

Michael Bien of Rosen Bien and Jim Egar, Chief Public Defender of Monterey County, worked together to investigate and then to successfully litigate a class action challenging medical, mental health, corrections, dental and ADA issues at the Jail. The Public Defender's Office daily access to the Jail, frequent meetings with class members and day-to-day knowledge of County Government provided a distinct litigation advantage. Numerous challenges and tensions, however, also resulted from the unusual posture of adversity to the County Government.

GOVERNMENT CODE

SECTION 27700-27712

27700. The board of supervisors of any county may establish the office of public defender for the county. Any county may join with one or more counties to establish and maintain the office of public defender to serve such counties.

27701. A person is not eligible to the office of public defender unless he has been a practicing attorney in all of the courts of the State for at least the year preceding the date of his election or appointment.

27702. At the time of establishing the office the board of supervisors shall determine whether the public defender is to be appointed or elected.

27703. If the public defender of any county is to be appointed, he shall be appointed by the board of supervisors to serve at its will. The public defender of any two or more counties shall be appointed by the boards of supervisors of such counties.

27704. If the public defender is to be elected:

(a) The board of supervisors shall appoint a public defender who shall hold office until the first Monday in January following the next general election of county officers.

(b) The first election of a public defender shall be held at the first general election of county officials after the establishment of the office.

(c) The term of office of the public defender is four years from and after the first Monday in January following his election.

27705. In counties of the first, second and third classes, the public defender shall devote all his time to the duties of his office and shall not engage in the practice of law except in the capacity of public defender.

27705.1. A public defender shall not during his incumbency defend or assist in the defense of, or act as counsel for, any person accused of any crime in any county, except as set forth in this chapter.

27706. The public defender shall perform the following duties:

(a) Upon request of the defendant or upon order of the court, the public defender shall defend, without expense to the defendant, except as provided by Section 987.8 of the Penal Code, any person who is not financially able to employ counsel and who is charged with the commission of any contempt or offense triable in the superior courts at all stages of the proceedings, including the preliminary examination. The public defender shall, upon request, give counsel and advice to such person about any charge against the person upon which the public defender is conducting the defense, and shall prosecute all appeals to a higher court or courts of any person who has been convicted, where, in the opinion of the public defender, the appeal will or might reasonably be expected to result in the reversal or modification of the judgment of conviction.

(b) Upon request, the public defender shall prosecute actions for the collection of wages and other demands of any person who is not financially able to employ counsel, where the sum involved does not exceed one hundred dollars (\$100), and where, in the judgment of the public defender, the claim urged is valid and enforceable in the courts.

(c) Upon request, the public defender shall defend any person who is not financially able to employ counsel in any civil litigation in which, in the judgment of the public defender, the person is being persecuted or unjustly harassed.

(d) Upon request, or upon order of the court, the public defender shall represent any person who is not financially able to employ counsel in proceedings under Division 4 (commencing with Section 1400) of the Probate Code and Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(e) Upon order of the court, the public defender shall represent any person who is entitled to be represented by counsel but is not financially able to employ counsel in proceedings under Chapter 2 (commencing with Section 500) of Part 1 of Division 2 of the Welfare and Institutions Code.

(f) Upon order of the court the public defender shall represent any person who is required to have counsel pursuant to Section 686.1 of the Penal Code.

(g) Upon the order of the court or upon the request of the person involved, the public defender may represent any person who is not financially able to employ counsel in a proceeding of any nature relating to the nature or conditions of detention, of other restrictions prior to adjudication, of treatment, or of punishment resulting from criminal or juvenile proceedings.



27707. The court in which the proceeding is pending may make the final determination in each case as to whether a defendant or person described in Section 27706 is financially able to employ counsel and qualifies for the services of the public defender. The public defender shall, however, render legal services as provided in subdivisions (a), (b) and (c) of Section 27706 for any person the public defender determines is not financially able to employ counsel until such time as a contrary determination is made by the court. If a contrary determination is made, the public defender thereafter may not render services for such person except in a proceeding to review the determination of that issue or in an unrelated proceeding. In order to assist the court or public defender in making the determination, the court or the public defender may require a defendant or person requesting services of the public defender to file a financial statement under penalty of perjury. The financial statement shall be confidential and privileged and shall not be admissible as evidence in any criminal proceeding except the prosecution of an alleged offense of perjury based upon false material contained in the financial statement. The financial statement shall be made available to the prosecution only for purposes of investigation of an alleged offense of perjury based upon false material contained in the financial statement at the conclusion of the proceedings for which such financial statement was required to be submitted. The financial statement shall not be confidential and privileged in a proceeding under Section 987.8 of the Penal Code.

27707.1. The boards of supervisors of two or more counties may authorize their respective public defenders to enter into reciprocal or mutual assistance agreements whereby a deputy public defender of one county may be assigned on a temporary basis to perform public defender duties in the county to which he has been assigned in actions or proceedings in which the public defender of the county to which the deputy has been assigned has properly refused to represent a party because of a conflict of interest or because of some other present inability.

For purposes of this section, the term "present inability" shall include a lack of personnel, lack of expertise, or lack of other resources by the local office.

Whenever a deputy public defender is assigned to perform public defender duties in another county pursuant to such an agreement, the county to which he is assigned shall reimburse the county in which he is regularly employed in an amount equal to the portion of his regular salary for the time he performs public defender duties in the county to which he has been assigned. The deputy public defender shall also receive from the county to which he has been assigned the amount of actual and necessary traveling and other expenses incurred by him in traveling between his regular place of employment and the place of employment in the county to which he has been assigned.

A board of supervisors may also authorize the reciprocal or mutual assistance agreements provided for in this section with the State Public Defender.

27708. In each county the board of supervisors shall provide

suitable rooms for the use of the public defender and office furniture and supplies with which to properly conduct the business of his office. Such expenses are a charge upon the county or counties in which the public defender is employed.

27709. The expense of printing or typewriting the briefs on appeal on behalf of a defendant represented by a public defender is a county charge.

27710. The public defender shall keep a record of all services rendered by him in that capacity and shall file with the board or boards of supervisors annually a written report of his services.

27711. The annual salary of each public defender shall be such as has been or may be fixed by the county or counties.

27712. (a) In any case in which a party is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the proceedings, or upon the withdrawal of the public defender or private counsel, after a hearing on the matter, the court may make a determination of the ability of the party to pay all or a portion of the cost of such legal assistance. Such determination of ability to pay shall only be made after a hearing conducted according to the provisions of Section 987.8 of the Penal Code; except that, in any court where a county financial evaluation officer is available, the court shall order the party to appear before the county financial evaluation officer, who shall make an inquiry into the party's ability to pay this cost as well as other court-related costs. The party shall have the right to dispute the county financial evaluation officer's evaluation, in which case he or she shall be entitled to a hearing pursuant to Section 27752. If the party agrees with the county financial evaluation officer's evaluation, the county financial evaluation officer shall petition the court for an order to that effect. The court may, in its discretion, hold one such additional hearing, or the county financial evaluation officer may hold one such additional evaluation, within six months of the conclusion of the criminal proceedings. If the court determines, or upon petition by the county financial evaluation officer is satisfied, that the party has the ability to pay all or part of the cost, it shall order the party to pay the sum to the county in any installments and manner which it believes reasonable and compatible with the party's ability to pay. Execution may be issued on the order in the same manner as on a judgment in a civil action. The order shall not be enforced by contempt.

The court, or in a county which has a county financial evaluation officer, the board of supervisors, shall adjudge a standard by which to measure the cost of legal assistance provided, which standard shall reflect the actual cost of legal services provided. Appointed counsel shall provide evidence of the services performed pursuant to such standard.