

Memorandum
To: Susan Parker and Carlos Torrez
From: Jose H. Varela
Re: Public Defender and Competent Representation
Date: April 18, 2023

WORKING DRAFT

Introductory Executive Summary

As Lake County envisions a public defender program, it should focus on creating a public defender program that serves all people in the community, attracts talent to an innovative institution, creates sustainable collaborative solutions, and invites members of their community to participate in the mission of the program through internships, educational outreach, and staffing of a Lake County Public Defender Advisory Committee.

Jose H. Varela, retired Marin County Public Defender, is consulting with Lake County officials as they address the start-up issues inherent in starting a new public defender program. In his over thirty-four years of practice as a trial attorney and as a leader in several county public defender programs, along with my work with the California Public Defenders Association (CPDA), Mr. Varela has witnessed a transition from a primarily trial-focused criminal defense practice to a collaborative service-focused representation model that is becoming a standard in many public defender programs.

While trial court work remains the primary function of public defenders as they protect an individual's constitutional rights assured under the federal and state constitutions, the movement toward holistic representation, which focuses on providing services to clients that help them reintegration back into the community, is taking hold in California and has received state gubernatorial and legislative support through resentencing options, divisionary relief, and mental health initiative (CARE Act) efforts.

Some in the criminal defense community believe that social work responsibilities belong to others in the criminal justice system and that only trial work should be the competencies on which criminal defense and public defense should be judged. This fails to understand current state law and the responsibilities now given to those who represent indigent criminal defendants.

With the advent of holistic representation, a new paradigm of representation is emerging. This new paradigm calls for a collaborative approach in representation that utilizes resources provided by other public entities (health and human services, probation, sheriff, and community-based culturally competent organizations) to create sustainable, jail-day, and other cost saving solutions. [Holistic Representation: An Innovative Approach to Defending Poor Clients Can Reduce Incarceration and Save Taxpayer Dollars — Without Harm to Public Safety | RAND](#)

Still, notwithstanding the promise of holistic representation, the Lake County Public Defender must maintain standards of excellence in trial court representation, including proper presentation of evidence and legal issues before the court and on-going training, supervision, and evaluation. In

addition, criminal justice stakeholders have a right to expect that public defenders, while zealously representing their clients, will be punctual, prepared, and professional in their representation of clients.

Outline for the Creation of the Lake County Public Defender Program

- I. Creating the Institutional Support for the Public Defender Program
 - A. Board of Supervisors
 - B. Chief Administrator’s Program
 - C. Department Heads
 - D. Police Chiefs
 - E. Community-Based Organizations
 - F. Schools

- II. Creating the Infrastructure Support for the Public Defender Program
 - A. Physical Work Site
 - B. Technology
 - C. Legal Reference Support (CEB, Jury Instructions, Practice Manuals)
 - D. Program Supplies
 - i. Letterhead and business cards
 - ii. Copy machines
 - iii. Scanning machines
 - iv. Telephones
 - v. Signage
 - vi. Social media

- III. Creating the Staffing Support for the Public Defender Program
 - i. Executive Team
 - a. Mission and Vision
 - b. Policies and Procedures
 - c. County rules and regulations
 - d. Community Outreach
 - f. Supervision of overall day-to-day activities

 - ii. Attorney Team Functions
 - a. Felony
 - b. Misdemeanor
 - c. Juvenile
 - d. Mental Health
 - e. Holistic Representation
 - f. Immigration
 - g. Community Outreach

- iii. Investigation, Case management, post-conviction relief

- IV. Creating the Litigation/Employment/Human Resource Support for the Public Defender Program
 - i. County Administration
 - ii. County Counsel
 - iii. Human Resources

- V. Creating the Recruitment and Payroll Support for the Public Defender Program
 - i. Human Resources
 - ii. Classifications
 - iv. Auditor-Controller/County Clerk

- VI. Creating the Policy and Procedures Manual for the Public Defender Program
 - i. Lake County Policy and Procedures
 - ii. Conforming departmental policies to Lake County Policy and Procedures
 - iii. Review with Human Resources County Policy and Procedures
 - iv. Implementation of Policy and Procedures

- VII. Creating the Governance Structure within the Public Defender Program
 - i. Public Defender
 - ii. Assistant Public Defender/ Senior Attorney
 - iv. Chief Trial Deputy/ Lead Attorney
 - v. Expectations of Executives and Supervisors
 - a. State required sexual harassment training
 - b. State Bar compliance (yearly updated bar cards/fingerprinting)
 - c. Fairness and Zero Tolerance Discrimination policy
 - d. Leadership training (CPDA Supervisor training)
 - e. Ensuring Competent Representation: Oversight and Evaluation
 - f. Ensuring reputation for excellence: Training and Legal Accomplishment

- VIII. Creating the Supervision Structure within the Public Defender Program
 - i. Public Defender supervises all program and immediate reports
 - a. Immediate reports: Assistant Public Defender and Chief Trial Deputy
 - b. Review of Supervision of all staff
 - ii. Investigators are supervised by attorney if no Chief Investigator
 - iii. Clerical Support Staff supervised by Program Manager

- iv. No evaluation of extra-hire/supervision for competency expected

IX. Creating the Internal and External Job Expectations for the Public Defender

- i. Professional presence in state and national organizations
- ii. Department Head responsibilities
- iii. Community Outreach Lead and Coordinator

X. Creating the Retention Plan for the Public Defender and Public Defender staff

- i. Competitive pay scale with contemporaneous counties
- ii. Housing incentive
- iii. Commute incentive
- iv. FMLA
- v. Remote work options
- vi. Retention bonus

XI. Transition of Cases and Appointments on New Cases

- i. Appointment on new cases (court or deputized to public defender)
- ii. Conflict procedure (APD or Private Panel)
- iii. Importing case information to case management system
- iv. Business rules for chronological case file updates
- v. Evaluation of appointment process
- vi. Workload balance and overload
- vii. Staff meetings
- viii. Review of case resourcing
- ix. Mentorship
- x. Acknowledgement, encouragement, and improvement (AEI)

Implementation Phases for Lake County Public Defender Program

Phase One: Leadership, Infrastructure, and Human Resources: Summer 2023 through Spring 2024

- I. Leadership: Hiring of a Chief Public Defender
- II. Recruitment and/or Appointment of Public Defender
- iii. Creation of a County Department/Division
- iv. Program Space for the Department: Acquiring space and conforming to needs of a confidential legal program: library, technology, and public works.
- v. Leadership: Hiring of an Assistant Public Defender or Senior Attorney
- vi. Coordinating Program Construction or Remodeling schedule
- vii. Coordinating recruitment of staff with Human Resources: Classification, Recruitment, and Appointment

Phase Two: Recruitment of Staff and Initial Training of Staff: Summer/Fall 2023 to Spring 2024

- i. Recruitment for Program Support Staff
- ii. Recruitment of Legal and Litigation Support Staff: Attorneys, Investigators, Case Managers
- iii. Training on Policies and Procedures and On Boarding Staff
- iv. Preparing to take on new cases

Phase Three: Opening Doors and Taking On Clients: Spring 2024 through June 2024

- i. Collaborating with court, district attorney, sheriff, and probation for processing of paperwork to facilitate representation by the Lake County Program of the Public Defender
- ii. Assessment of Transition of cases from LID.
- iii. Appointment of the Public Defender to all new cases on July 1, 2024.

Phase Four: Creation of the Lake County Indigent Defense Commission: Fall 2023 through June 2024

- i. Recruitment and appointment of residents to staff Commission: Board of Supervisor Appointment
- ii. Create rules and regulations for the Lake County Indigent Defense Commission
- iii. Independence of public defender and advisory role of Commission