

DEFENDER ASSOCIATION OF PHILADELPHIA

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MEMORANDUM
March 31, 2015

TO: HONORABLE DARRELL L. CLARKE, COUNCIL PRESIDENT AND
MEMBERS OF PHILADELPHIA CITY COUNCIL

FROM: CHARLES A. CUNNINGHAM, ACTING DEFENDER
DEFENDER ASSOCIATION OF PHILADELPHIA

RE: STATEMENT IN SUPPORT OF FISCAL YEAR 2016 APPROPRIATION
REQUEST FOR THE DEFENDER ASSOCIATION OF PHILADELPHIA

Good morning Council President Clarke and Members of City Council. My name is Charles A. Cunningham, Acting Defender of the Defender Association of Philadelphia, and I am here to present testimony in support of the Association's FY 2016 budget appropriation. With me today is Kristen Muhl, Chief Financial Officer for the Association.

The Defender Association of Philadelphia is an independent, not-for-profit corporation that provides legal representation to indigent Philadelphia citizens through a purchase of services contract with the City of Philadelphia. Defender attorneys represent adults and juveniles charged with criminal offenses, adults and juveniles who become the subject of involuntary civil mental health commitment procedures, and dependent and neglected children whom the City's Department of Human Services designates as in need of a Child Advocate to protect their legal rights. The office receives all of its cases through an appointment process managed by the Courts. Only those who meet the indigence standards set by the Courts will be appointed a "public defender." The Defender Association cannot provide representation unless appointed by the Courts to do so and cannot reject a case unless such representation would constitute a conflict of interest. The

Association receives approximately 65,000 new cases per year, or 70% of the cases available for appointment.

For FY 2016, the Budget Director has appropriated a budget of \$41,753,949. The Association is requesting an additional appropriation of \$5.1 million, to be distributed in the following areas:

- Eight (8) attorney positions. Changing from a system of three divisions (misdemeanors, felony waiver and jury trials) to a system of six zones, each with a mix of all levels of cases, increased our need for supervisors and assistants. Eight attorney positions were added during the transition and we are now asking for funding for those positions.
- Five (5) administrative positions. We need two (2) scanning clerks and three (3) Information Technologies staff (one systems developer and two desktop support personnel).
- Salary parity. The City added \$500,000 to the budget to advance the promised goal of achieving salary parity between Association employees and City employees. We are asking for an additional \$1.5 million in FY 2016; however \$6 million is needed if we are to reach our goal of parity within the next three years.
- Medical costs. At one time, the City automatically added a 10% increment to the budget each year for health insurance increases. That increment was subsequently removed and each year we must renegotiate an increase in this category.
- Benefits costs. Benefits costs, employer taxes, etc., related to the wage increases and new positions.

Although it may appear that the Defender Association's budget is large in comparison to that of the District Attorney's Office, it would be unfair to compare the two offices without accounting for the differences in funding. As an independent entity, the Association must provide for every expense

related to running an independent office and does not have access to City resources. Unlike the District Attorney's Office, the Defender Association's budget must fund all aspects of a stand-alone business: rent, utilities, equipment, telephone systems, computers, supplies and expenses, payroll taxes, benefits such as health insurance, life insurance, disability, and Workers' Compensation, malpractice insurance, business and property insurance, etc. In addition, the District Attorney's Office receives forfeiture monies, state and local grants and receives funding for technology and new initiatives through the City.

Although the Association made the change to the Zone System much later than the other criminal justice partners, the system is functioning well. Zoning promotes more one-to-one contact with clients, better file control and fewer continuances, thus keeping cases moving through the system.

The advent of electronic filing for criminal matters and the passing of discovery through electronic means within the past two years have placed increasing demands on our Information Technologies Department. There are also an increasing number of cases where videos, other electronic devices and social media have become important pieces of evidence. Therefore, it is incumbent upon the Defender Association to make every effort to locate this type of evidence and expend resources to retrieve it. Obviously this requires a change in our practice and our requirements. Because of these changes, it is even more imperative that our Information Technologies Department have the resources to ensure that we are able to keep pace with our partners in the criminal justice system.

We continue to work toward the creation of an electronic file, which we call the Defender Case Management System (DCM). Our DCM system includes notes of testimony, discovery, investigation reports, attorney case file notes, status and case tracking information using the bar

codes on the files. This system, while not only enabling us to better track our files, has also enabled us to retrieve information even if the file cannot be located. These advances cut down on the need for continuances and therefore save time and money.

The decision to start scanning closed trial files and to stop using an offsite storage facility to archive closed files continues to reap benefits for the office, both from the perspective of savings and file accessibility. We now have 6 ½ years of trial files in electronic form and have reduced our offsite storage inventory by more than 50%. Almost without exception, no trial files have been sent to off-site storage since 2002.

The Defender Association continues to work with the First Judicial District and the District Attorney's Office to ensure an efficient criminal justice system. Through programs such as the Accelerated Misdemeanor Program, Crash Court and other diversion courts such as Treatment Court, Veteran Court and Domestic Violence Court, many cases have been diverted from the trial room to programs that will help both the client and our community. In addition to these programs, the Defender Association plays a major role in the Intermediate Punishment Program. Again we are talking about a program that saves valuable judicial time while at the same time addressing the issues that have led to the client's involvement in the judicial system. Last but not least, the Defender Association handles many early parole petitions that, with the consent of both the District Attorney and the Court, enable people to gain an early release from an overcrowded prison system. We are also prepared to expand this program to other clients who were not originally appointed to the Defender Association, but now find themselves without representation. This will only require a small increase in our administrative staff, approximately one person at a cost of \$50,000 (this includes benefits). At the same time it has been estimated that the savings to the city will be about

\$4,000,000. It therefore goes without saying that the cost of one administrative person is a small price to pay for the savings that the city will experience.

As a member of the criminal justice partners, the Defender Association continues to play a role in the efficient running of our judicial system. As such, we never forget that our first duty is to our clients. We continue to look for new ways to provide better representation to our clients. We also continue to work hard to ensure that our clients receive the very best representation. Recently we were involved in two favorable decisions handed down by the Pennsylvania Supreme Court. In the case of Commonwealth v Benjamin Walker, our Appeals Division argued that expert testimony should be admissible regarding the reliability of eye witness testimony as it pertains to identification when certain factors are present. Although 47 states as well as the Federal Courts had accepted this type of testimony, it was not until the Defender Association argued this issue before the Pennsylvania Supreme Court that Pennsylvania joined in this enlightened approach. The second important decision involved our Child Advocate Unit. In the Interest of L.Z a Minor Child, our Child Advocate Unit sought to protect the rights of a minor and argued the case before the Pennsylvania Supreme Court. In its decision the Pennsylvania Supreme Court sustained the position of the Child Advocate and ruled that where a child is neglected and /or harmed the courts are justified in presuming that the parent/caregiver has failed to meet her/ his responsibility to ensure the safety of the child. These are just two examples of how the Defender Association continues to have an impactful role in our justice system.

The Association has always shown its commitment to staff diversity by actively recruiting job candidates, especially minority applicants, from a diverse network of sources. Our staff is made up of 510 members, included in which are 305 women (60%) and 190 members of minority groups (38%). Although there is no residency requirement for Defender Association employees,

approximately 67% of staff resides in the City of Philadelphia.

With few exceptions, the Association does not enter into contracts for goods and services and does not use subcontractors. Nevertheless, it is our policy to seek out vendors who are members of the Minority Business Enterprise/Women's Business Enterprise/Disabled Business Enterprise network. We also routinely check the OEO (Office of Economic Opportunity) database for new vendors and services. The Business Manager reviews purchase orders prepared by the Purchasing Agent, Information Technology Director, etc. before purchases are finalized and assures that we are making reasonable attempts to choose suppliers who are listed as members of the MBE/WBE/ DSBE.

The Association's Board of Directors has had some preliminary discussions with the City regarding the creation of a conflict office. We believe a Defender conflict office, if established, will enhance the representation of those people who are subject to conflict representation.

Finally, I would like to say that the entire staff of the Defender Association is committed to the idea that we are responsible for providing the very best representation that anyone who is accused of a crime can receive. The staff of attorneys is well trained and hard-working. They manage a caseload that at times seems incredible. Yet they not only handle it but they do so in a fashion that would allow you the opportunity to say that Philadelphia has one of the best public defender offices in the nation.

Thank you for your support of the Association and its work.

Attachments:

EEO Report
Residency Report