memorandum of Understanding (MOU) would be entered into between the PDSC Board of Trustees and the Judicial Council. Meetings of the PDSC Board of Trustees would be held to address the concerns and budgets of the PDSC and the APD together with procedures and rules remaining the same for both divisions/sections of the Public Defender as a whole.

Several considerations must be made when evaluating the budgetary needs of this proposal. Most obvious is the start-up costs associated with establishing the APD and setting up its facilities.

As with the PDSC, the bulk of the APD's yearly expense will be in salaries, given the professional qualifying requirements of two-thirds (2/3) of its staff. **For Personnel Services (salaries and benefits), a projection of \$477,489 is seen for FY2005.**

Travel expenses have been projected in connection with **local mileage reimbursement** for the Investigator at the rate of \$.375 per mile (current federal tax allowable rate), traveled for official purposes. **An average yearly cost of \$1,500 is projected.**

Contractual services are itemized on the attached Costs Breakdown, and generally involve leases on copiers, office maintenance, bar dues, etc. **Total projection for this object category is \$13,100 (an increase of \$250.00 is projected to cover notarial bonding for the additional Legal Secretary).**

Another great expense will be in **office space rental**, since it is physically and legally impossible for the APD to share office facilities with the PDSC. Bearing in mind that access to the courts is an essential ingredient for its smooth operations, we have looked into renting office space in the Hagatna area, within walking distance to the Judicial Center. The average rental rate is \$1.50 per square foot (inclusive of power and water); the highest rate is \$2.00 per square foot (with water, power, and janitorial services). Adhering to the instructions given by the PDSC Board of Trustees on March 29, 2004 the required office area was set at 2,000 square feet of space for a staff of eight (8). This equates to **\$48,000 for rental payments in FY2005.**

General office supplies were estimated to cost the APD \$4,000 for the fiscal year.

Small equipment, including office furniture and equipment with a unit cost of less than \$500 are also listed on the attached breakdown. This category reflects an estimate of **\$8,813 for FY2005.**

Miscellaneous expenditures for training, job announcements/advertisements were estimated at **\$4,000 for FY2005.**

In the area of **Utilities**, we foresee telephone, pager and long-distance services as the expenses in this object category. This was projected at **\$7,128.**

Capital outlay (furniture and equipment with a unit cost greater than \$500) for Fiscal Year 2005 is expected to be **46,396** since these items must be purchased this fiscal year in order to begin operations. Thereafter, costs are expected to decrease in this category, as the initial needs have been met. None of the items which will be purchased under this category are "extravagant", but instead are necessary for efficient operations.

c/c

**ALTERNATE PUBLIC DEFENDER (APD)
Budget Justification**

PERSONNEL SERVICES:

\$477,489.00

(Please refer to attached Staffing Pattern)

Salaries:

1. Regular Salaries for the **proposed staffing** of the Alternate Public Defender were determined using the Hay Study/Unified Pay Scale (and applicable laws for government attorneys), for the respective classes of employees. In order to attract qualified applicants, steps were set at middle-to-high levels. As instructed, attorneys will be hired and compensated as follows:

1 Attorney IV-9

(Supervising Attorney who will oversee the daily operations of the APD, and will be answerable to the Director of the Public Defender Service Corporation for administrative purposes only. All other attorneys and staff are answerable to the Supervising Attorney of the APD. The Board of Trustees would conduct performance reviews of the APD Supervising Attorney.)

1 Attorneys III-4

Mid-level, experienced attorney who will be working with minimal supervision.

1 Attorney III-3

Mid-level, experienced attorney who will be working with minimal supervision

1 Attorney II-3

Still considered entry level, but with some experience in the practice of law, and will be performing under close supervision.

Support staff will include:

1 Investigator II (M-5)

Mid-level, experienced investigator who will also perform process services, and may also be the "office messenger" for the delivery of various documents. This individual will be answerable to the Supervising Attorney.

1 Legal Secretary III (J-5)

Senior level legal secretary who will be responsible for the secretarial and/or clerical support of the four attorneys, with assistance from a Legal Secretary

I. He/she will also be supervising the Legal Secretary I and the Legal Clerk II.

1 Legal Secretary I (I-3)

Junior level legal secretary who will be supporting the secretarial and clerical needs of attorneys, with supervision from the Legal Secretary III.

1 Legal Clerk II (H-2)

Senior level legal clerk who will be responsible for telephone and personal reception functions, client interviews, records/files maintenance, while under the supervision of the Legal Secretary III.

Benefits:

1. APD employees will be considered government of Guam employees, since the organizational structure makes them answerable to the Director of the Public Defender Service Corporation and/or the Board of Trustees of the Public Defender Service Corporation. As such, each employee will be a member of the Government of Guam Retirement Fund, as mandated. Therefore, retirement benefits (employer's share) at the current rate of 20.81% of the employee's gross pay have been computed and are reflected.
2. As government of Guam employees, APD personnel are entitled to the available group insurance programs, should they so desire. Although it is not certain at this point as to what "classes" (for health and dental insurance purposes) prospective employees will belong to, placeholders were set with projected amounts for these purposes.

#220

TRAVEL:

\$ 1,500.00

Expenditures in this category are for the purpose of reimbursing employees whose duties involve "field assignments", which will require the use of their personal vehicles. The standard mileage rate utilized for this purpose is 37.5 cents, which is the allowable rate established by the Internal Revenue Service.

Prior to submitting claims for mileage reimbursements, affected employees must provide copies of their vehicle registrations and proof of insurance coverage. Updates of these documents will be required. Furthermore, requests for reimbursement must be accompanied by "Daily Work and Mileage Activities Reports", which will substantiate claims for mileage traveled.

#230

CONTRACTUAL SERVICES

\$ 13,100.00

1. **Xerox Printer/Copier/Facsimile Machine**
(Approximately \$200/month) \$2,400.00
2. **WestLaw (Internet Legal Research Source)**
(Approximately \$400/month for 4 users) 4,800.00
3. **JurisPacific (local Internet Legal Research Source)**
Approximately \$200/month for 1 user's license) 2,400.00
4. **Malpractice Insurance**
(Coverage under same policy as PDSC, but
additional premiums are for 4 additional attorneys) 1,800.00
5. **Guam Bar Association Dues**
(\$300/year for 4 attorneys) 1,200.00
6. **Notary Bonding for Legal Secretaries (\$250 x 2)** 500.00

#233

OFFICE SPACE RENTAL:

\$ 48,000.00

In seeking adequate accommodations for the facilities of the APD, one of the main considerations was that the office be within walking distance from the Judicial Center. Research was made involving several office spaces in the Hagatna vicinity. Results of this endeavor are attached.

Rental rates vary from a low of \$.91 per square foot to a high of \$2.00 per square foot. Among other considerations are the availability of a reliable air-conditioning system, power and water, a back-up generator, compliance with the Americans With Disabilities Act regarding accessibility, janitorial/maintenance services, and parking availability. Expenditures were estimated at the highest rate, multiplied by the required 2,000 square feet of space established by the PDSC Board of Trustees.

A Bid Invitation will be published in the Pacific Daily News, and all other requirements set forth in the PDSC's Procurement Rules and Regulations will be adhered to.

#240

SUPPLIES:

\$ 4,000.00

For the initial 12-month period of operations for the APD, the following supplies are necessary:

Xerox/Copying Paper

Pleading Paper

Postage Stamps

Pens/Pencils

Legal Pads

Toilet Tissue (may not be included with office rental, depending on which site is chosen)

Paper Towels (may not be included with office rental, depending on which site is chosen)

Envelopes

Batteries

Toner/Ink Cartridges

Business Cards

Computer Disks

Staplers and Staples

Perforators

Tape Dispensers and Tape

Yearly Calendars (Desks and Appointments)

Scissors

Paper Cutter

File Racks

Rolodex

Duplication of Office Keys

6/10

#250

SMALL EQUIPMENT:

\$ 10,457.00

(Under \$500 unit price)

The following items are slated to be purchased under this object category:

4	High-Back Chairs (for Attorneys)	\$499.00/ea	1,996.00
4	Desk Chairs (for Support Staff)	299.00/ea	1,196.00
6	Reception Chairs (waiting area)	120.00/ea	720.00
16	Client Chairs (2 for each of the employees)	100.00/ea	1,600.00
6	4-drawer Filing Cabinets (Attys & Secs)	200.00/ea	1,200.00
2	L-shaped Desk (Legal Secretaries)	499.00/ea	998.00
2	Double-Pedestal Desks (Inves and Leg Clk)	499.00/ea	998.00
2	Pagers (Investigator and Legal Clerk)	150.00/ea	300.00
1	Water Dispenser		400.00
1	Typewriter		499.00
1	Typewriter Table/Stand		150.00
2	Printer/Facsimile Tables	200.00/ea	400.00

4/10

#290

MISCELLANEOUS:

\$ 4,000.00

Expenditures in this category involve publications in the news media (e.g., bid invitations, job announcements, etc.), and local training for APD employees.

8/10

#363

UTILITIES (TELEPHONES):

\$ 7,128.00

When determining the site for the office of the APD, power and water are among the specifications required of the lessor. However, the APD will be responsible for the installation (designated under Capital Outlay), and retention of its telephone service. Costs are broken down as follows:

9	Telephone Units (each employee plus a fax line at \$60/month)	\$ 6,480.00
2	Pager Services (\$12/month x 2 pagers)	280.00
	Long Distance Calls (average \$30/month)	360.00

#450

CAPITAL OUTLAY:

\$ 46,396.00

(Furniture/Equipment above \$500 unit price)

As expected, start-up costs for the office of the Alternate Public Defender are high, due to the initial purchasing of equipment necessary for efficient operations. These include:

1	30-drawer Pigeon Box	\$ 600.00
4	Executive Desks-Attorneys (\$599/desk)	2,396.00
1	Network Infrastructure Installation	6,000.00
1	Main Server and Associated Software	4,500.00
8	Desktop Computer Workstations (\$2,000/station)	16,000.00
1	Installation of Telephone System	10,000.00
1	Case Management Software (with licenses for users)	4,500.00
1	LaserJet Printer (back-up to Xerox Copier/Printer/Fax)	2,400.00

10/10

**BEFORE THE
PUBLIC DEFENDER SERVICE CORPORATION
BOARD OF TRUSTEES
RESOLUTION NO. 08-04
RELATIVE TO THE ESTABLISHMENT OF
THE OFFICE OF THE
ALTERNATE PUBLIC DEFENDER**

- WHEREAS,** The Public Defender Service Corporation was established through Chapter 11 of Title 12 Guam Code Annotated (Public Defender Service Corporation Act of 1975), in part to ensure compliance with the constitutional mandate of an indigent defendant's right to counsel; and
- WHEREAS;** The judiciary branch of the government of Guam, has experienced and continues to experience obstacles in the application of this constitutional guarantee, more particularly in the timeliness of payments owed to court-appointed attorneys of the private bar; and
- WHEREAS,** In an attempt to address this growing concern, the Unified Judiciary's Sub-Committee on Indigent Defense under the chairmanship of Associate Justice Frances Tydingco-Gatewood, requested the Public Defender Service Corporation (PDSC) to develop a proposal for an Office of the Alternate Public Defender; and
- WHEREAS,** The Office of the Alternate Public Defender will be responsible for receiving cases which the PDSC must withdraw from due to conflicts of interest as established on the Corporation's General Administration Standard Operating Procedures No. 001-FY2004 and 002-FY2004 ; and
- WHEREAS,** The Office of the Alternate Public Defender will operate as a separate section/division of the PDSC, and will be answerable to the PDSC Board of Trustees and the PDSC Director. The two entities shall not have access to each other's clients' files, as specific clientele information must be kept separate and confidential, pursuant to ethical and legal mandates; and
- WHEREAS,** Further specifics regarding budgeting and financing methods, organizational structure, general functions and administrative resources of the Office of the Alternate Public Defender are described and hereby referred to in the proposal submitted by the PDSC; and
- WHEREAS,** This Proposal for the Establishment of the Office of the Alternate Public Defender was presented to the PDSC Board of Trustees at its regular meeting on March 26, 2004; now therefore be it

RESOLVED,

The Board of Trustees, at its continued meeting of March 29th, 2004, accepted and approved the Proposal for the Establishment of the Office of the Alternate Public Defender to be in place by October 1, 2004.

DULY AND REGULARLY ADOPTED this 21st day of April, 2004



Chief Justice F. PHILIP CARBULLIDO
Chairman

ATTEST:



BERNADETTE S.N. CHARGUALAF
Secretary

DIRECTOR
Kathleen E. Maher



ADMINISTRATIVE DIRECTOR
Bernadette S.N. Chargualaf

PUBLIC DEFENDER SERVICE CORPORATION
(Kotperasion Setbision Defensot Pupbleku)

GOVERNMENT OF GUAM
200 Judicial Center Annex ♦ 110 West O'Brien Drive
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March 30, 2004

Chief Justice F. Philip Carbullido
Chairman of Judicial Council
of Guam

RE: Proposed Alternative Public Defender

Dear Chief Justice Carbullido:

By this letter, as Director of the Public Defender Service Corporation and on behalf of the Board of Trustees of the PDSC, I respectfully request that the Judicial Council approve a plan by resolution to implement an Alternative Public Defender to handle conflict cases of the main Public Defender's office and save the government of Guam a considerable amount of public money.

As you are aware, the Board of Trustees of the Public Defender Service Corporation by resolution approved a plan and accepted a proposal for an Alternative Public Defender on March 29, 2004 with your participation as Chairman of the Board. The proposal provides for four attorneys with one supervising attorney serving as the Alternative Public Defender and three Assistant Public Defenders under him, two Legal Secretaries, one experienced mid-level Investigator, and a Legal Clerk. The total price would be less than \$600,000, including rent, utilities, housekeeping services and parking which is half the cost of the current expense of Associated Defense Advocates(ADA) to the Court of 1.2 + million annually.

The PDSC Administrative Director, Personnel Officer and Fiscal Officer of the Public Defender Service Corporation put together the proposal at my request for consideration of an Alternative Public Defender (APD) to handle PDSC conflicts with enough personnel and space to handle the approximately 800 cases per year formerly sent to the Associated Defense Advocates. This is an alternative to ADA and to a CJA type panel.

The Alternative Public Defender provides for sharing of administrative resources to provide for policy and planning regarding indigent defendant representation as well as the use of the same Director, Administrative Director, personnel officer, fiscal officer and resources, and sharing of supplies. The organizational plan would provide that the Alternative Public Defender(APD) be a satellite office of the Main Public Defender providing identical services for cases on which the main office has declared a conflict of interest.

The APD would act independently for the purposes of case management. The Director of the Public Defender would be nominally in charge of both the PDSC and the APD, however she would not be involved in the day to day operations of the APD and could not initiate any promotional or disciplinary actions. Only upon specific recommendations of the APD supervising attorney may the Director of the PDSC make changes in the salary or working conditions of persons working at the APD. Although the APD would be formally a branch of the PDSC, it would operate autonomously, with a separate supervising attorney who is responsible for directing, coordinating and evaluating the work of attorneys and staff employed by the APD. The Director and Administrative Director would be limited to reviewing and acting upon recommendations of the supervising

Letter to Chief Justice Carbullido
Chairman of the Judicial Council
Re Alternative Public Defender
page 2

attorney of the APD. The attorney in charge of the APD would report to the Board in conjunction with the Director of PDSC and personnel decisions affecting the APD attorney in charge would be reviewed by the Board of Trustees directly. The two offices would remain physically apart, the attorneys and staff would have no access to each other's files and the MIS computer case management system would be separate. The PDSC and the APD would adhere to a well known policy and written Standard Operating Procedure(SOP) of keeping all legal activities completely separate. All staff members assigned to the APD would be classified employees of the government of Guam.

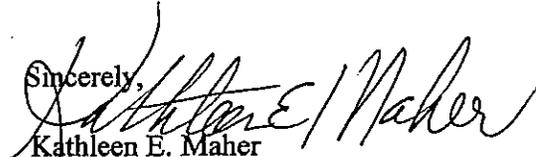
Several Counties in California have experimented with the APD concept with no ill effects. Case law delineating the physical requirements and separation of case management to create an entity that would pass ethical scrutiny was followed in the description of the organizational plan outlined above and attached to this letter. The leading case in California where robbery co-defendants were represented by the Public Defender and the Alternative Public Defender in a joint trial, where the two defendants implicated each other, is *People v. Christian*, 48 Cal. Rptr.2d 867(1996). The analysis by the court found no fault in the lawyering or ethical conflict in the arrangement of the two divisions of the Public Defender in that case. *Christian* cites to other cases of a similar nature where a similar organizational plan has been approved. I also spoke to a Chief Deputy Public Defender in Santa Clara County who has seen staff moved from the main office to the Alternative Public Defender since 1996. He indicated that there have been no problems and the organizational plan has worked well with the staff being all county employees under one main Public Defender.

The Attorney in charge of the APD would submit a separate budget to the Judicial Council for funding utilizing the aid and assistance of administrative staff of the PDSC and the Judicial Council would transfer approximately \$600,000 from its budgetary allocation for the year to the APD. The APD could also be funded directly through the Judicial Client Services Trust Fund for indigent defense counsel which is replenished by legislative appropriation for attorney fees for services provided to the indigent in court appointed cases and court fees. Meetings of PDSC Board of Trustees would be held to address the concerns and budgets of the PDSC and the APD with procedures and rules remaining the same for both divisions of the Public Defender as a whole.

There would be no duplication of efforts and wasted time separately addressing indigent defense issues by the Board of Trustees and the Court.

The benefits of the PDSC and the APD are many. The arrangement provides a means of providing alternate counsel at government attorney salaries. These Attorneys would have no financial incentive to work harder on one case than another as attorneys in private practice where one client is paying a considerably higher fee to a law firm than another. The cases would be kept separate, but the administration, personnel, computer services staff and fiscal officer would be shared with no extra cost to the Government and therefore the public in this regard.

Sincerely,


Kathleen E. Maher
Public Defender

TIMELINE

1. **March 29, 2004**

PDSC Board of Trustees approves a Proposal for the Establishment of the Office of the Alternate Public Defender, subject to modifications. (Please refer to the Proposal dated and/or revised on April 15, 2004.)

2. **April 21, 2004**

Proposal for the Establishment of the Office of the Alternate Public Defender (revised April 20, 2004) submitted to Chief Justice Carbullido for review and/or revisions.

3. **April 30, 2004**

Proposal for the Establishment of the Office of the Alternate Public Defender presented to the Judicial Council at their regularly scheduled meeting. If approved, then the following takes place.

4. **May 7, 2004**

PDSC to prepare Agreement for services between the Judicial Council and the PDSC, which will be signed by PDSC Director Kethleen E. Maher and Administrator of the Courts Perry C. Taitano.

5. **June 4, 2004**

Sealed Bid Invitation (for Office Space Rental) will be published in the Pacific Daily News.

First Publication of Job Announcements (for various positions involved) will be published in the Pacific Daily News, making reference to "establishing a list of eligibles". (Employment Applications will be accepted until 5:00 p.m. Friday, June 25, 2004.)

6. **June 11, 2004**

Second Publication of Job Announcements (for various positions involved) will be published in the Pacific Daily News (same information as above)

7. **June 18, 2004**

Deadline for submission of bids (for Office Space Rental).

8. **June 25, 2004**

Opening of Sealed Bids (for Office Space Rental) will take place at 3:00 p.m. in the Justice Monessa G. Lujan Appellate Courtroom of the Supreme Court of Guam, 3rd Floor, Guam Judiciary Center, 120 West O'Brien Drive, Hagatna, Guam.

5:00 p.m. Deadline for receipt of employment applications

9. **June 28 through July 8, 2004**

Evaluations and rating of employment applications

10. **July 2, 2004**

Deadline for notification to all bidders (for office space rental) as to who the bid is awarded to.

11. **July 9, 2004**

List of eligible applicants announced and/or notifications of ratings out for distribution.

Scheduling of interviews with applicants.

12. **July 26, 2004**

Successful job applicants notified/announced

13. **August 2004 - - - September 2004**

Procurement of necessary office furniture, equipment, materials and supplies

Preparation of office space (renovations, partitions, painting, etc.)

14. **OCTOBER 1, 2004**

GRAND OPENING OF THE OFFICE OF THE ALTERNATE PUBLIC DEFENDER

**Proposal
For The
Establishment Of The
Office Of The**

**ALTERNATE
PUBLIC
DEFENDER**

Revised
April 20, 2004

**Proposal for Establishment
of the Office of the
ALTERNATE PUBLIC DEFENDER
a separate subsidiary of the
PUBLIC DEFENDER SERVICE CORPORATION
(Revised April 15, 2004)**

BACKGROUND:

At a meeting of the Indigent Defense Sub-Committee on February 10, 2004, Associate Justice and Sub-Committee Chairwoman Frances Tydingco-Gatewood requested that the Public Defender Service Corporation (PDSC) develop a proposal for an Office of the Alternate Public Defender (APD), to include a cost analysis of the staffing, financing and other administrative needs necessary for the establishment of this body.

The original Proposal for Establishment of the Office of the Alternate Public Defender was presented to the PDSC Board of Trustees at its regular meeting on March 26, 2004. This meeting was continued to March 29, 2004, whereupon the original Proposal was approved with the following modifications:

1. **Personnel Services:**

Added:	One (1) Attorney III One (1) Legal Secretary I
Replaced:	One (1) Clerk Typist III with One (1) Legal Clerk II

2. **Office Space Rental:**

Increased square footage requirement from 1,500 to 2,000 square feet of office space

3. **Establishment of the Office of the Alternate Public Defender:**

All applicable laws, rules and regulations governing the **Reorganization Process** for the government of Guam must be adhered to. (The Public Defender Service Corporation will be the entity undergoing reorganization, which will essentially add a subsidiary—the Alternate Public Defender.)

Additionally presented to the PDSC Board of Trustees on March 26, 2004 was a California court decision, *People v. Christian*, 48 Cal. Repr. 2d 867 (1996) which, while citing other California cases, found no fault in the lawyering or ethical conflict in the arrangement of the two divisions (i.e.,

the main Public Defender and the Alternate Public Defender), representing the two defendants who implicated each other in the case. Furthermore, a telephonic discussion between PDSC Director Kathleen E. Maher and a Chief Deputy Public Defender in Santa Clara County revealed that there have been no problems, and the organizational plan, of which the proposed Guam Alternate Public Defender is similar to, has worked well with all staff members being county employees under the main Public Defender.

PURPOSE:

In part, the purpose of the Office of the Alternate Public Defender is to address the growing financial obligations confronting the Superior Court of Guam with respect to delays in payments to the private bar for court-appointed counsel when required. Additionally, the Office of the Alternate Public Defender will be responsible for receiving cases which the PDSC must withdraw from due to conflicts of interest as established in the Corporation's General Administration Standard Operating Procedures No.001-FY2004 and 002-FY2004.

The total annual cost of the Alternate Public Defender would be \$612,070 for the first year of operations (including rent, utilities, housekeeping services and parking), which is one-half the cost of current expenditures by the Associated Defense Advocates (ADA) to the Court of more than \$1.2 million annually. There will still be a need for a small panel of private lawyers to serve the smaller number of cases which involve multiple defendants or other sorts of conflict situations.

Summarily, the APD will provide legal representation to indigent defendants that the PDSC is unable to represent because of a conflict of interest, often because more than one defendant is charged, or the PDSC represents the victim in another pending legal matter. However, the two entities shall not have access to each other's clients' files, as specific clientele information must be kept separate and confidential, pursuant to ethical and legal mandates.

PROPOSAL:

A. ORGANIZATIONAL STRUCTURE:

As depicted on the attached Organizational Chart, the APD, like the Public Defender Service Corporation, will be under the governance of the PDSC Board of Trustees and the PDSC Director for administrative purposes only. All other attorneys and staff of the APD are answerable to the Supervising Attorney of the APD. The PDSC Board of Trustees would review the performance of the APD Supervising Attorney.

The office of the Alternate Public Defender will exist separate and apart from the site of the PDSC's main operations.

Administrative resources which may be shared by the PDSC and the APD include the areas of Fiscal/Financial Operations, and the Computer and Personnel Services. *It must be noted here that in order to adequately and efficiently meet the electronic/automation needs of both the main PDSC and the APD, the position of Computer Systems Analyst I which was requested by the PDSC for Fiscal Year 2005, must receive legislative approval and funding.* Current general functions, duties and responsibilities of these sections do not pose any obvious breaches of confidentiality or conflicts of interest when shared with the APD.

The APD would act independently for the purposes of case management. The Director of the PDSC would be nominally in charge of both the PDSC and the APD, however she would not be involved in the day-to-day operations of the APD, and could not initiate any promotional or disciplinary actions. Only upon specific recommendations of the APD Supervising Attorney may the Director of the PDSC make changes in the salary or working conditions of persons working at the APD. Although the APD would be formally a branch of the PDSC, it would operate autonomously, with a separate supervising attorney who is responsible for directing, coordinating and evaluating the work of attorneys and staff employed by the APD.

The PDSC Director and Administrative Director would be limited to reviewing and acting upon recommendations of the APD Supervising Attorney. The attorney in charge of the APD would report to the PDSC Board of Trustees in conjunction with the Director of the PDSC and personnel decisions affecting the APD supervising attorney would be reviewed by the Board of Trustees directly. The two offices would remain physically apart, the attorneys and staff would have no access to each other's files and the computer case management system would be separate. The PDSC and the APD would adhere to a well-known policy and written Standard Operating Procedures of keeping all legal activities completely separate. All attorneys and other staff employees assigned to the APD would be classified employees of the government of Guam.

There would be no duplication of efforts and wasted time separately addressing indigent defense issues by the PDSC Board of Trustees and the Court with an expansion of the PDSC under one administrative umbrella.

B. BUDGETING AND FINANCE:

There are a couple of options for funding of the APD. In the first option, the Judicial Council would transfer approximately \$612,070 from its budgetary allocation for the year to the APD. In the second option, the APD would be funded directly through the Judicial Client Services Trust Fund for indigent defense counsel which is replenished by legislative appropriation for attorney fees for services provided to the indigent in court-appointed cases and court fees. Funds would be transferred to an account established and maintained solely for the use of the APD by the PDSC Chief Fiscal Officer. The account shall be under the name of the APD, but part of the "Public Defender Service Corporation Fund" as authorized in 12 G.C.A. §11113. The statute requires that all monies from whatever source derived be placed in the "Public Defender Service Corporation Fund" and all expenditures be made therefrom. Payroll and expenditures for APD shall be handled in the same

manner as the PDSC. Legislative reports on expenditures and sources of funding of the "Public Defender Service Corporation Fund" are required quarterly pursuant to the PDSC enabling legislation and the current budget law, PL 27-29.

The attorney in charge of the APD would submit a separate budget to the Judicial Council for funding utilizing the aid and assistance of the Director and administrative staff of the PDSC. A Memorandum of Understanding (MOU) would be entered into between the PDSC Board of Trustees and the Judicial Council. Meetings of the PDSC Board of Trustees would be held to address the concerns and budgets of the PDSC and the APD together with procedures and rules remaining the same for both divisions/sections of the Public Defender as a whole.

Several considerations must be made when evaluating the budgetary needs of this proposal. Most obvious is the start-up costs associated with establishing the APD and setting up its facilities.

As with the PDSC, the bulk of the APD's yearly expense will be in salaries, given the professional qualifying requirements of two-thirds (2/3) of its staff. **For Personnel Services (salaries and benefits), a projection of \$477,489 is seen for FY2005.**

Travel expenses have been projected in connection with **local mileage reimbursement** for the Investigator at the rate of \$.375 per mile (current federal tax allowable rate), traveled for official purposes. **An average yearly cost of \$1,500 is projected.**

Contractual services are itemized on the attached Costs Breakdown, and generally involve leases on copiers, office maintenance, bar dues, etc. **Total projection for this object category is \$13,100** (an increase of \$250.00 is projected to cover notarial bonding for the additional Legal Secretary).

Another great expense will be in **office space rental**, since it is physically and legally impossible for the APD to share office facilities with the PDSC. Bearing in mind that access to the courts is an essential ingredient for its smooth operations, we have looked into renting office space in the Hagatna area, within walking distance to the Judicial Center. The average rental rate is \$1.50 per square foot (inclusive of power and water); the highest rate is \$2.00 per square foot (with water, power, and janitorial services). Adhering to the instructions given by the PDSC Board of Trustees on March 29, 2004 the required office area was set at 2,000 square feet of space for a staff of eight (8). This equates to **\$48,000 for rental payments in FY2005.**

General office supplies were estimated to cost the APD \$4,000 for the fiscal year.

Small equipment, including office furniture and equipment with a unit cost of less than \$500 are also listed on the attached breakdown. This category reflects an estimate of **\$8,813 for FY2005.**

Miscellaneous expenditures for training, job announcements/advertisements were estimated at **\$4,000 for FY2005.**

In the area of **Utilities**, we foresee telephone, pager and long-distance services as the expenses in this object category. This was projected at **\$7,128.**

Capital outlay (furniture and equipment with a unit cost greater than \$500) for Fiscal Year 2005 is expected to be 46,396 since these items must be purchased this fiscal year in order to begin operations. Thereafter, costs are expected to decrease in this category, as the initial needs have been met. None of the items which will be purchased under this category are "extravagant", but instead are necessary for efficient operations.

CALIFORNIA

CASE LAW

SUPPORTING

THE ESTABLISHMENT OF
THE OFFICE OF THE

**ALTERNATE PUBLIC
DEFENDER**

as a subsidiary of the main office of the

**PUBLIC DEFENDER
SERVICE CORPORATION**

48 Cal. Rptr.2d 867, 96 Cal. Daily Op. Serv. 249, 96 Daily Journal D.A.R. 331

View National Reporter System version

THE PEOPLE, Plaintiff and Respondent,

v.

RON DUPRIES CHRISTIAN et al., Defendants and Appellants.

No. A067247.

Court of Appeal, First District, Division 2, California.

Jan 9, 1996.

SUMMARY

A jury convicted two defendants of several offenses related to the robbery of a fast-food restaurant: the jury found one defendant guilty of two counts of robbery and a personal use enhancement, and the other guilty of one of the two charged robberies and of being a felon in possession of a firearm. One of the defendants was represented at trial by the county public defender's office, while the other was represented by the alternate defender's office. (Superior Court of Contra Costa County, No. 940743-8, Patricia K. Sepulveda, Judge.)

The Court of Appeal affirmed as to both defendants. The court held that there was no violation of defendant's constitutional right to conflict-free counsel, even though one of the two defendants was represented by an attorney from the public defender's office, and the other was represented by the alternate defender's office. Although the county public defender was nominally in charge of both offices, he was an overseer only in a strict administrative sense; he was not involved in any way in the day-to-day operations of the alternate defender's office. In addition, attorneys from the two offices remained physically apart, had no access to each other's files, and adhered to a well-known policy of keeping all legal activities completely separate, such that the offices were separate "firms." There was no evidence that those "ethical walls" had been ineffective in avoiding conflicts of interest between the two offices; hence, an ethical separation existed in fact between the two. (Opinion by Kline, P. J., with Smith and Phelan, JJ., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1a, 1b) Attorneys at Law § 15--Attorney-client Relationship--Conflicts of Interest--Criminal Codefendants Represented by Public *987 Defender and Alternate Defender--Ethical Separation

In a robbery prosecution of two codefendants, there was no violation of one of the defendant's constitutional right to conflict-free counsel, even though one of the two defendants was represented by an attorney from the public defender's office, and the other was represented by the alternate defender's office. Although the county public defender was nominally in charge of both offices, he was an overseer only in a strict administrative sense; he was not involved in any way in the day-to-day operations of the alternate defender's office, and he could not initiate any promotional or disciplinary actions, but was limited to reviewing and acting upon the recommendations of the supervising attorney of the alternate defender's office. In addition, attorneys from the two offices remained physically apart, had no access to each other's files, and adhered to a well-known policy of keeping all legal activities completely separate. There was no evidence that those "ethical walls" had been ineffective in avoiding conflicts of interest between the two offices; hence, an ethical separation existed in fact between the two.

[See 5 Witkin & Epstein, Cal. Criminal Law (2d ed. 1989) § 2767.]

(2) Attorneys at Law § 15--Attorney-client Relationship--Conflicts of Interest

The potential for conflict of interest in representing multiple defendants is so grave that ordinarily a lawyer should decline to act for more than one of several codefendants except in unusual situations when, after careful investigation, it is clear that no conflict is likely to develop and when the several defendants give an informed consent to such multiple representation. There is a possibility of conflict, then, if the interest of the defendants may diverge at some point so as to place the attorney under inconsistent duties. There is an actual, relevant conflict of interests if, during the course of the representation, the defendants' interests do diverge with respect to a material factual or legal issue or to a course of action.

(3) Attorneys at Law § 15--Attorney-client Relationship--Conflicts of Interest--Distinctions Between Public and Private Sectors

Although rules regarding conflicts of interest clearly apply both to private and public sector attorneys, they appear to have been drafted with private attorneys primarily in mind. There are certain distinctions between these two types of practices public and private that are relevant; in particular, the financial incentive, often present in private practice, to favor a more important client over a lesser one is not an issue for government-funded offices performing services for indigent clients. Disqualification of public sector attorneys due to conflicts of *988 interest should proceed with caution, due to the danger of dislocation and increased expense in government. Thus, in the public sector, in light of the somewhat lessened potential for conflicts of interest and the high public price paid for disqualifying whole offices of government-funded attorneys, use of internal screening procedures to avoid conflicts within government offices, have been permitted.

(4) Attorneys at Law § 15--Attorney-client Relationship--Conflicts of Interest--Criminal Codefendants Represented by Public Defender and Alternate Defender--Separate Firms

In a robbery prosecution of two codefendants, where one defendant was represented by the county public defender's office, and the other was represented by the alternate defender's office, both offices were separate "firms" for purposes of conflict of interest analysis. These offices were nonprofit organizations, funded by the county, not by clients, thus eliminating any financial incentive to favor one client over another. Furthermore, the two offices presented themselves to the public as separate entities, and conducted themselves as separate firms, coinciding only for matters of administrative convenience and only at the top administrative level. Supervision of attorneys at the alternate defender's office was the responsibility of the supervising attorney there, not the public defender, and neither office consulted with the other on general litigation strategy or the handling of individual cases.

(5) Attorneys at Law § 15--Attorney-client Relationship--Conflicts of Interest--Criminal Codefendants Represented by

Public Defender and Alternate Defender--Evidence of Actual Conflict.

In a robbery prosecution of two codefendants, where one defendant was represented by the county public defender's office, and the other was represented by the alternate defender's office, there was no evidence of a conflict of interest between the two defendants' attorneys. Speculative contentions of conflict of interest cannot justify disqualification of counsel. Although the record showed that there was a potential and actual conflict of interest between the codefendants, the record also showed that each of the two trial attorneys vigorously defended his client, objecting to the admission of evidence when appropriate and even attempting to implicate each other's client through argument and cross-examination. Furthermore, although there was no question as to the identities of the robbers, since the incident had been captured on videotape and was shown to the jury, each attorney attempted to portray the other defendant as the instigator of the crime and to prove that it was the other defendant, and not his client, who had dropped the gun in front of a pursuing police officer. *989

COUNSEL

Alfons G. Wagner and David J. Briggs, under appointment by the Court of Appeal, for Defendants and Appellants.
Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Ronald A. Bass, Assistant Attorney General, and Catherine A. Rivlin, Deputy Attorney General, for Plaintiff and Respondent.

KLINE, P. J.

Ron Dupries Christian and Dishon Jackson appeal their convictions, following a joint jury trial, of several offenses related to the robbery of a Taco Bell restaurant. Christian's counsel filed an opening brief in which he raised no issues and asked this court for an independent review of the record pursuant to People v. Wende (1979) 25 Cal.3d 436 [158 Cal.Rptr. 839, 600 P.2d 1071]. Jackson contends the trial court erred in permitting the Contra Costa County Public Defender's Office (PD) to represent codefendant Christian and the alternate defender office (ADO) to represent Jackson. According to Jackson, because both offices are under the supervision of Public Defender Charles James, they are not separate entities for conflict of interest purposes, and the joint representation of Jackson and his codefendant denied Jackson the right to conflict-free and independent counsel.

Statement of the Case and Facts

On March 10, 1994, Jackson and Christian approached the counter at a Taco Bell restaurant in Richmond, California. As Jackson ordered some food, Christian pulled a gun on Rudolfo Gomez, who was working behind the counter. [FN1] Jackson demanded money from Gomez, who gave him money from the cash register. Jackson then jumped over the counter, followed by Christian. Jackson attempted to open another cash register, but was unsuccessful; the clerk opened the register and Jackson took money from it.

FN1 In his testimony, Gomez had difficulty recalling the course of events during the robbery.

Christian went to the back of the restaurant where he demanded that Melvin Lopez, the shift manager, give him money from the safe. Lopez opened the safe and Christian took the money. Jackson also went to the back of the restaurant, where he tried to exit through a back door, but he stopped when Lopez told him an alarm would ring. Jackson then returned to the front of the restaurant, jumped over the counter, and told Christian to "[h]urry up." Christian joined him and they left out the front of the restaurant. *990

Richmond police officers responded to reports of the robbery. Officer Mark Granko noticed two men fitting the robbers' descriptions walking through a parking lot. He approached the two men and ordered them to stop, at which point Jackson pulled a handgun from his waistband and dropped it on the ground. Jackson then ran in the direction of a Home Depot store, where he was apprehended. Christian attempted to hide under some shrubbery, but was arrested by Granko.

An information dated April 14, 1994, charged Christian with two counts of robbery pursuant to Penal Code sections 211 and 212.5, subdivision (b), [FN2] and alleged an enhancement for personal use of a firearm pursuant to section 12022.5, subdivision (a). The personal use enhancement also, it was alleged, precluded Christian's eligibility for probation under section 1203.06, subdivision (a). The information also charged Jackson with two counts of robbery and alleged he was armed with a firearm during the commission of the robberies pursuant to section 12022, subdivision (a)(1). The information further charged Jackson with possession of a firearm by a felon pursuant to section 12021, subdivision (a)(1). Jackson also was alleged to be ineligible for probation under section 1203, subdivision (e)(4) because of two prior felony convictions.

FN2 Unless otherwise indicated, all further statutory references are to the Penal Code.

After his arrest, Christian gave a statement to the police in which he implicated Jackson in the robbery. He told police he had handed Jackson some money and the gun after they had left Taco Bell. Based on this statement, Jackson moved to sever his trial from Christian's. However, the prosecutor stated that he would not use Christian's statement at trial unless Christian testified. Neither appellant testified during trial, and the statement was not introduced into evidence. Christian was represented in the trial court by Deputy Public Defender Jonathan Cooper and Jackson was represented by William Veale of the ADO. Before trial, Jackson moved for substitute counsel under People v. Marsden (1970) 2 Cal.3d 118 [84 Cal.Rptr. 156, 465 P.2d 44], saying that he wanted a court-appointed attorney. The motion was denied. On the second day of trial Jackson made another Marsden motion, generally asserting that "there is a conflict of interest here

that is involving my case." This motion also was denied.

Following a five-day trial, the jury found Christian guilty of both robbery charges and also found true the personal use enhancements. The jury found Jackson guilty of the first of the two robbery counts (the robbery of Gomez at the front counter) and of being a felon in possession of a firearm. *991

On August 26, 1994, the court found Christian ineligible for probation and sentenced him to the midterm of three years in state prison on the first robbery count and to a consecutive midterm of four years in state prison on the personal use enhancement for a total of seven years. The court also sentenced him to a concurrent midterm of three years on the second robbery count. Finally, the court ordered a lateral transfer of Christian to the California Youth Authority pursuant to Welfare and Institutions Code section 1731.5, subdivision (c).

The court also found Jackson ineligible for probation and sentenced him to the midterm of three years in state prison on the first robbery count, with a one-year enhancement for being armed with a firearm, and to a concurrent midterm of two years on the third count of being a felon in possession of a firearm, for a total of three years. Both appellants filed timely notices of appeal.

Discussion

I.

Christian's attorney has filed an opening brief in which he raises no issues and has asked that we independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) We find no meritorious issues to be argued. With respect to appellant Christian, we shall affirm the judgment.

II.

(1a) Jackson contends that Charles James, Contra Costa County Public Defender, unconstitutionally failed to provide him with conflict-free, separate and independent counsel because in light of the fact that Christian was represented by an attorney from the PD and Jackson was represented by an attorney from the ADO—the public defender in effect represented both codefendants. Jackson's basic argument is that Charles James's position as administrative overseer of both the PD and the ADO creates a per se conflict of interest between attorneys in the two offices.

(2) "The potential for conflict of interest in representing multiple defendants is so grave that ordinarily a lawyer should decline to act for more than one of several co-defendants except in unusual situations when, after careful investigation, it is clear that no conflict is likely to develop and when the several defendants give an informed consent to such multiple representation." [Citation.] (*People v. Mroczko* (1983) 35 Cal.3d 86, 104 *992 [197 Cal.Rptr. 52, 672 P.2d 835]; see also Cal. Rules Prof. Conduct, rule 3-310(C).) "There is a possibility of conflict, then, if the interest of the defendants may diverge at some point so as to place the attorney under inconsistent duties. There is an actual, relevant conflict of interests if, during the course of the representation, the defendants' interests do diverge with respect to a material factual or legal issue or to a course of action." (*Cuylar v. Sullivan* (1980) 446 U.S. 335, 356, fn. 3 [64 L.Ed.2d 333, 351-352, 100 S.Ct. 1708] (conc. and dis. opn. of Marshall, J.).)

Jackson argues that in this case there existed both a potential conflict of interest (had either defendant testified, he would have incriminated his codefendant) and an actual conflict of interest (both defendants attempted to show that the other defendant dropped the gun in front of Officer Granko). Since, according to Jackson, the public defender in effect represented both him and his codefendant without first obtaining their informed consent, the conflicting loyalties that ensued undermined his right to effective assistance of counsel, requiring reversal of the judgment.

III.

In November 1991, in response to the escalating cost of obtaining legal representation for indigent criminal defendants in conflict of interest cases, the Contra Costa County Board of Supervisors authorized establishment of the ADO. [FN3] The ADO serves indigent clients who would otherwise be represented by private attorneys appointed through the conflicts panel of the Contra Costa County Bar Association.

FN3 This information regarding the history and functioning of the Contra Costa County ADO is taken primarily from a 1993 decision of the Contra Costa County Superior Court in *People v. Johns* (Super. Ct. Contra Costa County, 1993, No. 92-2614-3) and accompanying moving papers, of which we have taken judicial notice pursuant to Evidence Code section 459. Appellant does not specifically challenge the factual accuracy of those moving papers in describing the PD/ADO system.

At the ADO's inception, the public defender promulgated a policy statement that articulated the nature of the ADO and its relationship to the PD. The policy was disseminated to all staff at both the PD and the ADO. The structure and functioning of the ADO, as explained in the 1991 policy statement, are as follows. Although the ADO is formally a branch of the PD, it operates autonomously, with a separate supervising attorney who is responsible for directing, coordinating, and evaluating the work of attorneys employed by the ADO. This supervising attorney is solely responsible for providing guidance to and determining litigation strategy of ADO attorneys. The public defender exercises no control or influence over the handling of cases by the ADO. Nor does he have access to the client files or other client *993 confidences of the ADO. Only upon the specific recommendation of the ADO supervising attorney may the public defender make changes in the salary or working conditions of persons working for the ADO.

Individual cases in the ADO are opened, litigated, and closed under separate ADO file numbers. The ADO generates calendars listing appearances only for attorneys in the ADO. The ADO has its own clerical support staff and investigators, independent of those employed by the PD. The ADO offices are physically separate from those of the public defender. The keys to the offices of the ADO are different from the keys to the PD offices, and ADO keys are not available to attorneys or support staff not employed by the ADO. The public defender does not personally possess a key to the ADO offices, nor does the ADO supervisor possess keys to the PD offices. The ADO maintains a separate communications network, with its own telephone number, computer hookups to the Law & Justice computer system, facsimile machine, and computer equipment. The ADO also uses independent library facilities.

The files of ADO clients are housed separately from those of the PD to insure that only ADO attorneys have access to the confidential files of the ADO. In turn, files of the primary branches of the PD are protected as separate and likewise inaccessible to ADO attorneys or staff. Every employee of the PD and ADO has been specifically advised to maintain the confidences of individual clients and to be sensitive to the required degree of separation between the ADO and the PD. In November of 1992, the Contra Costa County Superior Court addressed the validity of the county's PD/ADO system in *People v. Johns*, *supra*, No. 92-2614-3. The court found the system adequate in all respects, basing its ruling on (1) the applicability to the PD/ADO situation of the Second District Court of Appeal's reasoning in *Castro v. Los Angeles County Bd. of Supervisors* (1991) 232 Cal.App.3d 1432 [284 Cal.Rptr. 154]; (2) the fact that the PD and ADO offices were separate offices for the purpose of imputation of conflicts; (3) the policy statement and its implementation created a strict "ethical wall" between the two offices; and (4) the speculation that the system created an unconstitutional conflict of interest was not legally sufficient to justify disqualification of counsel or dismantling of the current system.

IV.

Castro v. Los Angeles County Bd. of Supervisors, *supra*, 232 Cal.App.3d 1432, on which the trial court in *People v. Johns*, *supra*, No. 92-2614-3 *994 relied, addressed a question similar to that raised here, regarding alleged conflicts of interest in the context of the juvenile dependency court system. Los Angeles County, in order to save money, had replaced its dependency court conflicts panel system with Dependency Court Legal Services, Inc. (DCLS), a nonprofit organization, which was to represent all parties in dependency proceedings. (232 Cal.App.3d at p. 1436.) Under its operating rules, DCLS had three separate groups, each of which reported, through its individual chain of command, to a common executive director. All three groups received funding through a single administrative unit that handled certain common administrative functions, unrelated to providing legal representation. (*Id.* at pp. 1436-1437.) However, each group was otherwise autonomous, with attorneys from each group making all decisions regarding the handling of cases within that group; with separate offices, including different addresses and telephone numbers; separate staff and attorneys; separate files, secure from both the other two groups and from the administrative unit; and separate computers. (*Castro v. Los Angeles County Bd. of Supervisors*, *supra*, 232 Cal.App.3d at pp. 1437-1438.) DCLS represented up to three separate indigent parties in a dependency proceeding, including proceedings where a conflict existed between the parties. (*Id.* at p. 1436.) The plaintiffs, panel attorneys whose services were being displaced by DCLS, sued for declaratory and injunctive relief, claiming that the new system was irreparably flawed because of an inherent conflict of interest between attorneys in the three groups. (*Id.* at p. 1434.) The Court of Appeal upheld the trial court's denial of a preliminary injunction, finding the doctrine of "vicarious" or firm disqualification inapplicable to DCLS's situation. (*Castro v. Los Angeles County Bd. of Supervisors*, *supra*, 232 Cal.App.3d at pp. 1440-1441, citing *Klein v. Superior Court* (1988) 198 Cal.App.3d 894, 911-913 [244 Cal.Rptr. 226] and *William H. Raley Co. v. Superior Court* (1983) 149 Cal.App.3d 1042, 1048-1049 [197 Cal.Rptr. 232].) Observing Raley's emphasis that "rulings on disqualifications must proceed according to the circumstances of each case, in light of several competing interests,]" the court in *Castro* concluded that the kinds of dangers present in cases holding vicarious disqualification necessary did not appear to arise from DCLS's representation of its clients. (232 Cal.App.3d at p. 1441.) First, the court rejected plaintiffs' analogy of DCLS to a private law firm; since DCLS did not charge clients and received its funding from the county, no DCLS attorney had any financial incentive to favor one client over any other. "Quite the opposite is true; because a third party pays, the attorney has *995 every incentive to devote his or her entire efforts on behalf of the client." (*Castro v. Los Angeles County Bd. of Supervisors*, *supra*, 232 Cal.App.3d at p. 1441.) The court further noted that the trial court had credited DCLS's evidence of screening measures and "Chinese walls." (*Id.* at p. 1440.)

The court also rejected the plaintiffs' characterization of DCLS as a single "firm" for conflict of interest purposes. (*Castro v. Los Angeles County Bd. of Supervisors*, *supra*, 232 Cal.App.3d at p. 1442, citing rule 1.10 of the American Bar Association Model Rules of Professional Conduct (hereinafter ABA rule 1.10) [defining "firm" as those lawyers who "present themselves to the public in a way suggesting that they are a firm or conduct themselves as a firm"].) The court found that DCLS was not analogous to the conventional definition of a "firm," in that it was a nonprofit corporation, was a creation of a public entity, did not present itself to the public as a law firm, had only one source of clients in a single kind of legal proceeding, did not solicit clients or accept referrals from the public, and had been structured so its attorneys and three groups had no contact with one another. (232 Cal.App.3d at p. 1442.) "It is not to be assumed hypothetically, in the absence of facts, that DCLS attorneys will act to violate their client's confidence or to compromise their legal interests. The structures of the organization reinforce this ethical duty, which is well known to all attorneys." (*Ibid.*) The court also found the plaintiffs' many examples of situations in which DCLS attorneys might find themselves with divided loyalties -such as possible disinclination to pursue a costly appeal or reluctance to charge an opposing counsel with unethical conduct-to be "[s]peculative contentions of conflict of interest [which] cannot justify disqualification of counsel." (*Ibid.*) [FN4]

FN4 The court in *Castro* expanded on this point when, later in its opinion, it quoted from an exhibit in the record, a letter in which New York University School of Law Professor Stephen Gillers had written, in part: "Conflict rules try to strike an appropriate balance between protecting against risks to loyalty and confidentiality, on the one hand, and fostering the availability of counsel on the other. Because conflict rules mainly deal with risk of unethical conduct, arguments about these rules often use words like "may," "might," and "could," usually followed by phrases like "be tempted to." Obviously, such words are highly elastic. They tell us nothing about the appropriate tolerance for risk when measured

against the social, professional, and monetary costs of disqualification or of forbidding a particular practice arrangement. We allow many arrangements that tolerate some risk because they also provide social or other benefits and because we are prepared to believe that lawyers take their ethical responsibilities seriously. The question, therefore, is not whether a lawyer in a particular circumstance "may" or "might" or "could" be tempted to do something improper, but whether the likelihood of such a transgression, in

the eye of the reasonable observer, is of sufficient magnitude that the arrangement or representation ought to be forbidden categorically." (232 Cal.App.3d at p. 1444.)

Finally, the court rejected the plaintiffs' argument that DCLS's representation of opposing parties in a single proceeding would create the "appearance of impropriety." (*996 *Castro v. Los Angeles County Bd. of Supervisors*, supra, 232 Cal.App.3d at p. 1443.) The court noted that California had not adopted the "appearance of impropriety" standard found in former canon 9 of the American Bar Association Code of Professional Responsibility regarding a lawyer's duty to avoid the appearance of impropriety and observed, moreover, that plaintiffs had cited no California authority showing that the DCLS arrangement would lead to the appearance of, or any actual, ethical impropriety. (*Id.* at pp. 1443-1444.)

V.

In attempting to distinguish *Castro* from this case, Jackson first argues that, unlike the PD, DCLS's legal services did not implicate the Sixth Amendment right to conflict-free representation. He also contrasts the nature of DCLS—a nonprofit, public benefit corporation which is free to contract to create three separate offices—with that of the PD, where the Public Defender has a statutory duty to represent indigent criminal defendants and to make decisions relating to conflicts of interest. (See *Gov. Code*, § 27706, subd. (a); § 987.2, subs. (d) & (e).)

In addition, Jackson asserts that the structure of DCLS differed dramatically from the PD/ADO system, in which Charles James supervises both offices and in which his names appears at the top of pleadings from both the PD and the ADO. Finally, Jackson argues that the court of appeal in *Castro* might have treated the "appearance of impropriety" issue more seriously had it arisen in a criminal context since, as the California Supreme Court has explained, "[i]t is essential that the public have absolute confidence in the integrity and impartiality of our system of criminal justice. This requires that public officials not only in fact properly discharge their responsibilities but also that such officials avoid, as much as is possible, the appearance of impropriety." (*People v. Rhodes* (1974) 12 Cal.3d 180, 185 [115 Cal.Rptr. 235, 524 P.2d 363].)

Respondent rebuts Jackson's arguments about the inapplicability of *Castro* to the criminal context, first asserting that both the PD and DCLS have a statutory obligation to provide conflict-free representation to their clients. (See *Welf. & Inst. Code*, § 317, subd. (c); § 987.) Respondent states, moreover, that there is authority suggesting that the right to counsel in *Welfare and Institutions Code* section 300 proceedings is also constitutionally based (cf. *In re Christina H.* (1986) 182 Cal.App.3d 47, 49 [227 Cal.Rptr. 41]; *In re Ammanda G.* (1986) 186 Cal.App.3d 1075, 1079-1080 [231 Cal.Rptr. 372]), and that Jackson's argument erroneously implies the conflict standard differs for criminal and civil cases. (See discussion to *Rules Prof. Conduct*, rule 3-310(C) ["Subparagraphs (C)(1) and (C)(2) are intended to apply to all types of legal employment"].) *997

Regardless of whether the obligation to provide conflict-free representation in the juvenile dependency proceedings at issue in *Castro* is statutorily or constitutionally based, we find unpersuasive Jackson's attempts to distinguish the present situation from that at issue in *Castro*. The differences between the juvenile dependency proceedings at issue in *Castro* and the criminal proceedings with which we are here concerned are not material. Although a juvenile dependency proceeding is not one which can result in deprivation of liberty, it is one in which highly protected interests are at stake and in which those interests could be seriously prejudiced by a conflict of interest between parents or between a parent and a child. In our view, the reasoning of the *Castro* opinion is largely applicable to the question we confront: whether the PD/ADO system provides representation to indigent criminal defendants that is free from inherent conflicts of interest.

VI.

(3) Although conflict rules clearly apply both to private and public sector attorneys, they appear to have been drafted with private attorneys primarily in mind. (See *In re Lee G.* (1991) 1 Cal.App.4th 17, 34 [1 Cal.Rptr.2d 375]; *Civil Service Com. v. Superior Court* (1984) 163 Cal.App.3d 70, 84 [209 Cal.Rptr. 159].) There are certain distinctions between these two types of practices—public and private—that are relevant to our analysis. In particular, the financial incentive, often present in private practice, to favor a more important client over a lesser one is not an issue for the PD or ADO, given that they are government-funded offices performing services for indigent clients. (See *Castro v. Los Angeles County Bd. of Supervisors*, supra, 232 Cal.App.3d at p. 1441 [DCLS attorneys have no "obvious financial incentive" to favor one client over another; in fact, because third party pays, attorneys have every incentive to devote entire efforts on behalf of client].)

Gendron v. State Bar (1983) 35 Cal.3d 409 [197 Cal.Rptr. 590, 673 P.2d 260], relied on by Jackson to demonstrate that a public defender representing multiple defendants with adverse interests commits ethical misconduct, differs in a crucial way from the present case. In *Gendron*, the Madera County Public Defender operated under a contract that essentially required deductions from his own salary for the cost of counsel from outside his office appointed in conflicts cases (*Id.* at p. 415), and, moreover, a single attorney from his office repeatedly represented two or more defendants with conflicting interests. (*Id.* at pp. 416-418; see also *People v. Barboza* (1981) 29 Cal.3d 375 [173 Cal.Rptr. 458, 627 P.2d 188].) This clear financial incentive to ignore conflicts, as well as the dual representation by one attorney, distinguish *Gendron* and *Barboza* from the many cases emphasizing that, in *998 general, courts should not assume the existence of conflicts of interest in the public sector absent evidence of any conflict, and should attempt to limit the reach of disqualification in such cases whenever possible.

As the Court of Appeal explained in *In re Lee G.*, supra, 1 Cal.App.4th at page 28, disqualification of public sector attorneys should proceed with caution since such disqualifications can result in increased public expenditures for legal representation. "Where only speculative or minimal benefit would be obtained by disqualification of public counsel, the dislocation and increased expense of government is not justified. [Citation.]" (*Ibid.*; see also *Castro v. Los Angeles County Bd. of Supervisors*, supra, 232 Cal.App.3d at p. 1442.) A similar standard obtains in the criminal context. In *People v. Daniels* (1991) 52 Cal.3d 815, 843 [277 Cal.Rptr. 122, 802 P.2d 906], for example, our Supreme Court rejected a rule of per se disqualification in a case in which the defendant alleged that because a deputy public defender

might have to challenge the competence of a former deputy public defender, a conflict existed. The court stated: "We agree with the Illinois Supreme court [in *People v. Banks* (1987) 121 Ill.2d 36 (117 Ill.Dec. 266, 520 N.E.2d 617, 620-621)] that a rule of automatic disqualification is unnecessary, and would hamper the ability of public defenders' offices to represent indigents in criminal cases." (*Ibid.*; see also *Love v. Superior Court* (1980) 111 Cal.App.3d 367, 371 [168 Cal.Rptr. 577] [particular caution should be exercised before an entire district attorney's office, as opposed to a particular prosecutor, is recused]; *People v. Pineda* (1973) 30 Cal.App.3d 860, 865 [106 Cal.Rptr. 743], overruled on other grounds in *Leveresen v. Superior Court* (1983) 34 Cal.3d 530 [194 Cal.Rptr. 448, 668 P.2d 755] ["[I]n the absence of some affirmative showing that a particular deputy public defender has acquired confidential adverse information about a defendant from the files or other employees of the office, any claim of conflict of interest would be groundless."]) Thus, in the public sector, in light of the somewhat lessened potential for conflicts of interest and the high public price paid for disqualifying whole offices of government-funded attorneys, use of internal screening procedures or "ethical walls" to avoid conflicts within government offices, such as those found acceptable in *Castro*, have been permitted. (See, e.g., *People v. Clark* (1993) 5 Cal.4th 950, 999-1000 [22 Cal.Rptr.2d 689, 857 P.2d 1099]; *People v. Hernandez* (1991) 235 Cal.App.3d 674, 681 [286 Cal.Rptr. 652]; *People v. Lopez* (1984) 155 Cal.App.3d 813, 827 [202 Cal.Rptr. 333]; *Love v. Superior Court*, *supra*, 111 Cal.App.3d at p. 374.) [FN5]

FN5 A recent draft Restatement by the American Law Institute provides further support for looking beyond the formal relationship of the deputy public defender to the public defender, arguing for ordinarily treating even deputy public defenders who are part of the same administrative structure within an organization as independent. "In a public defender office, conflict of interest questions commonly arise when the interests of two or more defendants so conflict that lawyers in a private-practice defense firm could not represent the defendants.... Where defenders in the

same office discuss cases and have access to each other's files, [section] 203(3) would impute their conflicts to each other. In the absence of such access, however, even public defenders who are subject to the same supervisory structure within an organization ordinarily should be treated as independent for purposes of [section] 203(2). The lawyers do not provide legal services to the public defender office; they provide the legal services to the individual defendants. Furthermore, there is ordinarily no reason to believe that the office would have reason to give one defendant more vigorous representation than other defendants whose interests are in conflict. Thus, while individual defendants ordinarily should be represented by separate members of the defender's office, the representation of each defendant should not be imputed to other lawyers in the office." (Rest., The Law Governing Lawyers (Tent. Draft No. 4, Apr. 10, 1991) § 203, com. (d)(iv).)

(1b) In the present case, the record shows that the PD and ADO not only claim to have an ethical separation, but that such a separation in fact exists. *999 As was the case with the executive director of DCLS in *Castro*, the Public Defender of Contra Costa County is nominally in charge of both offices, but in a strictly administrative sense. He is not involved in any way in the day-to-day operation of the ADO. He may not initiate any promotional or disciplinary actions; rather his role is limited to reviewing and acting upon the recommendations of the ADO supervising attorney. In addition, like the three DCLS groups discussed in *Castro*, attorneys from the two offices remain physically apart, have no access to each other's files, and adhere to a well-known policy of keeping all legal activities completely separate. There is no evidence that use of these "ethical walls" have been ineffective in avoiding conflicts of interest between the PD and the ADO. [FN6] (See *People v. Pineda*, *supra*, 30 Cal.App.3d at p. 865.) *1000

FN6 Furthermore, that the Government Code provides statutory authority for the existence of a public defender, whose mandate is to represent indigent criminal defendants (*Gov. Code, § 27706*), does not mean that the creation of an alternate defender's office is impermissible or that the public defender himself is personally responsible for the legal representation of each defendant. Nor does *Mowrer v. Superior Court* (1969) 3 Cal.App.3d 223 [83 Cal.Rptr. 125], relied on by Jackson, show that the public defender is ultimately responsible, as attorney of record, for each individual case handled by the PD. Rather, in *Mowrer*, the court stressed the independence of each deputy public defender, even though the

deputy "derives his authority by delegation from the public defender ..., whose powers and duties are prescribed by statute." (*Id.* at pp. 230- 231.) Again, the public defender's administrative role in overseeing both the PD and ADO should not be mistaken for any kind of direct involvement in the ADO's cases or internal operations.

Jackson also relies for support on a 1976 opinion of the California Attorney General, which concluded that a PD office could not avoid ethical violations by establishing a second division whose sole purpose was to provide representation to a defendant when his or her interests conflicted with a defendant being represented by the first division. (59 Ops.Atty.Gen. 27, 29 (1976).) Even assuming that the scenario envisioned in that opinion was in fact similar to the one at issue here, for the reasons discussed in the text of this opinion, we do not find the Attorney General's reasoning persuasive.

VII.

(4) We also find that the PD and ADO are separate "firms" for purposes of conflict analysis. Again, their structure is remarkably similar to that of the three groups that constituted DCLS and that were found to be distinct firms by the court of appeal in Castro v. Los Angeles County Bd. of Supervisors, *supra*, 232 Cal.App.3d at pp. 1441-1442. Like DCLS, the PD and ADO are nonprofit organizations, with a single source of clients in a single type of legal proceeding, and their attorneys practice only in a specific area of law. The PD and ADO are also funded by the county, not by clients, thus eliminating any financial incentive to favor one client over another. Like DCLS, neither the PD nor the ADO solicits clients, nor do they accept referrals from the public. The two offices also have been structured to have minimal contact with each other. (See *id.* at p. 1442.)

Furthermore, as with DCLS, when analyzed under the criteria set forth in the comment to ABA rule 1.10, [FN7] the PD and ADO do not constitute a single "firm" in that they present themselves to the public as separate entities with separate offices, phone numbers, letterhead, pleading paper, and distinct business cards. The two offices likewise conduct themselves as separate firms. They keep separate confidential files, none of which are cross-accessible, and each office has its own support staff and keeps separate computers, as well as copying and facsimile machines. Importantly supervision of ADO attorneys is the responsibility of the ADO supervising attorney, not the public defender, and neither office consults with the other on general litigation strategy or the handling of individual cases. These rules are reflected in the public defender's policy statement, disseminated to all staff in the PD and ADO. In sum, the two offices are separate "firms," coinciding only for matters of administrative convenience and only at the top administrative level. [FN8] *1001

FN7 Paragraph 3 of the comment to rule 1.10 states: "Lawyers employed in the same unit of a legal service organization constitute a firm, but not necessarily those employed in separate units." The California Rules of Professional Conduct are less explicit, defining a "law firm" as, among other things, "a publicly funded entity which employs more than one lawyer to perform legal services." (Rules Prof. Conduct, rule 1-100(B)(1)(d).) The meaning of "entity" is not explained.

FN8 Jackson has requested that we take judicial notice, pursuant to Evidence Code section 459, of a report in which the 1992-1993 Contra Costa County Grand Jury recommended that the board of supervisors "[r]equire the monitoring of case decisions arising out of ADO-defended cases, either in this county or elsewhere in the state[.]" and the board responded: "Monitoring of all cases, including those in the ADO, is the responsibility of the Public Defender and is ongoing." We grant Jackson's request for judicial notice, but observe that the report refers to the

public defender's monitoring of case *decisions*-an administrative function- and does not imply that the public defender has any sort of involvement in cases in progress in the ADO.

VIII.

Finally, as our previous analysis shows, Jackson's assertion that Charles James's role as administrative head of both the PD and ADO necessarily impairs the integrity and independence of client representation, and results in both the appearance of and actual ethical impropriety, is without merit. The purpose of the careful separation between the ADO and the PD is to avoid either the appearance of any conflict of interest or any actual ethical impropriety. (See People v. Rhodes, *supra*, 12 Cal.3d at p. 185.) We conclude that these efforts have been successful.

(5) In addition, we have found no evidence of impropriety in the particular circumstances of this case. The record shows that, as Jackson claims, there was a potential and actual conflict of interest between him and his codefendant. However, the record also shows that each of the two trial attorneys vigorously defended his client, objecting to the admission of evidence when appropriate and even attempting to implicate each other's client through argument and cross-examination. Both attorneys focused their defense on negating the second robbery charge (from the safe in the back of the restaurant) by alluding to possible embezzlement by Lopez and suggesting the entire incident could not have constituted more than a single robbery; Jackson was in fact acquitted of the second robbery count. Furthermore, although there was no question as to the identities of the robbers, since the incident had been captured on videotape and was shown to the jury, each attorney attempted to portray the other defendant as the instigator of the crime [FN9] and to prove that it was the other defendant, and not his client, who had dropped the gun in front of Granko. There is simply no evidence that either attorney represented conflicting interests in his defense of this case. [FN10] We repeat the admonition of the court of appeal in Castro: "Speculative contentions of conflict of interest cannot justify disqualification *1002 of counsel." (Castro v. Los Angeles County Bd. of Supervisors, *supra*, 232 Cal.App.3d at p. 1442.) [FN11]

FN9 Even at the sentencing hearing, each attorney told the judge that the evidence showed the other defendant was the motivating force behind the robbery.

FN10 Jackson observes that his codefendant's attorney briefly stood in for

Jackson's attorney at a preliminary conference regarding jury instructions. However, as respondent points out, both the court and codefendant's counsel were extremely careful in protecting Jackson's rights during the absence of Jackson's attorney. They both noted several issues upon which Jackson's attorney might wish to be heard and, indeed, the court specifically reviewed many of the instructions with Jackson's attorney when he arrived a few minutes later, and gave him the entire set of instructions to review on his own. This occurrence does not evidence any unethical behavior on the part of the two attorneys or the two offices. Rather, it is merely a routine example of attorneys cooperating with each other and the trial court during one attorney's brief absence from the courtroom. Christian's attorney clearly did not make any tactical or substantive decisions that affected Jackson's defense.

FN11 Because it is not relevant to the facts in this case, and is based on speculation regarding what *could* happen, we will not address the concerns raised in Jackson's reply brief about the potential for conflicts of interest in cases in which first the PD and then the ADO serially represent the same defendant. (See Castro v. Los Angeles County Bd. of Supervisors, *supra*, 232 Cal.App.3d at p. 1442.)

We thus conclude that Jackson's concerns about an inherent conflict of interest between the Contra Costa County PD and ADO in general, and between the two attorneys in this case in particular, are unfounded.

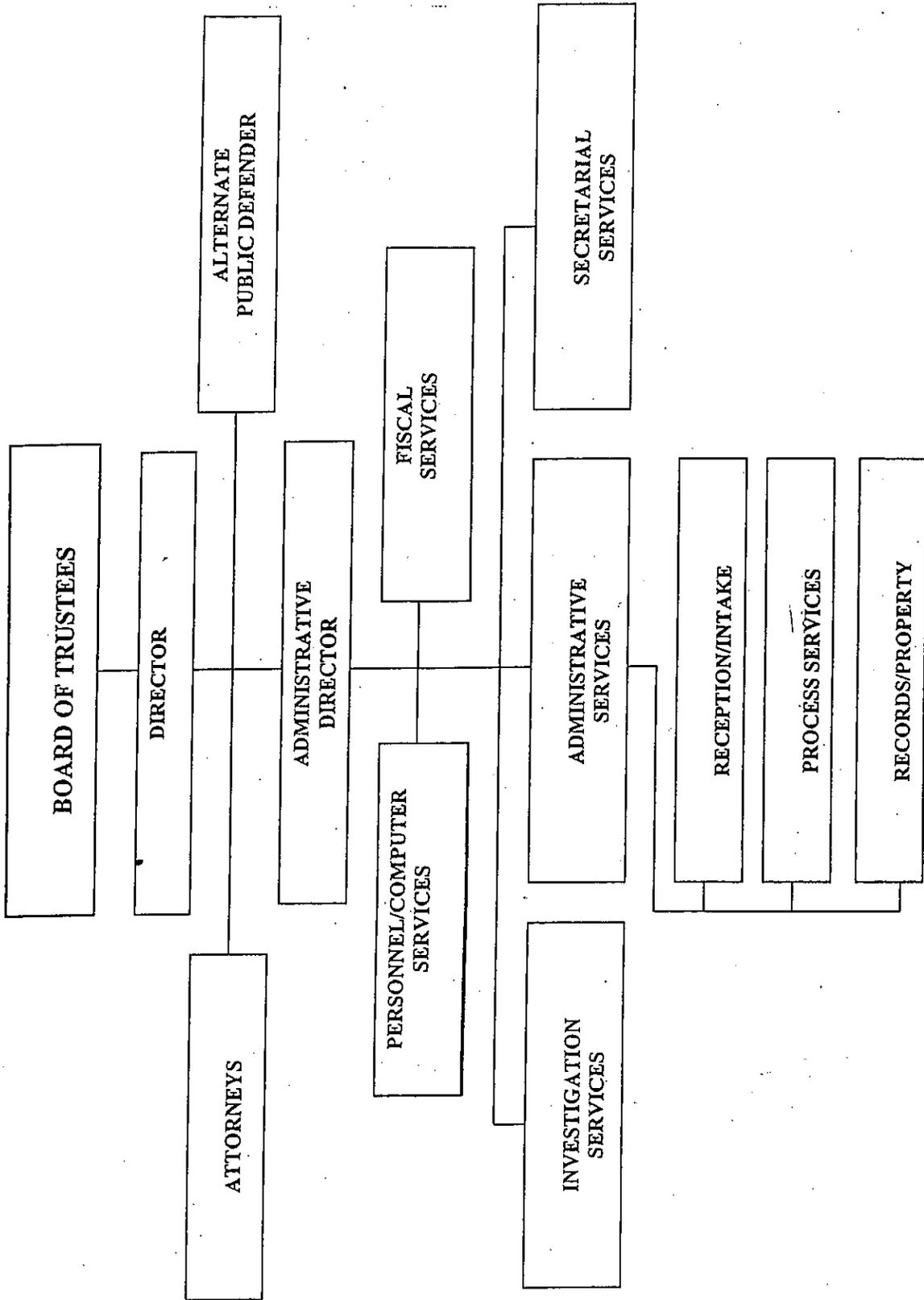
Disposition

The judgments are affirmed as to both appellants.

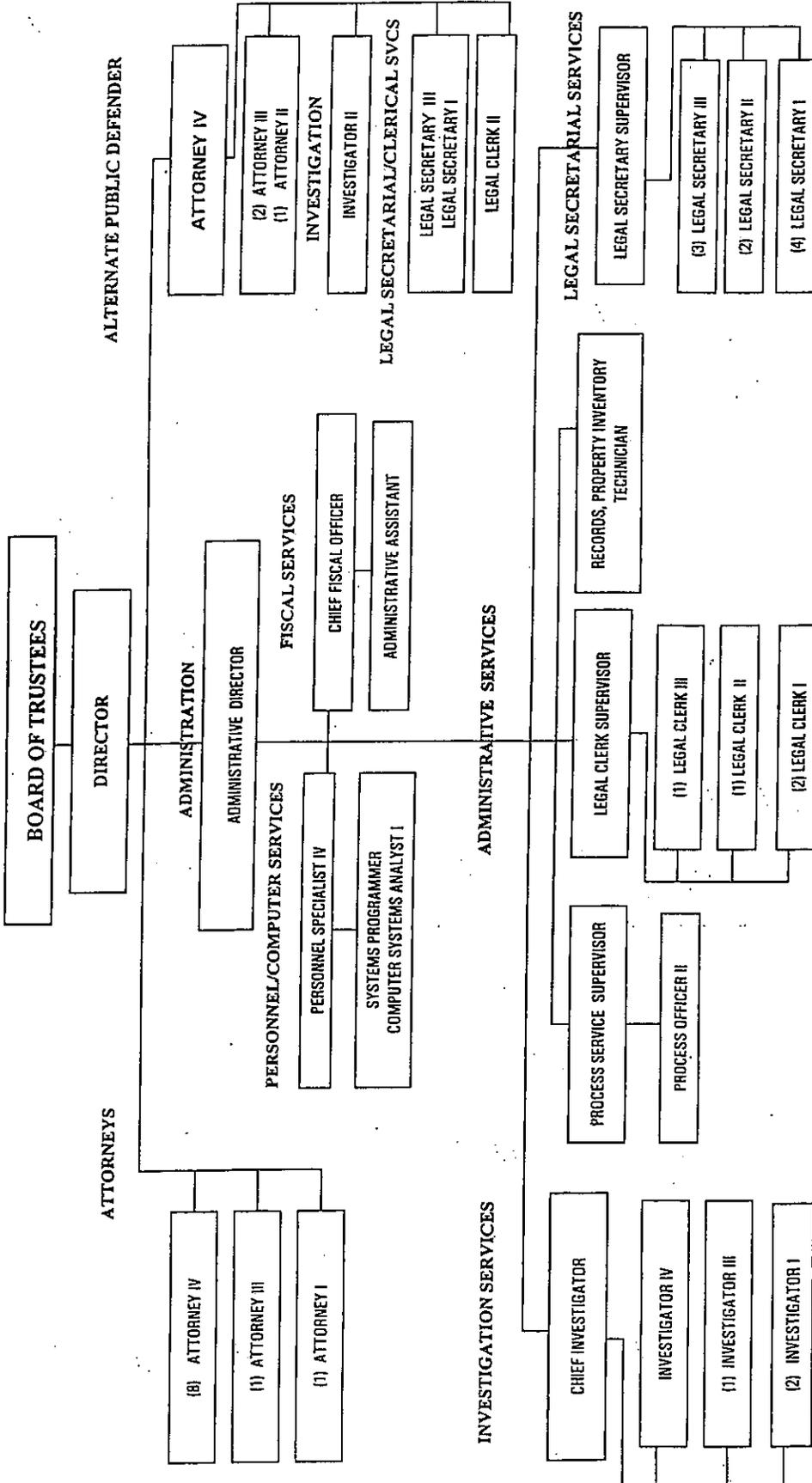
Smith, J., and Phelan, J., concurred.
Appellants' petition for review by the Supreme Court was denied April 11, 1996.
Cal.App.1.Dist., 1996.
People v. Christian
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PUBLIC DEFENDER SERVICE CORPORATION
ORGANIZATIONAL CHART
(PROPOSED)



PUBLIC DEFENDER SERVICE CORPORATION
STAFFING CHART
(PROPOSED)



ALTERNATE PUBLIC DEFENDER
PROPOSED STAFFING PATTERN

(A) Position Number	(B) Position Title	(C) Name of Incumbent	(D) Grade/Step	(E) Salary		(F) Increment		(G) Subtotal	(H) Ret.	(I) Rel. (DDI)	(J) Benefits				(K) Med. care	(L) Life (Presn)	(M) Med (Presn)	(N) Dun (Presn)	(O) Total Benefits (H+K+L+M+N)	(P) TOTAL	
				Base	Ann.	Date	Rate				Med. care	Life (Presn)	Med (Presn)	Dun (Presn)							
APD-100	ATTORNEY IV	NEW	IV-9	83,400	10000	0	10000	83,400	17,356	124	1,209	153	3,102	288	22,242	105,642					
APD-101	ATTORNEY III	NEW	III-4	63,284	10000	0	10000	63,284	13,169	124	918	153	3,946	446	18,756	82,040					
APD-102	ATTORNEY III	NEW	III-3	59,329	10000	0	10000	59,329	12,346	124	860	153	3,946	446	17,875	77,204					
APD-103	ATTORNEY II	NEW	II-3	49,773	10000	0	10000	49,773	10,358	124	722	153	1,368	149	12,874	62,647					
APD-104	INVESTIGATOR II	NEW	M-5	35,848	10000	0	10000	35,848	7,460	124	520	153	3,102	268	11,657	47,505					
APD-105	LEGAL SECRETARY III	NEW	J-5	28,678	10000	0	10000	28,678	5,968	124	416	153	3,102	298	10,061	38,770					
APD-106	LEGAL SECRETARY I	NEW	I-3	24,062	10000	0	10000	24,062	5,007	124	349	153	3,102	298	9,033	33,095					
APD-107	LEGAL CLERK II	NEW	H-2	21,223	10000	0	10000	21,223	4,417	124	308	153	3,946	446	9,394	30,617					
GRAND TOTAL				365,597				365,597	76,081	992	5,302	1,224	25,614	2,679	111,892	477,489					

JUDICIARY
PUBLIC DEFENDER SERVICE CORPORATION
COMBINED - ALTERNATE PUBLIC DEFENDER

Appropriation Classification	A	B	C	D	E	F
	FY 2003 Actual Appropriations	FY 2004 Actual Appropriations	FY 2005 General Fund	FY 2005 Federal Fund(s)	FY 2005 Other Fund 1/	FY 2005 Total Req. (C+D+E)

PERSONNEL SERVICES						
Regular Salaries/Increments	\$0	\$0	\$365,597		\$0	\$365,597
Overtime/Special Pay	0	0	0	0	0	0
Benefits	0	0	111,892		0	111,892
TOTAL PERSONNEL SERVICES	\$0	\$0	\$477,489	\$0	\$0	\$477,489

OPERATIONS						
TRAVEL - Local Mileage Reimburs.	\$0	\$0	\$1,500	\$0	\$0	\$1,500
CONTRACTUAL SERVICES:	0	0	13,100	0	0	13,100
OFFICE SPACE RENTAL:	0	0	48,000	0	0	48,000
SUPPLIES & MATERIALS:	0	0	4,000	0	0	4,000
EQUIPMENT: <\$500	0	0	10,457	0	0	10,457
SUB-RECIPIENT/SUBGRANT:	0	0	0	0	0	0
MISCELLANEOUS:	0	0	4,000	0	0	4,000
TOTAL OPERATIONS	\$0	\$0	\$81,057	\$0	\$0	\$81,057

UTILITIES						
Power	\$0	\$0	\$0	\$0	\$0	\$0
Water/ Sewer	0	0	0	0	0	0
Telephone/ Toll	0	0	7,128	0	0	7,128
TOTAL UTILITIES	\$0	\$0	\$7,128	\$0	\$0	\$7,128

INDIRECT COST	\$0	\$0	\$0	\$0	\$0	\$0
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CAPITAL OUTLAY >\$500	\$0	\$0	\$46,396	\$0	\$0	\$46,396
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TOTAL APPROPRIATIONS	\$0	\$0	\$612,070	\$0	\$0	\$612,070
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1/ Specify Fund Source

FULL TIME EQUIVALENCIES (FTE)						
UNCLASSIFIED	0.00	0.00	0.00	0.00	0.00	0.00
CLASSIFIED	0.00	0.00	8.00	0.00	0.00	8.00
TOTAL FTEs	0.00	0.00	8.00	0.00	0.00	8.00

Agency: **JUDICIARY**
 Program: **PUBLIC DEFENDER SERVICE CORPORATION**
COMBINED - ALTERNATE PUBLIC DEFENDER

Budget Account Code	Appropriation Classification	A	B	C	D	E	F	Incr (Decr)
		FY 2004 Actual Appropriations	FY 2005 Actual Appropriations	FY 2006 General Fund	FY 2006 Federal Fund(s)	FY 2006 Other Fund 1/	FY 2006 Total Req. (C+D+E)	
PERSONNEL SERVICES								
111	Regular Salaries/Increments	\$0	\$365,597	\$390,820		\$0	\$390,820	25,223
112	Overtime/Special Pay	0	0	0	0	0	0	
113	Benefits	0	111,892	132,407		0	132,407	20,515
	TOTAL PERSONNEL SERVICES	\$0	\$477,489	\$523,227	\$0	\$0	\$523,227	45,738
OPERATIONS								
220	TRAVEL - Local Mileage Reimburs.	\$0	\$1,500	\$2,000	\$0	\$0	\$2,000	500
230	CONTRACTUAL SERVICES:	0	13,100	13,200	0	0	13,200	100
233	OFFICE SPACE RENTAL:	0	48,000	48,000	0	0	48,000	0
240	SUPPLIES & MATERIALS:	0	4,000	4,000	0	0	4,000	0
250	EQUIPMENT: <\$500	0	10,457	0	0	0	0	(10,457)
	SUB-RECIPIENT/SUBGRANT:	0	0	0	0	0	0	
290	MISCELLANEOUS:	0	4,000	1,260	0	0	1,260	(2,740)
	TOTAL OPERATIONS	\$0	\$81,057	\$68,460	\$0	\$0	\$68,460	(12,597)
UTILITIES								
	Power	\$0	\$0	\$0	\$0	\$0	\$0	
	Water/ Sewer	0	0	0	0	0	0	
363	Telephone/ Toll	0	7,128	7,128	0	0	7,128	0
	TOTAL UTILITIES	\$0	\$7,128	\$7,128	\$0	\$0	\$7,128	0
INDIRECT COST								
		\$0	\$0	\$0	\$0	\$0	\$0	
450	CAPITAL OUTLAY >\$500	\$0	\$46,396	\$0	\$0	\$0	\$0	(46,396)
	TOTAL APPROPRIATIONS	\$0	\$612,070	\$598,615	\$0	\$0	\$598,615	(13,255)

1/ Specify Fund Source

FULL TIME EQUIVALENCIES (FTE)

	0.00	0.00	0.00	0.00	0.00	0.00
UNCLASSIFIED	0.00	0.00	0.00	0.00	0.00	0.00
CLASSIFIED	0.00	0.00	8.00	0.00	0.00	8.00
TOTAL FTE:	0.00	0.00	8.00	0.00	0.00	8.00

Note 1> Salary for 2006 includes increments.

Note 2> Benefits - Retirement and medicare increased by increments; ret rate incr to 25%; hospital and dental increased by 7% and life ins incr by 34%.

Note 3> Reduced miscellaneous-publication limited to board meetings, no need for invitation to bid or rfp since no purchase for small equipment and capital outlay.

Note 4> Zeroed out small equipment and capital outlay for 2006.

**ALTERNATE PUBLIC DEFENDER (APD)
Budget Justification**

PERSONNEL SERVICES:

\$477,489.00

(Please refer to attached Staffing Pattern)

Salaries:

1. Regular Salaries for the **proposed staffing** of the Alternate Public Defender were determined using the Hay Study/Unified Pay Scale (and applicable laws for government attorneys), for the respective classes of employees. In order to attract qualified applicants, steps were set at middle-to-high levels. As instructed, attorneys will be hired and compensated as follows:

- 1 **Attorney IV-9**

- (Supervising Attorney who will oversee the daily operations of the APD, and will be answerable to the Director of the Public Defender Service Corporation for administrative purposes only. All other attorneys and staff are answerable to the Supervising Attorney of the APD. The Board of Trustees would conduct performance reviews of the APD Supervising Attorney.)

- 1 **Attorneys III-4**

- Mid-level, experienced attorney who will be working with minimal supervision.

- 1 **Attorney III-3**

- Mid-level, experienced attorney who will be working with minimal supervision

- 1 **Attorney II-3**

- Still considered entry level, but with some experience in the practice of law, and will be performing under close supervision.

Support staff will include:

- 1 **Investigator II (M-5)**

- Mid-level, experienced investigator who will also perform process services, and may also be the "office messenger" for the delivery of various documents. This individual will be answerable to the Supervising Attorney.

- 1 **Legal Secretary III (J-5)**

- Senior level legal secretary who will be responsible for the secretarial and/or clerical support of the four attorneys, with assistance from a Legal Secretary

I. He/she will also be supervising the Legal Secretary I and the Legal Clerk II.

1 Legal Secretary I (I-3)

Junior level legal secretary who will be supporting the secretarial and clerical needs of attorneys, with supervision from the Legal Secretary III.

1 Legal Clerk II (H-2)

Senior level legal clerk who will be responsible for telephone and personal reception functions, client interviews, records/files maintenance, while under the supervision of the Legal Secretary III.

Benefits:

1. APD employees will be considered government of Guam employees, since the organizational structure makes them answerable to the Director of the Public Defender Service Corporation and/or the Board of Trustees of the Public Defender Service Corporation. As such, each employee will be a member of the Government of Guam Retirement Fund, as mandated. Therefore, retirement benefits (employer's share) at the current rate of 20.81% of the employee's gross pay have been computed and are reflected.
2. As government of Guam employees, APD personnel are entitled to the available group insurance programs, should they so desire. Although it is not certain at this point as to what "classes" (for health and dental insurance purposes) prospective employees will belong to, placeholders were set with projected amounts for these purposes.

#220

TRAVEL:

\$ 1,500.00

Expenditures in this category are for the purpose of reimbursing employees whose duties involve "field assignments", which will require the use of their personal vehicles. The standard mileage rate utilized for this purpose is 37.5 cents, which is the allowable rate established by the Internal Revenue Service.

Prior to submitting claims for mileage reimbursements, affected employees must provide copies of their vehicle registrations and proof of insurance coverage. Updates of these documents will be required. Furthermore, requests for reimbursement must be accompanied by "Daily Work and Mileage Activities Reports", which will substantiate claims for mileage traveled.

#230

CONTRACTUAL SERVICES

\$ 13,100.00

1. **Xerox Printer/Copier/Facsimile Machine**
(Approximately \$200/month) \$2,400.00
2. **WestLaw (Internet Legal Research Source)**
(Approximately \$400/month for 4 users) 4,800.00
3. **JurisPacific (local Internet Legal Research Source)**
Approximately \$200/month for 1 user's license) 2,400.00
4. **Malpractice Insurance**
(Coverage under same policy as PDSC, but
additional premiums are for 4 additional attorneys) 1,800.00
5. **Guam Bar Association Dues**
(\$300/year for 4 attorneys) 1,200.00
6. **Notary Bonding for Legal Secretaries (\$250 x 2)** 500.00

#233

OFFICE SPACE RENTAL:

\$ 48,000.00

In seeking adequate accommodations for the facilities of the APD, one of the main considerations was that the office be within walking distance from the Judicial Center. Research was made involving several office spaces in the Hagatna vicinity. Results of this endeavor are attached.

Rental rates vary from a low of \$.91 per square foot to a high of \$2.00 per square foot. Among other considerations are the availability of a reliable air-conditioning system, power and water, a back-up generator, compliance with the Americans With Disabilities Act regarding accessibility, janitorial/maintenance services, and parking availability. Expenditures were estimated at the highest rate, multiplied by the required 2,000 square feet of space established by the PDSC Board of Trustees.

A Bid Invitation will be published in the Pacific Daily News, and all other requirements set forth in the PDSC's Procurement Rules and Regulations will be adhered to.

#240

SUPPLIES:

\$ 4,000.00

For the initial 12-month period of operations for the APD, the following supplies are necessary:

Xerox/Copying Paper
Pleading Paper
Postage Stamps
Pens/Pencils
Legal Pads
Toilet Tissue (may not be included with office rental, depending on which site is chosen)
Paper Towels (may not be included with office rental, depending on which site is chosen)
Envelopes
Batteries
Toner/Ink Cartridges
Business Cards
Computer Disks
Staplers and Staples
Perforators
Tape Dispensers and Tape
Yearly Calendars (Desks and Appointments)
Scissors
Paper Cutter
File Racks
Rolodex
Duplication of Office Keys

#250

SMALL EQUIPMENT:
(Under \$500 unit price)

\$ 10,457.00

The following items are slated to be purchased under this object category:

4	High-Back Chairs (for Attorneys)	\$499.00/ea	1,996.00
4	Desk Chairs (for Support Staff)	299.00/ea	1,196.00
6	Reception Chairs (waiting area)	120.00/ea	720.00
16	Client Chairs (2 for each of the employees)	100.00/ea	1,600.00
6	4-drawer Filing Cabinets (Attys & Secs)	200.00/ea	1,200.00
2	L-shaped Desk (Legal Secretaries)	499.00/ea	998.00
2	Double-Pedestal Desks (Inves and Leg Clk)	499.00/ea	998.00
2	Pagers (Investigator and Legal Clerk)	150.00/ea	300.00
1	Water Dispenser		400.00
1	Typewriter		499.00
1	Typewriter Table/Stand		150.00
2	Printer/Facsimile Tables	200.00/ea	400.00

#290

MISCELLANEOUS:

\$ 4,000.00

Expenditures in this category involve publications in the news media (e.g., bid invitations, job announcements, etc.), and local training for APD employees.

#363

UTILITIES (TELEPHONES):

\$ 7,128.00

When determining the site for the office of the APD, power and water are among the specifications required of the lessor. However, the APD will be responsible for the installation (designated under Capital Outlay), and retention of its telephone service. Costs are broken down as follows:

9	Telephone Units (each employee plus a fax line at \$60/month)	\$ 6,480.00
2	Pager Services (\$12/month x 2 pagers)	280.00
	Long Distance Calls (average \$30/month)	360.00

#450

CAPITAL OUTLAY:
(Furniture/Equipment above \$500 unit price)

\$ 46,396.00

As expected, start-up costs for the office of the Alternate Public Defender are high, due to the initial purchasing of equipment necessary for efficient operations. These include:

1	30-drawer Pigeon Box	\$ 600.00
4	Executive Desks-Attorneys (\$599/desk)	2,396.00
1	Network Infrastructure Installation	6,000.00
1	Main Server and Associated Software	4,500.00
8	Desktop Computer Workstations (\$2,000/station)	16,000.00
1	Installation of Telephone System	10,000.00
1	Case Management Software (with licenses for users)	4,500.00
1	LaserJet Printer (back-up to Xerox Copier/Printer/Fax)	2,400.00