



24-4952-01

**DATE:** April 16, 2024 (Item No. {{item.number}})

**TO:** Board of Supervisors

**FROM:** Molly O’Neal, Public Defender

**SUBJECT:** Salary Ordinance to extend two Unclassified Attorney positions

### **RECOMMENDED ACTION**

Final adoption of Salary Ordinance No. NS-5.24.67, an Ordinance amending Santa Clara County Salary Ordinance No. NS-5.24 relating to compensation of employees revising Footnote 874 to extend the expiration date for two unclassified Attorney IV - Public Defender or Attorney III - Public Defender or Attorney II - Public Defender or Attorney I - Public Defender positions in the Office of the Public Defender. Positions shall expire at 11:59 p.m. on June 30, 2024.

### **FISCAL IMPLICATIONS**

The fiscal impact for the remainder of Fiscal Year (FY) 2023-2024 to extend two unclassified Attorney positions is \$73,251. If necessary, the Office of the Public Defender (PDO) will return to the Board with an appropriation modification at year-end to increase revenue and expenditures.

### **REASONS FOR RECOMMENDATION AND BACKGROUND**

The Board of Supervisors allocated two FTE unclassified attorney positions funded by AB-109 Trust Fund 0433 in the Office of the Public Defender (PDO) in October 2022 to address a misdemeanor case backlog created by the COVID-19 pandemic. The court’s focus on reducing the number of San José misdemeanor jury trials initially resulted in the misdemeanor attorneys being continually engaged in trial or sent to trial departments to discuss trial cases during their regular pretrial calendars. This severely impacted the PDO’s ability to sufficiently staff pretrial conference calendars. Meaningful pretrial conference negotiations result in settlement and are critical to keeping case backlogs from increasing.

The addition of two unclassified Attorney positions allowed the PDO to sufficiently staff trial and pretrial conference calendars, resulting in enhanced representation to public defender clients while also reducing the San José misdemeanor trial backlog. However, the overall caseload per San José misdemeanor attorney has remained exponentially higher than the

national standard. A 2023 research report by the Rand Corporation<sup>1</sup> examining public defense caseloads suggests that the caseload of a misdemeanor attorney should be no more than 154 cases annually, depending on the type of case and charges. The San José PDO misdemeanor attorneys are each carrying an *active* caseload of around 400 cases—two to three times the recommended *annual* number.

Despite a reduction in the COVID-19 pandemic trial backlog, the workload of our misdemeanor attorneys has increased in recent years. With the emergence of body worn cameras in 2017, most misdemeanor cases now receive several hours of body worn camera footage that needs to be reviewed by the assigned attorney. In addition, new legislation such as the Mental Health Diversion law and the Racial Justice Act require attorneys to apply additional layers of analysis to each case and additional hours of conduct related workup if the case requires it. These developments, which are good for the criminal legal system, involve more hours spent on any given case. Both the District Attorney's Office and the PDO have provided data analysis over the years to highlight a steady increase of workload per attorney.

The two unclassified attorney positions are scheduled to expire on April 29, 2024. The PDO is requesting a two-month extension through the end of the fiscal year to maintain current level service that the Misdemeanor Unit is providing to the clients. The PDO is working with the Administration to look at longer-term options to address this ongoing challenge of workload.

Employee Services Agency supports the recommended action.

### **CHILD IMPACT**

The recommended action will have no/neutral impact on children and youth.

### **SENIOR IMPACT**

The recommended action will have no/neutral impact on seniors.

### **SUSTAINABILITY IMPLICATIONS**

The recommended action will have no/neutral sustainability implications.

### **CONSEQUENCES OF NEGATIVE ACTION**

The Office of the Public Defender would not be able to provide adequate representation of clients.

### **STEPS FOLLOWING APPROVAL**

The Clerk of the Board of Supervisors is requested to send OneMeeting notifications of completed processing to Hong Cao in the Office of the Public Defender and Staci Bjerk, Jennifer Paredes-Fricano, and Zullay Rodriguez, Employee Services Agency, Human Resources Department.

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<sup>1</sup> Pace, N. M., Brink, M. N., Lee, C. G., & Hanlon, S. F. (2023). National Public Defense Workload Study | Rand.

[https://www.rand.org/pubs/research\\_reports/RRA2559-1.html](https://www.rand.org/pubs/research_reports/RRA2559-1.html)

Board of Supervisors: Sylvia Arenas, Cindy Chavez, Otto Lee, Susan Ellenberg, S. Joseph Simitian

County Executive: James R. Williams

Agenda Date: April 16, 2024

## **ATTACHMENTS:**

- NS 5 24 67 PDO Extend two unclassified Attorney IV Public Defender