

Fresno County defends its staffing in Public Defender's Office

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Fresno County officials defended the county's budgeting for the Public Defender's Office in letters exchanged with the American Civil Liberties Union earlier this year after the ACLU said inadequate staffing violated the rights of criminal defendants.

The letters were a precursor to [a lawsuit](#) filed Wednesday by the ACLU that said Fresno County and the state of California were not funding or overseeing the Public Defender's Office properly, violating the constitutional rights of criminal defendants.

The ACLU cited one defendant who said he was represented by nine different public defenders. But at the time the letters were written, Dan Cederborg, Fresno County Counsel, said the ACLU hadn't provided the county with information about individuals whose constitutional rights allegedly were violated.

In a six-page letter to the ACLU, the county "rejects the conclusion...that staffing levels at the Public Defender's Office have resulted in violation of defendants' rights," Cederborg wrote. "The county is aware of the staffing level issue and has taken aggressive steps to add additional positions to the Public Defender's Office."

[The letter, written March 20](#), was sent to the ACLU in response to a letter detailing many of the issues cited in its lawsuit.

Cederborg said adequate staffing levels are difficult to ascertain.

"No particular staffing level is mandated by state law," he said. The ACLU "indicated that the quality of representation was of more importance to the ACLU than a specific numerical caseload standard."

Novella Coleman, ACLU staff attorney, said [the letters were exchanged](#) as part of a Public Records Act request by the ACLU. She said there were "factual discrepancies between what the county was saying and what we were hearing from individuals."

The ACLU claims that the caseload levels were two or three times higher than recommended standards and much higher than they had seen in other communities around the country.

"One of the main points was that the county was insisting that it has always had adequate staffing levels, and to us that defies all credibility," said Coleman.

The suit said that the Public Defender's Office lacks parity with the District Attorney's Office, which has more lawyers who are more experienced. The result is more plea bargains, according to the lawsuit. The District Attorney's Office has 112 lawyers in this year's county budget, including 19 grant-paid positions. The Public Defender's Office has 66 lawyers.

Cederborg said that unlike the District Attorney's Office, the Public Defender's Office has options for alternative defense lawyers, employing Richard Ciummo & Associates and the Alternative Defense Office, as well as a group of lawyers known as the "Wheel." Those lawyers get about 25% of the county's cases and private lawyers probably another 10%, officials estimate.

41,171

Number of cases submitted to District Attorney's Office for prosecution in 2014

Fresno County District Attorney Lisa Smittcamp, who counts herself as a supporter of budgeting more attorneys to work for the Public Defender's Office because it will speed up the legal process, reduce jail crowding and give victims closure sooner, said her office will always encounter more cases than does the Public Defender's Office.

There were 41,171 cases submitted to the District Attorney's Office in 2014. Of those, 33,807 cases resulted in criminal findings. By comparison, in the 10-month period ending April 30, the Public Defender's Office received 27,166 new cases, according to a report for county supervisors filed last month by Elizabeth Diaz, the public defender. That number equates to about 32,600 cases for the year.

Because Smittcamp's office has to file cases, there is more work done on the front end of prosecution before defense lawyers ever get a case file.

District attorneys must prosecute all cases that are filed and don't have alternative lawyers for prosecution, she said.

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Novella Coleman, ACLU staff attorney

In 2013, some Fresno County public defenders had 1,000 misdemeanor and 650 to 700 felony cases each year. The American Bar Association recommends 400 misdemeanor and 150 felony cases covered annually by public defenders. Caseloads in Fresno County were at such a level that they only had the ability to "meet, greet and plead" their clients.

"Because Fresno County's public defense system is not capable of putting the prosecution's case to meaningful adversarial testing, courts cannot ensure that their decisions, judgments, verdicts and punishments are rendered fairly and accurately," the ACLU lawsuit said. Between July 2014 and March, the ACLU lawsuit said, about 79% of the Public Defender's felony clients in jail were not visited by public defender staff.

Among Fresno County Jail inmates, 67% are awaiting hearings and have not been convicted of crimes they are accused of committing. Much of the blame, county officials say, goes back to a clogged court system with too few lawyers and judges to handle caseloads. Plea bargains were more frequently employed than state or national averages. Fresno County public defender cases went to trial 0.19% of the time. Statewide, 2.29% of felony cases and 1.02% of misdemeanor cases went to trial in 2013-14, the lawsuit said.

The heavy caseload also caused many experienced lawyers to leave the Public Defender's Office, only to be replaced by less experienced, entry-level lawyers, the ACLU suit said.

"Saying there are enough people to staff the courtrooms is one thing, but the county didn't address what it is to have meaningful representation," she said.

But Cederborg said the Public Defender's Office works with its lawyers to ensure they are not overworked. The Public Defender's Office "checks and monitors the caseloads of the trial attorneys and other staff members," he said.

Management determines the appropriate caseload given an attorney's skill and experience.

The additional 17 staff members approved in last year's budget were all recently hired, Cederborg said in the March letter. At the time, he said, the Public Defender's Office was evaluating workloads among its employees in light of the new hires and Proposition 47's impact on the Public Defender's Office. Prop. 47, approved by voters in November, allows some nonviolent felonies to be reduced to misdemeanors.

"The significant impacts of Proposition 47 are just being felt by the justice system and further complicate the development of a particular caseload numerical standard at the present time," Cederborg wrote.

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