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November 26, 2008

## **TO ALL PCC PANEL ATTORNEYS & OTHER INTERESTED PARTIES**

Please be assured the pending transfer of management of San Diego County's indigent defense private attorney panel program from PCC to a new County office on January 1, 2009 will involve very little change for you. The most significant differences will be a new mailing address for sending bills, a new phone number to call for funding requests, and a new office name – the Office of Assigned Counsel or OAC for short.

I have been asked to head the new office. It is a job I have had before. I was San Diego County's last in-house administrator of this same program back in 1995 and 1996 when I headed the Office of Panel Administration. Many of the forms PCC uses today are modified versions of the same forms I used back then, and we are in the process of modifying them again for use by OAC. Here are some further details.

Effective January 1, 2009, the County of San Diego will resume direct management of the indigent defense private attorney panel program for all cases assigned after that date and for any existing private bar capital cases and retained-indigent cases. The County directly managed this program for approximately 20 years before outsourcing management to the San Diego County Bar Association through its Private Conflicts Counsel (PCC) office starting in July of 1996. The County has decided to resume its direct management of the program at this time. Under the terms of its County contract, PCC will continue to manage all the cases, other than capital and retained-indigent cases, it assigns through December 31, 2008, until those cases have been concluded at the trial court level. The County is currently in the process of setting up its new Office of Assigned Counsel to manage the panel program. We hope to open the doors of the new office by mid-December, and we will assign all new private panel cases starting Friday, January 2, 2009.

OAC would very much like to have all 114 currently active PCC panel attorneys continue to serve as OAC panel attorneys under the new administration, and we will also accept new applications from attorneys interested in joining the panel. OAC's panel program will function almost identically to PCC's panel program. All current PCC panel members will be "grandfathered" in at their current program level, and the program rules and fee schedule will remain unchanged in almost all respects. Attorney fees are not being reduced, and reasonable and necessary ancillary case expenses will continue to be approved. Those suggesting otherwise are misinformed.

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Panel attorneys will be asked to sign a new contract with OAC in December, to add the County as an insured, and to provide OAC with a W9 Taxpayer ID form so the County can enter the panel attorneys into the County's payment system as approved County vendors. This will be necessary so OAC can promptly pay your billings on cases you receive from OAC after January 1, 2009, or on capital or retained-indigent cases regardless of when received. The required W9 form is attached to this message for your use. Please fill out the W9 form and send it to my attention (Robert Stall) at 233 A Street, Suite 500, San Diego, CA 92101. Once OAC's new office is open, I expect my mailing address will change to Suite 1210; but that suite address is not up and running just yet. We have some painting, carpeting, and furnishing to do first.

OAC expects to open its own website as part of the County's larger website on or before December 9, 2008 to assist you. That OAC website will contain more detailed information about the new office and will include links for you to download new OAC forms such as the OAC contract, the OAC program rules & regulations, and the OAC attorney fee schedule. All of these will look very familiar to you because they are all based on PCC forms you have already seen. The new OAC website will also have a Frequently Asked Questions (FAQ) section providing additional information.

Here is a little information about me for those of you who may not know me. I served as San Diego County's last in-house administrator of the indigent defense private attorney panel program from May 1995 through the end of 1996. I have been a practicing criminal defense attorney here in San Diego for 34 years. I was admitted to the California state bar and the local federal bar in December of 1974 after graduating from the University of San Diego's School of Law in June of 1974. I was admitted to the federal Ninth Circuit Court of Appeals bar in April of 1982 and the United States Supreme Court bar in December of 1983. I worked in private practice for 14 years from December of 1974 through December of 1988 focusing primarily on criminal law matters. During that time I personally handled thousands of appointed felony cases as a private bar panel attorney, just like you, from 1981 through 1988. I joined the newly created Public Defender 20 years ago at the end of 1988. I supervised the Public Defender's South Bay branch office from September 1990 through January 1993. I have served as a Chief Deputy Public Defender for the last 12 years managing three different divisions, including the central attorney division consisting of more than 80 attorneys which I managed from April 2002 to October 2005. In these various capacities over many years I have had the opportunity to make decisions approving, denying, or modifying thousands of requests for ancillary expenses for experts and investigation services on cases ranging from misdemeanors to capital offenses.

For budgetary and very limited administrative support purposes such as payroll and human resources, OAC will be a division of the County's Department of the Public Defender rather than a separate County department; but OAC will function with complete independence as an ethically separate or "glass-walled" office in all matters

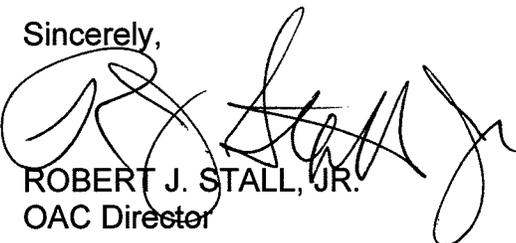
related to operation of the private panel attorney program. OAC will operate out of its own physically separate suite on the 12<sup>th</sup> floor of the Centre City Building at 233 A Street in San Diego. Other members of the Public Defender's staff will not have access to OAC's work areas unless escorted by OAC staff and will not have the keys and codes necessary to enter those OAC work areas. The Public Defender will not have any role in assigning cases to the private panel attorneys or in the consideration of attorney fee requests or ancillary service funding requests from private attorneys.

The concept of glass-walled or ethically separate public law offices has been around for a long time and is well supported by case law. If you have any concerns or doubts about that issue, please review the cases of *Castro v. Los Angeles County Bd. of Supervisors* (1991) 232 Cal.App.3d 1432 (*Castro*); *People v. Christian* (1996) 41 Cal.App.4th 986 (*Christian*); and the recent California Supreme Court decision of *In re Charlisse C.* (Oct. 30, 2008) \_\_\_ Cal.4<sup>th</sup> \_\_\_ (Docket # S152822) (*Charlisse*). Those cases should put your mind at ease. OAC will fully and rigorously comply with the guidelines set forth in those cases to ensure the confidentiality of information on your cases. OAC will provide only general statistical information about its operation to other County offices, and that information will not be case specific and will not provide any narrative information about cases or funding requests. Concerns that have been raised by some regarding potential conflict of interest problems with this County management of the indigent panel attorney program are unfounded and without legal support.

By the way, the County will not be charging any fee for participation in the OAC panel attorney program. In addition, the comprehensive training resources available from the Public Defender and Alternate Public Defender offices will be made more readily available to OAC panel attorneys to assist them in meeting their MCLE requirements to the state bar and the panel program. OAC panel attorneys will also be eligible to receive client dress out clothing assistance from the Public Defender's very extensive collection of such materials. There is no conflict in sharing client clothing services.

I am a strong supporter of a healthy private panel attorney program. I look forward to working with all of you to help your clients receive the excellent representation to which they are entitled. Please continue your participation in the County's indigent defense panel program by submitting the necessary paperwork to OAC during December so you will be eligible to receive new cases starting on Friday, January 2, 2009.

Sincerely,



ROBERT J. STALL, JR.  
OAC Director