

## Private Defender Program

The Private Defender Program - A Brief History Since 1969, the San Mateo County Bar Association has, by contract with the San Mateo County Board of Supervisors, provided attorneys to represent indigent criminal defendants, juveniles, and persons on the mental calendars. Nowhere else in the state has a local bar association taken on such a task. Public Defender or Private Defender? Prior to 1963, defendants in criminal actions hired counsel if they could afford to do so, or went without an attorney if they could not. The United States Supreme Court decided *Gideon v. Wainwright* in 1963, ruling that indigents accused of crimes were entitled to appointed counsel at public expense. Responding to the holding of *Gideon*, our criminal court judges randomly choose an attorney to represent an accused indigent who requested counsel (generally from one of those attorneys present in the courtroom). By the mid 1960's, judges consulted a list of volunteers and appointed an attorney from the list. This ad hoc method of appointing counsel for indigent criminal defendants proved to be unworkable in several respects, not the least of which, from the County's perspective, was the absence of adequate cost controls. Frustration with the problems of the direct appointment system led the Board of Supervisors of San Mateo County to seriously consider the establishment of a Public Defender Office in the course of preparing its 1967-68 budget. The initial proposal for such an office by the County administrative staff was highly unrealistic in terms of staffing, and the San Mateo County Bar Association strongly voiced its criticism. The Bar Association felt that there were many good aspects to the direct appointment system, but recognized the validity of certain complaints, such as the cost control problem, and the absence of a system for matching the attorney's skill and experience to the seriousness of a given case. The Bar Association appointed a select committee to examine the alternatives. The committee developed the idea of the Bar Association assuming the responsibility of providing attorneys for indigent defendants, and administering the entire program. The plan called for a contract with the County, incorporating cost and quality controls, with the courts determining the eligibility of defendants for appointed counsel. In December 1968, the County of San Mateo, and the San Mateo County Bar Association entered into such contract, and the Private Defender Program ("PDP") was born. Contract With San Mateo County While the contract with the County has changed somewhat throughout the years, the basic plan has not. The County pays the Bar Association the contract price in annual installments. The Bar Association provides attorneys to represent those defendants found to be eligible by the Court, and provides investigative, expert, and other ancillary services required to provide proper representation. In its first year of operation, the Private Defender Program represented nearly 3000 clients, with a budget of \$500,000. In fiscal year 2003-2004, the Program accepted approximately 24,000 case appointments, with a budget of \$11.6 million. Operation of the Private Defender Program Pursuant to the By-Laws of the San Mateo County Bar Association, the Chief Defender of the Private Defender Program, acting with the Private Defender Committee, has the responsibility for conducting the operations and expending funds in accordance with the policies of the Bar Association Board of Directors. The Bar Association's Executive Director, John Digiacinto is the Chief Defender of the Private Defender Program. He is a member of the American Council of Chief Defenders and has recently been appointed to the 10 person "Workgroup to Revise California State Bar Indigent Defense Guidelines" which will suggest standards for qualification for attorneys, standards for representation, workloads, funding issues, facilities, disciplinary procedures, supervision, training, support staff, assignment of cases and other criminal defense services standards for public defender offices, assigned counsel systems, and contract defense programs.

He manages the day-to-day operation of the Program along with Assistant Chief Defender, Charles Robinson; Managing Attorney for juvenile operations, Gerry Hilliard; a Chief Investigator and a support staff of 5 secretaries; a Controller, Assistant Controller and bookkeeper.

The cases in which the Private Defender Program is appointed cover all types of criminal matters, from misdemeanor traffic violations to felony homicides, including death penalty cases. Case assignments are made by the program staff on the basis of the nature, seriousness, and complexity of the charge, matching the skill and experience of the individual lawyer to the client and his or her case. The program is also appointed in dependency and delinquency matters in Juvenile Court, as well as mental health and civil matters, where the indigent is entitled to appointed counsel. Program Attorneys

Many of San Mateo County's finest criminal trial attorneys participate on the Private Defender panel. Some of them have always been in private practice, others have experience as former prosecutors, former public defenders, and some have even been judges. A unique feature of the program is that attorneys with 20-30 years criminal trial experience handle not only serious felony cases, but also less serious misdemeanor matters. There is much less stratification of experience levels for given types of cases than is found in most Public Defender offices. When the Private Defender Program is appointed to represent several co-defendants, the program is able to avoid the potential conflict issue, because the program's involvement in the individual case is limited to assigning the several clients to separate attorneys, each of whom is in private practice. This feature alone results in the Private Defender Program being able to deliver lower cost indigent legal services than a Public Defender office, because in co-defendant cases the Public Defender may represent only one co-defendant, and must refer all other co-defendants to a costly conflicts panel. Attorney-Client Relationship

Private Defender clients are treated with the same respect and care in the handling of a case as any retained client. If not in custody, the client will confer with the attorney in the attorney's office. The psychological effect of having a "private lawyer" is extremely important to many clients, instilling in them a sense of dignity which might not otherwise be felt, no matter how competent a government operated system might be. Criminal defense practice is not easy these days.

Emphasis is less on assuring rights for those accused of crime, and more on redress to those victims of crime. Focus on the "Administration of Justice" is increasingly placed on administration and less on justice. Concern seems centered on the speed with which the system disposes of cases, rather than the system's commitment to fairness. While panel attorneys feel the increasing difficulty in criminal defense practice, they continue to fight for the rights of their clients. In so doing, they often earn the respect of the client. The stress on both the attorneys and their clients because of the increased sentencing schemes and mandatory sentencing requirements has made dealing with the criminal justice system more difficult for all involved. Attorneys Fees

The Bar Association pays Private Defender panel attorneys from funds obtained under the contract with San Mateo County. Fees are paid according to a fee schedule, which has been developed by the Administrator and Private Defender Committee, and approved by the Bar Association Board of Directors. The fee schedule is modest. While most fees are fixed for a particular activity, trial and evidentiary hearing fees are paid hourly. In addition to a basic case fee, for example, appearance at a pre-trial conference is compensated at \$65. Jury trial fees are set at \$90 per hour plus a per diem. The fee schedule is structured to encourage the panel attorney to do all the work necessary to properly represent the client by compensating the attorney for his or her work, as opposed to a flat fee arrangement. The fee schedule also allows for certain variables, which can increase the fee in a particular case. In serious, extremely complicated cases, or cases in which unusual demands are made upon the attorney's time and skill, the attorney may apply for a special fee consideration in excess of that fixed by the schedule. Such an application is considered by the Special Fee Committee, which can approve, adjust or deny the special fee request. Examples of cases that are handled as Special Fee cases include murders, attempted murders, complex fraud cases, and cases that fall within the provisions of the "Three Strike" law. Continuing Education Program

Since its inception, the Private Defender Program has developed in-house continuing education. Seminars and meetings are regularly scheduled with panel attorneys or outside speakers presenting programs on a variety of substantive and procedural topics relevant to panel practice. In addition, each panel attorney has at his/her disposal an education fund upon which the attorney can draw to cover the cost of attendance at outside training seminars. Panel lawyers can also subscribe to the PDP listserv, a closed electronic forum where the free exchange of ideas, tactics and legal advice benefits both the lawyers and the clients they serve. Summary

The Private Defender Program is indeed unique. It delivers high quality legal services to clients otherwise unable to hire counsel. And it does so at a substantial savings to the taxpayers of San Mateo County. The Bar Association has earned national acclaim, and local respect for its Private Defender Program.