

File No. 100490

Committee Item No. 4

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Sub - Committee: Budget and Finance

Date: May 26, 2010

Board of Supervisors Meeting

Date: \_\_\_\_\_

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form (for hearings)             |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
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| <input type="checkbox"/>            | <input type="checkbox"/> | Contract/Agreement                           |
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#### OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>FY 2009-2010 Indigent Defense Projection</u> |
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Completed by: Andrea S. Ausberry

Date Friday, May 21, 2010

Completed by: \_\_\_\_\_

Date \_\_\_\_\_

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



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

400 McAllister Street, Room 205  
San Francisco, CA 94102-4512  
Phone: 415-551-4000  
FAX: 415-551-5712



JAMES J. MCBRIDE  
PRESIDING JUDGE

CLAIRE A. WILLIAMS  
COURT EXECUTIVE OFFICER

May 12, 2010

Hon. John Avalos  
Chair, Budget and Finance Committee  
Board of Supervisors  
City and County of San Francisco  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

via email only

**Re: Request to Release Reserve for Indigent Defense**

Dear Supervisor Avalos:

As you are aware, the Superior Court of California, County of San Francisco appeared before the Budget and Finance Committee on February 24, 2010 to request and subsequently received a supplemental appropriation to fully fund indigent defense in the current fiscal year. Of the \$3,257,575 requested, \$2,850,910 was appropriated, and \$406,665 was placed on a Budget and Finance Committee reserve (File #100059; Ordinance #50-10). With this letter, the Court respectfully requests for the \$406,665 reserve to be released.

This request is based on actual monthly expenditures for the two months that have transpired since the Committee made its recommendation that the full Board eventually approved. Given the year to date actual and projected expenditures for the rest of the fiscal year, the Court expects existing funding to dry up in June, necessitating the release of the reserve. The expenditures compared to budget are displayed in the attached projection table. Currently, the Court projects the Indigent Defense Fund to end the year with a deficit if the reserve is not lifted.

If you have further questions regarding this reserve release request, please contact Michael Yuen, the Court's Chief Financial Officer, at 415-551-5727.

Sincerely,

A handwritten signature in cursive script, appearing to read "C Williams", with a horizontal line extending to the right.

Claire A. Williams  
Court Executive Officer

Attachment

Hon. John Avalos

May 12, 2010

Page 2

cc: Ms. Raquel Redondiez, Legislative Aide, Office of Supervisor John Avalos, City and County of San Francisco  
Ms. Gail Johnson, Assistant Clerk, Board of Supervisors, City and County of San Francisco  
Mr. Ben Rosenfield, Controller, City and County of San Francisco  
Ms. Rebekah Krell, Senior Fiscal & Policy Analyst, Mayor's Office of Public Policy and Finance, City and County of San Francisco  
Hon. James J. McBride, Presiding Judge, Superior Court of California, County of San Francisco  
Hon. Katherine Feinstein, Assistant Presiding Judge, Superior Court of California, County of San Francisco  
Hon. Charles F. Haines, Supervising Judge – Criminal Division, Superior Court of California, County of San Francisco  
Mr. T. Michael Yuen, Chief Financial Officer, Superior Court of California, County of San Francisco

**FY 2009-10 Indigent Defense Projection Table**

<b>Revised Budget (less reserve amount)</b>	<b>10,261,504</b>
<b>Expenditures</b>	
July 2009 Actual	994,891
August 2009 Actual	1,959,164
September 2009 Actual	711,402
October 2009 Actual	629,922
November 2009 Actual	510,223
December 2009 Actual	654,445
January 2010 Actual	677,786
February 2010 Actual	783,371
March 2010 Actual	500,232
April 2010 Actual	966,477
May 2010 Projected	620,478
June 2010 Projected	1,110,681
Vendor Contract	549,097
<b>Total Expenditures</b>	<b>10,668,169</b>
<b>Surplus / (Deficit)</b>	
	<b>(406,665)</b>



**Item 4**  
**File 10-0490**

**Department(s):**  
Superior Court

## EXECUTIVE SUMMARY

### Legislative Objective

- The requested release of \$406,665 from reserve would fund indigent defense expenses in the Superior Court's Indigent Defense Program for FY 2009-2010.

### Fiscal Impacts

- The requested release of \$406,665 on reserve would be funded with monies from the General Fund Reserve, previously appropriated by the Board of Supervisors and placed on reserve.

### Key Points

- Both Federal and State law require the City to provide legal representation to indigent persons charged with a crime but unable to afford a private attorney. In San Francisco, the Public Defender's Office provides representation to such persons. However, the Public Defender's Office refers cases to the Superior Court's Indigent Defense Program if either (a) the Public Defender's Office has a conflict of interest, such as representing more than one individual in a case in which multiple defendants are charged with a crime, or (b) the Public Defender does not have sufficient staff availability to provide representation. The Superior Court's Indigent Defense Program provides private attorneys to represent such defendants through a contract between the Superior Court and the Bar Association of San Francisco.
- In the FY 2009-2010 budget, the Board of Supervisors approved a budget of \$7,410,594 for the Superior Court's Indigent Defense Program. Additionally, on March 9, 2010, the Board of Supervisors approved a supplemental appropriation of \$3,257,575 for the Indigent Defense Program, but placed \$406,665 of the \$3,257,575 on reserve (File 10-0053) pending additional justification that the \$406,665 would be required to fund FY 2009-2010 Indigent Defense Program expenditures.
- Therefore, the Board of Supervisors has approved a total budget of \$10,668,196, including the \$406,665 on reserve which is now being requested for release.
- The Budget and Legislative Analyst finds that the Superior Court's estimate that the Indigent Defense Program will need the entire \$10,668,169 previously appropriated by the Board of Supervisors in FY 2009-2010 is justified, and therefore recommends releasing the requested \$406,665 from reserve.

### Recommendation

- Approve the requested release of \$406,665 on reserve.

**MANDATE STATEMENT / BACKGROUND****Mandate Statement**

The United States and California constitutions mandate that all citizens are entitled to legal representation when arrested for a crime, regardless of ability to pay. The Sixth Amendment to the United States Constitution guarantees the right of all indigent defendants to legal counsel (or attorney representation). California Penal Code Section 987.2 provides that in any case in which a person desires but is unable to employ counsel, assigned counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the county general fund.

**Background**

To comply with the Federal and State requirements discussed above, the City and County of San Francisco provides legal representation for indigent defendants who are unable to afford private counsel through two primary entities: (1) the Public Defender's Office and (2) the Superior Court's Indigent Defense Program. The Public Defender's Office refers cases to the Indigent Defense Program when the Public Defender has an ethical conflict of interest as defined by law. Examples of when a conflict of interest may occur are when there are multiple defendants in a case or when the Public Defender's Office has a previous relationship with the defendant or a witness. The Public Defender's Office also refers cases to the Indigent Defense Program when the Public Defender's Office does not have sufficient staff to provide representation. According to Mr. Michael Yuen, Chief Financial Officer for the Superior Court, the Public Defender's Office does not provide information regarding the reason a case is referred to the Indigent Defense Program, such that the number of cases which are referred due to conflicts compared to those which are referred due to staff unavailability has not been provided to the Budget and Legislative Analyst.

The Bar Association of San Francisco (BASF) has a contract with the Superior Court to (a) provide appropriately qualified and insured private attorneys and (b) schedule these attorneys for Superior Court appointments to represent indigent defendants in criminal proceedings and juveniles in delinquency proceedings. Under that contract with the Superior Court, BASF has provided administrative oversight of the Indigent Defense Program, including the review and data entry of all bills from attorneys, private investigators and expert witnesses appointed by the Court in criminal and juvenile delinquency proceedings. Table 1 below, based on data provided by Mr. Yuen, shows historical expenditures and case load information for the Indigent Defense Program.

**Table 1. Historical Expenditures for the Indigent Defense Program**

	FY 2005-2006 (Actual)	FY 2006-2007 (Actual)	FY 2007-2008 (Actual)	FY 2008-2009 (Actual)	FY 2009-2010 (Projected <sup>1</sup> )	Increase From FY 2005-2006 to FY 2009-2010
Total Expenditures	\$7,451,372	\$7,033,290	\$9,562,418	\$8,816,386	\$10,668,169	43.2 %
Total Cases Handled	6,868	6616	8574	7501	9284	35.2 %
Average Expenditure Per Case	\$1,085	\$1,063	\$1,115	\$1,175	\$1,149	5.9 %

<sup>1</sup> See Table 2 for a calculation of the projected FY 2009-2010 expenditures.



As shown above in Table 1 above, the average cost per case has increased 5.9 percent from FY 2005-2006 to FY 2009-2010. During the same period, the number of cases referred by the Public Defender's Office to the Superior Court's Indigent Defense Program has increased 35.2 percent and the total expenditures incurred by the Superior Court's Indigent Defense Program has increased 43.2 percent. As noted above, the Public Defender's Office does not provide information to the Superior Court regarding the reason a case is referred to the Indigent Defense Program, such that the Superior Court does not know the number of cases which are referred due to conflicts as compared to those which are referred due to Public Defender staff unavailability. All of the Superior Court's Indigent Defense Program expenditures are funded through the City's General Fund.

In the FY 2009-2010 budget, the Board of Supervisors appropriated \$7,410,594 for the Superior Court's Indigent Defense Program. On March 9, 2010, the Board of Supervisors approved a supplemental appropriation of \$3,257,575 for the Indigent Defense Program, for a total FY 2009-2010 budget of \$10,668,196. However, the Budget and Finance Committee placed \$406,665 of the \$3,257,575 on reserve (File 10-0053) pending additional justification that the \$406,665 would be required to fund FY 2009-2010 Indigent Defense Program expenditures.

The Superior Court is now requesting the release of the entire \$406,665 previously placed on reserve.

## DETAILS OF PROPOSED LEGISLATION

The Superior Court is requesting the release of the \$406,665 previously placed on reserve by the Budget and Finance Committee, such that the Indigent Defense Program would have total funding in FY 2009-2010 of \$10,668,169 for FY 2009-2010. Table 2 below, based on data provided by the Superior Court, shows the total estimated Indigent Defense Program expenditures of \$10,668,169 for FY 2009-2010.

**Table 1: Calculation Estimated FY 2009-2010 Indigent Defense Program Expenditures**

July 2009 Actual		\$994,891
August 2009 Actual		1,959,164
September 2009 Actual		711,402
October 2009 Actual		629,922
November 2009 Estimated		510,223
December 2009 Estimated		654,445
January 2010 Estimated		677,786
February 2010 Estimated		783,371
March 2010 Estimated		500,232
April 2010 Estimated		966,477
<b>Subtotal Actual Expenditures</b>		<b>\$8,387,913</b>
May 2010 Estimated	620,478	
June 2010 Estimated	1,110,681	
<b>Subtotal Estimated Expenditures</b>		<b>\$1,731,159</b>
BASF Administration Costs		549,097
<b>Total</b>		<b>\$10,668,169</b>

The Budget and Legislative Analyst finds that the Superior Court's estimate that the Indigent Defense Program will need the entire FY 2009-2010 appropriation of \$10,668,169 is justified because (a) the expenditures for July 2009 through April 2010 are based on actual expenditures, (b) the estimated May 2010 expenditures of \$620,478 is less than the average monthly cost in the eight<sup>2</sup> prior months of \$679,232, and (b) the estimated June 2010 cost of \$1,110,681 is less than the average June expenditures in 2007 of \$1,545,295 and in 2008 of \$1,171,762.<sup>3</sup>

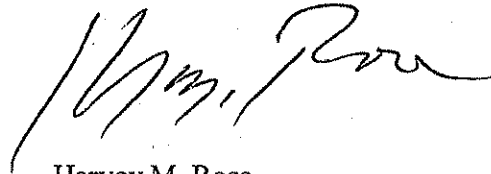
The Budget and Legislative Analyst notes that should Indigent Defense Program expenses exceed the \$10,668,169 shown in Table 2 above resulting in a budgetary shortfall, the Superior Court would have to either (a) request a supplemental appropriation from the General Fund Reserve to offset such a shortfall, subject to Board of Supervisors approval, or (b) defer payment of such an shortfall into FY 2010-2011.

### FISCAL IMPACT

The requested release of \$406,665 on reserve would be funded with monies from the General Fund Reserve, previously appropriated by the Board of Supervisors.

### RECOMMENDATION

Release the requested \$406,665 from reserve.



Harvey M. Rose

cc: Supervisor Avalos	Supervisor Dufty
Supervisor Mirkarimi	Supervisor Mar
Supervisor Elsbernd	Supervisor Maxwell
President Chiu	Clerk of the Board
Supervisor Alioto-Pier	Cheryl Adams
Supervisor Campos	Controller
Supervisor Chu	Greg Wagner
Supervisor Daly	

<sup>2</sup> July and August of 2009 were not included in the average monthly cost calculation because, according to Mr. Michael Yuen, CFO for the Superior Court, these two months include expenditures for services provided in the end of FY 2008-2009 but not paid until the beginning of FY 2009-2010 due to budgetary constraints in FY 2008-2009.

<sup>3</sup> Expenditures for June of 2009 were not included due to the payment of services provided in FY 2008-2009 not being paid until FY 2009-2010, as discussed in Footnote 1 above. According to Mr. Yuen, June expenditures historically exceed those of other months because in June, the Bar Association of San Francisco private attorneys are required by the Court to submit invoices for representation services provided for all open cases at the end of the fiscal year, regardless of case status. In contrast, during months other than June, the private attorneys only submit invoices (a) at the end of a preliminary hearing (a hearing to determine if a case will move forward to a trial), and (b) at the end of the trial.