

File No. 100059

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee BUDGET AND FINANCE

Date 2/24/10

Board of Supervisors Meeting

Date _____

Cmte Board

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OTHER

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Completed by: Gail Johnson

Date 2/19/10

Completed by: _____

Date _____

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

1 [Appropriating \$3,257,575 of General Fund Reserve for Indigent Defense Expenses in the
2 Superior Court for Fiscal Year 2009-2010.]

3
4 **Ordinance appropriating \$3,257,575 of General Fund Reserve to fund indigent defense**
5 **expenses associated with increased felony caseloads in the Superior Court for Fiscal**
6 **Year 2009-2010, requiring a two-thirds affirmative vote of all members of the Board of**
7 **Supervisors per San Francisco Charter Section 9.113.**

8
9 Be it ordained by the People of the City and County of San Francisco:

10
11 Section 1. The use of funding outlined below is herein de-appropriated to reflect the funding
12 available for Fiscal Year 2009-2010.

13
14 **Use De-Appropriation**

Fund	Index Code	Subobject	Description	Amount
1G AGF AAA – GF- Non-Project- Controlled	*CON1GAGFAAA	098GR	Unappropriated General Fund Reserve – Designated	\$3,257,575
Total USE De-Appropriation				\$3,257,575

1 Section 2. The uses of funding outlined below are herein appropriated in the Subobject 02699
2 Court Fees and Other Compensation – Other Fees, and reflects the projected uses of funding
3 to support indigent defense expenses for the Superior Court for Fiscal Year 2009-2010.
4

5 **USES Appropriation**

Fund	Index Code	Subobject	Amount
1G AGF AAA – GF-Non- Project-Controlled	115038	02699 Court Fees and Other Compensation – Other Fees	\$3,257,575
Total USES Appropriation			<u>\$3,257,575</u>

10
11 Section 3. The Fiscal Year 2009-2010 Annual Appropriation Ordinance includes the rejection
12 of \$2,701,680 for Court Fees and Other Compensation – Other Fees by the Mayor and the
13 Board of Supervisors, which is subject to appropriation in this legislation. Pursuant to Charter
14 Section 9.113, the funding of any item previously rejected by the Mayor or the Board of
15 Supervisors in consideration of the annual budget shall require a two-thirds vote of all
16 members of the Board of Supervisors for approval. Therefore, the appropriation of
17 \$2,701,680 within this appropriation is subject to a two-thirds affirmative vote of all members
18 of the Board of Supervisors.
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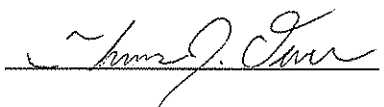
FUNDS AVAILABLE

APPROVED AS TO FORM:

BEN ROSENFELD

DENNIS J. HERRERA, City Attorney

Controller

By: 

By: 

Deputy City Attorney

Date: 01/12/2010

Item 5
File 10-0059

Department(s):
Superior Court

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance would appropriate \$3,257,575 from the General Fund Reserve to fund indigent defense expenses associated with increased felony caseloads in the Superior Court's Indigent Defense Program for FY 2009-2010.

Fiscal Impacts

- The proposed supplemental appropriation of \$3,257,575 would be funded with monies from the General Fund Reserve. On February 9, 2010, the Controller certified the availability of General Fund Reserve monies for this proposed supplemental appropriation.

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, if 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, the Public Defender's Office refers the case to the Superior Court's Indigent Defense Program (called an "appointment"). The Indigent Defense Program maintains a panel of private attorneys to represent these defendants.
- In FY 2009-2010, the Superior Court projects both an increase in new appointments and the number of existing cases billed by private attorneys. The total number of new appointments is expected to increase by 1,205, or approximately 21 percent, from 5,861 new appointments in FY 2008-2009 to 7,066 new appointments in FY 2009-2010. The total number of existing cases billed is expected to increase by 1,747, or approximately 23 percent, from 7,501 in FY 2008-2009 to 9,248 in FY 2009-2010.
- As a result, the Superior Court estimates total FY 2009-2010 indigent defense expenditures of \$10,688,169, which is \$3,277,575, or approximately 44 percent, more than budgeted expenditures of \$7,410,594.
- The Budget and Legislative Analyst estimates total FY 2009-2010 expenditures of \$10,261,504, which is \$2,850,910, or approximately 38.5 percent more than budgeted expenditures of \$7,410,594. Therefore, the Budget and Legislative Analyst recommends reducing the requested supplemental appropriation by \$406,665, from the requested amount of \$3,257,575 to the needed amount of \$2,850,910.
- Pursuant to Charter Section 9.113, a two-thirds affirmative vote of all members of the Board of Supervisors is required to approve this ordinance since this ordinance includes expenditures previously rejected by the Board of Supervisors in its consideration of the Mayor's proposed FY 2009-2010 budget.

- The Budget and Finance Committee is considering a separate ordinance related to a supplemental request from the Public Defender's Office (File No. 10-0099) to pay for the Public Defender's Office's General Fund salary costs, including costs associated with backfilling 10 vacant positions. Both the Public Defender's Office and the Superior Court's Indigent Defense Program provide legal representation for indigent defendants who are unable to afford private attorneys. While the Indigent Defense Program should only be appointed cases if the Public Defender has a conflict of interest, neither the Indigent Defense Program nor the Public Defender can confirm if all Indigent Defense Program appointments are due to conflict of interest or if some Indigent Defense Program appointments are in fact due to staff unavailability in the Public Defender's Office.
- Neither the Superior Court nor the Public Defender's Office has provided an explanation for the increased Indigent Defense Program caseload in FY 2009-2010. In fact, the District Attorney's Office, which files the criminal cases defended by the Public Defender's Office and the Indigent Defense Program, reports a 5 percent decrease in projected FY 2009-2010 cases, from 18,611 cases in FY 2008-2009 to 17,752 cases in FY 2009-2010, a decrease of 859 cases. The Public Defender's Office and Indigent Defense Program report a combined 6 percent increase in projected FY 2009-2010 cases, from 19,368 total cases in FY 2008-2009 to 20,573 total cases in FY 2009-2010, an increase of 1,205 cases.
- The Controller's City Service Auditor is preparing a report that includes an analysis of indigent defense caseload over time for both the Superior Court's Indigent Defense Program and the Public Defender's Office, including recommendations on staffing. The release of this report is pending as of the writing of this report.

Recommendations

The Budget and Legislative Analyst recommends amending the proposed ordinance to reduce the supplemental appropriation by \$406,665, from \$3,257,575 to \$2,850,910.

Because approval of the proposed ordinance would result in the approval of \$2,701,680 of expenditures previously rejected by the Board of Supervisors, the Budget and Legislative Analyst considers approval of \$2,701,680 of the recommended \$2,850,910 to be a policy matter for the Board of Supervisors.

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.

The San Francisco Charter Section 9.113 (d) specifies that no ordinance or resolution for the expenditure of money, except the annual appropriation ordinance, shall be approved by the Board of Supervisors unless the Controller first certifies to the Board that there is a sufficient unencumbered balance in a fund that may legally be used for such proposed expenditure, and that, in the judgment of the Controller, revenues as anticipated in the appropriation ordinance for such fiscal year and properly applicable to meet such proposed expenditures will be available in the treasury in sufficient amount to meet the same as it becomes due.

San Francisco Charter Section 9.113 (c) specifies that in the event the Mayor or a member of the Board of Supervisors recommends a supplemental appropriation ordinance, after the adoption of the budget for any fiscal year and prior to the close of the fiscal year, containing any item which had been rejected by the Mayor in his/her review of departmental budget estimates for the fiscal year or which had been rejected by the Board of Supervisors in its consideration of the Mayor's proposed budget for the fiscal year, a vote of two-thirds of all members of the Board of Supervisors is then required to approve such a supplemental appropriation ordinance.

DETAILS OF PROPOSED LEGISLATION

Background

The United States and California constitutions and case law mandate that all citizens are entitled to legal representation when arrested for a crime, regardless of ability to pay. To comply with these requirements, 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) Superior Court's Indigent Defense Program. The Public Defender's Office refers cases to the Indigent Defense Program when there is 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 Bar Association of San Francisco (BASF) has a contract with the Superior Court to maintain panels of appropriately qualified and insured attorneys and schedules members of these panels to be available for appointment by the Court to represent indigent defendants in criminal proceedings and juveniles in delinquency proceedings when the Public Defender has a conflict of interest or is otherwise unavailable. Under the contract with the Superior Court, BASF has

provided oversight in the administration of the conflict counsel 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 shows the Indigent Defense Program’s total expenditures and number of cases billed by the Superior Court’s Indigent Defense Program over the last five fiscal years.

Table 1. Indigent Defense Program’s Total Expenditures & Existing Cases Billed FY 2005-2006 through FY 2009-2010 (Projected)							
	FY 2005- 2006 (Actual)	FY 2006- 2007 (Actual)	FY 2007- 2008 (Actual)	FY 2008- 2009 (Actual)	FY 2009- 2010 (Projected)	Increase FY 2008- 2009 to FY 2009- 2010	Percent
Total Expenditures	\$7,451,372	\$7,033,290	\$9,562,418	\$8,816,386	\$10,668,169	\$1,851,783	21%
Total Cases Billed	6,868	6,616	8,574	7,501	9,248	1,747	23%

Source: Superior Court and Indigent Defense Program expenditures and caseload data.

Mr. Michael Yuen, Chief Financial Officer for the San Francisco Superior Court, states that there were 1,944 new cases appointed to the Indigent Defense Program from July 2009 to October 2009, an increase of 486 cases, or 33.3 percent compared to the 1,458 appointments from July 2008 to October 2008.¹ According to Mr. Yuen, the Indigent Defense Program did not anticipate the increase in appointments and caseload assigned to their conflicts panel attorneys in FY 2009-2010. Table 2 below shows the estimated number of new appointments in FY 2009-2010 compared to the three prior fiscal years.

Table 2: Total Number of New Appointments to Indigent Defense Program FY 2006-2007 to FY 2009-2010 (Estimated)						
	FY 2006- 2007	FY 2007- 2008	FY 2008- 2009	FY 2009- 2010 (estimated)	Increase FY 2008- 2009 to FY 2009- 2010	Percent
Total Appointments	4,191	4,631	5,861	7,066	1,205	21%

Source: Superior Court and Indigent Defense Program caseload data.

¹ “Appointments” are the number of new cases appointed by the Superior Court to the Indigent Defense Program and assigned to private attorneys. Appointments include cases in which the Public Defender declares a conflict of interest. “Cases billed” are the number of invoices submitted by private attorneys and paid by the BASF on behalf of the Indigent Defense Program.

Supplemental Appropriation Request

The proposed ordinance would appropriate \$3,257,575 from the General Fund Reserve to fund the Superior Court's Indigent Defense Program in FY 2009-2010. According to Mr. Yuen, this supplemental appropriation amount will be used to cover Indigent Defense Program expenditures related to conflict cases, including attorney fees, investigator expenses, witness and legal support costs, and conflicts program administration costs.

Mr. Yuen advised that the supplemental appropriation amount of \$3,257,575 was calculated by subtracting the total budgeted FY 2009-2010 amount of \$7,410,594 from the estimated total FY 2009-2010 expenditures of \$10,668,169. Mr. Yuen advised that the estimated total expenditures were derived by adding the following three cost factors, totaling \$10,668,169:

- (a) The sum of actual monthly billings during the first four months of the fiscal year (\$4,216,280);
- (b) The sum of the estimated monthly billings for the remainder of the fiscal year based on expenditure projections, assuming that the exact same number of bills would come in every month for the same types of cases with the same amount of billable time (\$5,902,792); and
- (c) The fixed-amount paid to the Bar Association of San Francisco for administering the Indigent Defense Program conflicts counsel program (\$549,097).

Table 3 below shows how the supplemental appropriation amount of \$3,257,575 was derived.

July 2009 Actual	\$997,181	
August 2009 Actual	1,959,164	
September 2009 Actual	711,402	
October 2009 Actual	548,533	
TOTAL ACTUALS	\$ 4,216,280	(A)
November 2009 Estimated	\$737,849	
December 2009 Estimated	737,849	
January 2010 Estimated	737,849	
February 2010 Estimated	737,849	
March 2010 Estimated	737,849	
April 2010 Estimated	737,849	
May 2010 Estimated	737,849	
June 2010 Estimated	737,849	
TOTAL ESTIMATED	\$5,902,792	(B)
TOTAL BASE CONTRACT AMOUNT - FY09-10	\$549,097	(C)
TOTAL ESTIMATED EXPENDITURES - FY09-10	\$10,668,169	(A) + (B) + (C)
TOTAL INDIGENT DEFENSE PROGRAM BUDGET - FY09-10	\$ 7,410,594	(D)
TOTAL SUPPLEMENTAL REQUEST	\$ 3,257,575	(A) + (B) + (C) - (D)

Source: Superior Court and Indigent Defense Program billing and budget data.

Mr. Yuen advised that the estimated average monthly expenditures of \$737,849 for November 2009 through June 2010 are based on (1) the average monthly expenditures during the first four months of the fiscal year, and (2) discounting this average by 30 percent to account for the disproportionately high expenditures in July 2009 and August 2009 due to the FY 2008-2009 bills that were not paid until the beginning of FY 2009-2010 because of a lack of available funds. Mr. Yuen also advised that the estimates for November through June for the past three fiscal years closely approximate the estimated average monthly expenditures for the months of November 2009 through June 2010 (i.e., \$737,849 each month), as reflected in the supplemental appropriation calculations above.

Two-thirds Affirmative Vote Requirement

The FY 2009-2010 Annual Appropriation Ordinance includes the rejection of \$2,701,680 in the Superior Court Indigent Defense Program budget by the Board of Supervisors, which is part of this subject supplemental appropriation request of \$3,257,575. San Francisco Charter Section 9.113 (c) specifies that in the event the Mayor or a member of the Board of Supervisors recommends a supplemental appropriation ordinance, after the adoption of the budget for any fiscal year and prior to the close of the fiscal year containing any item which had been rejected by the Mayor in his/her review of departmental budget estimates for the fiscal year or which had been rejected by the Board of Supervisors in its consideration of the Mayor's proposed budget for the fiscal year, a vote of two-thirds of all members of the Board of Supervisors is required to approve such a supplemental appropriation ordinance. Since \$2,701,680 out of the total requested supplemental appropriation of \$3,257,575 was previously rejected by the Board of Supervisors, a two-thirds affirmative vote of all members of the Board of Supervisors is required for \$2,701,680 and a majority affirmative vote of all members of the Board of Supervisors is required for the balance of \$555,895.

FISCAL IMPACTS

Based on Indigent Defense Program actual billings from July 2009 through January 2010, the Budget and Legislative Analyst recommends a reduction in the requested supplemental appropriation amount by \$406,665, from \$3,257,575 to \$2,850,910. The Budget and Legislative Analyst estimates (1) \$620,478 average monthly billings from February 2010 through May 2010, based on the average monthly billings from September 2009 through January 2010, and (2) increased end-of-year billings in June 2010 based on prior years' June billings.. Table 4 below shows how these amounts were calculated.

Table 4: Budget and Legislative Analyst's Projected FY 2009-2010 Indigent Defense Program Expenditures and Supplemental Appropriation		
July 2009 Actual	\$997,181	
August 2009 Actual	1,959,164	
September 2009 Actual	711,402	
October 2009 Actual	548,533	
November 2009 Actual	510,223	
December 2009 Actual	654,445	
January 2010 Actual	677,786	
TOTAL ACTUAL EXPENDITURES	\$6,058,734	(A)
February 2010 Estimated	\$620,478	
March 2010 Estimated	620,478	
April 2010 Estimated	620,478	
May 2010 Estimated	620,478	
June 2010 Estimated	1,171,762	
TOTAL ESTIMATED	\$3,653,673	(B)
TOTAL BASF CONTRACT AMOUNT - FY09-10	\$549,097	(C)
TOTAL ESTIMATED EXPENDITURES - FY09-10	\$10,261,504	(A) + (B) + (C)
TOTAL INDIGENT DEFENSE PROGRAM BUDGET - FY09-10	\$7,410,594	(D)
BUDGET ANALYST'S RECOMMENDED SUPPLEMENTAL AMOUNT NEEDED	\$2,850,910	(A) + (B) + (C) - (D)

ORIGINAL SUPPLEMENTAL AMOUNT REQUESTED \$3,257,575

BUDGET ANALYST'S RECOMMENDED REDUCTIONS \$406,665

Source: Superior Court and Indigent Defense Program billing and budget data.

The Controller has certified this supplemental appropriation, which will be funded by General Fund Reserves.

San Francisco Charter Section 9.113 (d) specifies that no ordinance or resolution for the expenditure of money shall be approved by the Board of Supervisors unless the Controller first certifies to the Board that there is a sufficient unencumbered balance in a fund that may legally be used for such proposed expenditure, and that, in the judgment of the Controller, revenues as anticipated in the appropriation ordinance for such fiscal year and properly applicable to meet such proposed expenditures will be available in the treasury in sufficient amount to meet the same as it becomes due.

According to Ms. Monique Zmuda of the Controller's Office, with the implementation of the Mayor's mid-year reduction plan, the General Fund Reserve will have a projected year-end balance of \$29.6 million. As such, on February 9, 2010, the Controller certified that General Fund Reserve monies are available to fund the Superior Court's supplemental appropriation request of \$3,257,575 for the Indigent Defense Program.

POLICY CONSIDERATIONS

The Public Defender's Office and the Superior Court's Indigent Defense Program Have Not Provided an Explanation for the Indigent Defense Program's Increased Caseload in FY 2009-2010.

The Budget and Finance Committee is considering a separate ordinance related to a \$1,813,616 supplemental appropriation request from the Public Defender's Office (File No. 10-0099) to pay for the Public Defender's Office's General Fund salary costs, including costs associated with backfilling 10 vacant positions. Both the Public Defender's Office and the Superior Court's Indigent Defense Program provide legal representation for indigent defendants who are unable to afford private attorneys. While the Indigent Defense Program should only be appointed cases if the Public Defender has a conflict of interest, neither the Indigent Defense Program nor the Public Defender can confirm if all Indigent Defense Program appointments are due to a conflict of interest or if some Indigent Defense Program appointments are in fact due to staff unavailability in the Public Defender's Office.

Neither the Superior Court nor the Public Defender's Office has provided an explanation for the increased Indigent Defense Program caseload in FY 2009-2010. Although the District Attorney's Office, which files the criminal cases defended by the Public Defender's Office and the Indigent Defense Program, reports a 5 percent decrease in projected FY 2009-2010 cases, the Public Defender's Office and Indigent Defense Program report a combined 6 percent increase in projected FY 2009-2010 cases, as shown in Table 5.

Table 5: Comparison of Total Indigent Defense Program and Public Defender's Caseload to the District Attorney's Caseload FY 2008-2009 and FY 2009-2010 (Projected)				
	FY 2008-2009	FY 2009-2010 (Projected)	Increase FY 2008-2009 to FY 2009-2010	Percent
Indigent Defense Program	5,861	7,066	1,205	17%
Public Defender's Office	<u>13,507</u>	<u>13,507</u>	<u>0</u>	0%
Total Indigent Defense Program and Public Defender's Office	19,368	20,573	1,205	6%
District Attorney's Office	18,611	17,752	(859)	(5%)

Source: Superior Court, Public Defender's Office, and District Attorney's Office

Indigent defense caseload data tracking and reporting needs to be improved.

Neither the Superior Court's Indigent Defense Program nor the Public Defender's Office have a consistent approach for tracking caseload and case information to ensure the data's accuracy and completeness. Consequently, neither the Public Defender's Office nor the Superior Court's

Indigent Defense Program can identify the exact number of open cases and whether the cases appointed to the Indigent Defense Program are due to the Public Defender's Conflict of Interest or due to staff unavailability at the Public Defender's Office.

The Controller issued a report on June 23, 2009 on the Public Defender's Office's FY 2009-2010 budget. This report recommended that criminal justice agencies (including the Superior Court's Indigent Defense Program and the Public Defender's Office) should "work with the Department of Technology to rank court events and update the Court Management System (CMS) database with weighted court events. This will allow for a more accurate measurement of a conflict of interest case workload, and thus a cost per case estimate can be made with thorough consideration of the complexities of conflict of interest cases." According to Mr. Yuen, the Superior Court has not initiated anything further on this recommendation.

Further, according to Mr. Yuen, despite requests from the Superior Court to the Public Defender to differentiate between cases assigned due to staff unavailability from those assigned because of the Public Defender's ethical obligation to avoid a conflict of interest, the format for Public Defender's Office's monthly reports provided to the Superior Court has not changed, making it difficult for the Superior Court to accurately track the number of cases assigned due to the Public Defender's conflict of interest and the number of cases assigned to the Indigent Defense Program by the Public Defender's Office due to unavailability of Public Defender staff. In order maintain an accurate and complete conflicts caseload dataset, a more robust and consistent approach for keeping track of conflicts caseload and case information is necessary. The Superior Court's Indigent Defense Program should, therefore, collaborate with the Public Defender's Office to ensure that conflict of interest caseload data are accurately and completely tracked and reported.

The Controller is preparing a report on indigent defense caseload.

According to Ms. Lani Kent of the Controller's City Services Auditor Division, the City Service Auditor is preparing a report that includes an analysis of Public Defender caseload and staffing over time. As of the writing of this report, Ms. Kent advised that the release date for this City Services Auditor report is pending. According to Mr. Jeff Adachi, the Controller's report will provide specific staffing recommendations and a historical analysis of the Public Defender's Office's caseloads/workloads.

RECOMMENDATIONS

The Budget and Legislative Analyst recommends amending the proposed ordinance to reduce the supplemental appropriation by \$406,665, from \$3,257,575 to \$2,850,910.

Because approval of the proposed ordinance would result in the approval of \$2,701,680 of expenditures previously rejected by the Board of Supervisors, the Budget and Legislative Analyst considers approval of \$2,701,680 of the recommended \$2,850,910 to be a policy matter for the Board of Supervisors.



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: *FC* Mayor Gavin Newsom *ST*
RE: Ordinance appropriating \$3,257,575 of General Fund Reserve for
Indigent Defense Expenses in the Superior Court for Fiscal Year 2009-
2010
DATE: January 11, 2010

Dear Madame Clerk:

Attached for introduction to the Board of Supervisors is an ordinance appropriating \$3,257,575 of General Fund Reserve to fund indigent defense expenses associated with increased felony caseloads in the Superior Court for Fiscal Year 2009-2010, requiring a two-thirds affirmative vote of all members of the Board of Supervisors per San Francisco Charter Section 9.113

I request that this item be scheduled in the Budget and Finance Committee.

Should you have any questions, please contact Starr Terrell (415) 554-5262.

