

File No. 091250

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 12/2/09

Board of Supervisors Meeting

Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
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| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
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OTHER

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Completed by: Gail Johnson
Completed by: _____

Date 11/25/09
Date _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Resolution Granting Approval of Public Defender Personnel Requisition Requests.]

2
3 **Resolution pursuant to ASO Section 1.1C granting approval of the Office of the Public**
4 **Defender's personnel requisitions # PE8017/1106107, PE8018/1106108, P8030/1106096,**
5 **P8031/1106098, DP8004/1106097, P8032/1106948 and P8033/1107530 to fill vacant**
6 **positions.**

7
8
9 WHEREAS, the City and County of San Francisco is constitutionally mandated to
10 provide legal representation to individuals in criminal cases who cannot afford to hire an
11 attorney. This mandate is set forth in the Sixth Amendment of the U.S. Constitution, which
12 provides that "in all criminal prosecutions the accused [will] have the assistance of counsel for
13 his defense," and California State Constitution Article 1, Section 15, Penal Code section 987
14 and 987.2, and the City Charter section 6.104; and,

15 WHEREAS, the Public Defender provides legal representation to over 28,000 people
16 each year. Pursuant to the City Charter, section 6.104, "the Public Defender shall, upon the
17 request of an accused who is financially unable to employ counsel, or upon order of the court,
18 defend or give counsel or advice to any person charged with the commission of a crime or in
19 danger of criminal prosecution." Under the Charter, the Public Defender is the designated
20 elected department head who is obligated to provide these services; and,

21 WHEREAS, in providing such representation, the Public Defender must meet the
22 standards set forth in the California Code of Professional Responsibility, the American Bar
23 Association's Ten Principles of a Public Defense System and California State Bar Guidelines
24 on Indigent Defense Services, and all applicable statutes and rules. Failure to meet these
25 standards may result in disciplinary action against the Public Defender, including disbarment,

1 as well as a reversal of a conviction and subsequent retrial. Moreover, the City and County of
2 San Francisco may be sued civilly for failure to provide adequate representation to an
3 accused person; and,

4 WHEREAS, the Public Defender's core functions of the mandated defense
5 representation include: 1) obtaining discovery; 2) thoroughly interviewing each client; 3)
6 conducting a thorough independent investigation of each case; 4) preserving material
7 evidence; 5) securing necessary expert witness consultation; 6) researching and bringing
8 proper legal motions and protecting the client's legal rights; 7) being aware of sentencing
9 alternatives that take into consider the client's unique circumstances; 8) being prepared to
10 litigate or negotiate or otherwise resolve the matter; 9) advising the client as to collateral
11 consequences, including immigration law; 10) advising clients of their appellate rights; and,

12 WHEREAS, the Public Defender cannot reduce the quality of representation to the
13 indigent accused below the constitutionally mandated threshold. He cannot fail to investigate
14 the criminal cases assigned to his office because of lack of staffing; he cannot fail to properly
15 interview clients and prepare their cases when his workload prevents him from doing so; he
16 cannot fail to file necessary legal motions or refuse a client's request for a jury trial because of
17 his caseload. If his budget is reduced and this results in inadequate staffing, the Public
18 Defender is obligated to seek necessary funding for his office, or, if such funding is refused,
19 he must decline cases beyond the number of cases that his staff is able to competently
20 handle, in accordance with constitutional and ethical authority; and,

21 WHEREAS, the Office of the Public Defender was not given sufficient funding in
22 FY2008-09 and FY2009-2010 to sustain staffing levels required to provide the mandated
23 services; in FY 2009-2010, the office's budget was reduced by \$950,000; furthermore, an
24 analysis of the office's current salaries show that there is an \$800,000 gap between the
25 office's actual salary cost and the office's budgeted salary costs; although the Public Defender

1 made several requests to cure this error, known as a "Step M" adjustment, this problem was
2 not addressed. This has resulted in a \$1.7 million dollar shortfall in the department's budget;
3 and,

4 WHEREAS, the Mayor's Office has rejected five requisitions that the Public Defender
5 submitted between November 2, 2008 and September 14, 2009 requesting approval for five
6 employees (two entry level 8177 and three 8173) to replace five vacancies--created by the
7 resignation of three legal assistants and two attorneys. On October 10, 2009, the Mayor's
8 Office rejected a sixth requisition to backfill a Court Alternative Specialist position; and,

9 WHEREAS, the Public Defender has already suffered significant staffing reductions
10 due to budget cuts; in FY 2008-2009, the Public Defender's office reduced its staff by six
11 employees. In addition to the positions cut last year during mid-year cuts, the office has been
12 unable to fill seven vacant positions; and,

13 WHEREAS, the Mayor's office has refused to approve the requisitions due to
14 insufficient funding of the department's salaries; accordingly, the department has filed a
15 concurrent supplemental request to address the shortfall in its funding; and,

16 WHEREAS, leaving the legal assistant, court alternative specialist and attorney
17 positions unfilled will result in existing staff being unable to provide adequate representation to
18 all of its clients; and,

19 WHEREAS, without adequate Public Defender support staff, court cases are delayed,
20 resulting in increased costs to the Trial Courts, increased costs to the Sheriff's department
21 due to increased lengths of pre-trial incarceration; and,

22 WHEREAS, a June 2009 Controller's Study found that the Public Defender's current
23 attorney's caseloads exceed the number of caseloads allowed by standards set forth by the
24 American Bar Association by more than 50%. Each of the office's felony attorneys are
25 handling an average of 218 felony cases per attorney per year, far above the National

1 Advisory Commission's (NAC) allowable maximum standards of 150 felony cases per
2 attorney per year. Further, the Study found that the office's misdemeanor attorneys handle
3 666 cases per attorney per year, exceeding the NAC standard of 400 misdemeanor cases per
4 attorney per year; and,

5 WHEREAS, as a result of case overload, the Public Defender has been forced to
6 decline representation in 329 cases including 296 felony cases and 33 misdemeanor cases
7 due to lack of staff support in the current fiscal year; and,

8 WHEREAS, the June 2009 Controller's Study found that the cost of appointing private
9 attorneys is \$1,194 per felony case and \$420 per misdemeanor case, which is greater than
10 the cost of having the Public Defender handle these cases; and,

11 WHEREAS, with a continuation of this staffing shortage, the Public Defender will have
12 to decline representation in additional cases—at least 90 felony cases and 10 misdemeanor
13 cases per month on average, and likely more, given the increasing number of felony arrests
14 by the Police department, for a total of 1,496 cases in the current fiscal year. The additional
15 cost to the City to pay private attorneys to handle these cases would be at least \$1,339,920
16 annually (90 felony cases X 12 months X \$1,194 + 10 misdemeanor cases X 12 months X
17 \$420); and,

18 WHEREAS, the annual cost of filling the Public Defender's vacant positions is
19 \$618,893; and,

20 WHEREAS, the City would incur a total of approximately \$1,707,744 (\$367,284 +
21 \$1,339,920) in costs in the current fiscal year if the Public Defender is forced to declare itself
22 unavailable in 1,496 cases due to staffing shortages; and,

23 WHEREAS, the Board of Supervisors may grant approval of the requisitions as per
24 Section 1.1C of the 2009/10 Annual Salary Ordinance; and, now, therefore be it
25

1 RESOLVED, The Board of Supervisors approves Requisitions #PE8017/1106107,
2 PE8018/1106108, P8030/1106096, P8031/1106098, DP8004/1106097, P8032/1106948 and
3 P8033/1107530 allowing the Office of the Public Defender to fill the aforementioned vacant
4 staff positions.

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