

1 [Resolution authorizing Trial Courts to require payment of legal fees by defendants upon  
2 finding of ability to pay]

3 **Resolution authorizing the San Francisco Trial Courts to require payment of legal fees**  
4 **by a defendant who is provided legal counsel through the Public Defender’s Office or**  
5 **private counsel appointed by the court, upon a finding by the court that the defendant**  
6 **has the ability to pay all or part of the cost of legal assistance.**

7 WHEREAS, The Public Defender of the City and County of San Francisco provides  
8 legal representation to 25,000 people each year who are charged with misdemeanor and  
9 felony crimes in the City and County of San Francisco; and,

10 WHEREAS, If the Public Defender is unable to provide legal representation due to a  
11 conflict of interest, or is otherwise unavailable to represent the defendant, private counsel is  
12 appointed by the court; and,

13 WHEREAS, The cost of legal representation provided by the Public Defender and  
14 private counsel appointed by the court is paid by the county; and,

15 WHEREAS, Penal Code section 987.81 provides that the county may seek  
16 reimbursement of legal fees from persons who receive legal representation from the Public  
17 Defender or private counsel appointed by the court, upon a finding by the court that the  
18 person has the ability to pay the cost of such legal representation; and,

19 WHEREAS, Penal Code section 987.81 provides that, upon conclusion of the criminal  
20 proceedings in the trial court, or upon the withdrawal of the Public Defender or appointed  
21 private counsel, the court shall consider the available information concerning the defendant’s  
22 ability to pay the cost of legal assistance and may, after notice, hold a hearing to make a  
23 determination of the present ability of the defendant to pay all or a portion of the cost thereof;  
24 and,

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1           WHEREAS, Penal Code section 987.81 further provides that the court may, in its  
2 discretion, hold one such additional hearing within six months of the conclusion of the criminal  
3 proceedings; and,

4           WHEREAS, Concurrent with the furnishing of counsel or legal assistance by the court,  
5 the court shall order the defendant to appear before a county officer designated by the court  
6 to make an inquiry into the ability of the defendant to pay all or a portion of the legal  
7 assistance provided. Prior to the furnishing of counsel or legal assistance by the court, the  
8 court shall give notice to the defendant that the court shall, after a hearing, make a  
9 determination of the present ability of the defendant to pay all or a portion of the cost of  
10 counsel. The court shall also give notice that, if the court determines that the defendant has  
11 the present ability, the court shall order him or her to pay all or a part of the cost. The notice  
12 shall inform the defendant that the order shall have the same force and effect as a judgment  
13 in a civil action and shall be subject to enforcement against the property of the defendant in  
14 the same manner as any other money judgment; and,

15           WHEREAS, The provisions of Penal Code section 987.81 shall apply only in a county  
16 in which the Board of Supervisors adopts a resolution which elects to proceed under that  
17 section; and,

18           WHEREAS, It is estimated that the City may recover \$400,000 annually in legal fees;  
19 and,

20           WHEREAS, It is estimated that the cost of collecting \$400,000 in fee reimbursement  
21 payments is \$75,000; now, therefore, be it

22           RESOLVED, That the San Francisco Trial Courts are authorized to collect attorneys  
23 fees pursuant to Penal Code section 987.81; and, be it

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1           FURTHER RESOLVED, That the revenues collected by the City shall be deposited in  
2 the Public Defender’s budget, and made available to fund the department’s programs, subject  
3 to expenses incurred by the Treasurer to assist in the collection of said revenue.

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