

AGENDA

REGULAR MEETING ORANGE COUNTY COMMUNITY CORRECTIONS PARTNERSHIP

Thursday, May 23, 2013, 2:00 P.M.

PROBATION DEPARTMENT
Training Room 5
1001 S. Grand Ave.
Santa Ana, California

STEVE SENTMAN, Chair
Chief Probation Officer

THOMAS BORRIS
Presiding Judge

SANDRA HUTCHENS
Sheriff-Coroner

TONY RACKAUCKAS
District Attorney

MARY HALE
Health Care Agency

FRANK OSPINO
Public Defender

KEVIN RANEY
Chief of Police, Garden Grove

The Orange County Community Corrections Partnership welcomes you to this meeting. This agenda contains a brief general description of each item to be considered. The Partnership encourages your participation. If you wish to speak on an item contained in the agenda, please complete a Speaker Form identifying the item(s) and deposit it in the Speaker Form Return box located next to the Clerk. If you wish to speak on a matter which does not appear on the agenda, you may do so during the Public Comment period at the close of the meeting. Except as otherwise provided by law, no action shall be taken on any item not appearing in the agenda. When addressing the Partnership, please state your name for the record prior to providing your comments.

****In compliance with the Americans with Disabilities Act, those requiring accommodation for this meeting should notify the Clerk of the Board's Office 72 hours prior to the meeting at (714) 834-2206****

All supporting documentation is available for public review in the office of the Clerk of the Board of Supervisors located in the Hall of Administration Building, 333 W. Santa Ana Blvd., 10 Civic Center Plaza, Room 465, Santa Ana, California 92701 during regular business hours, 8:00 a.m. - 5:00 p.m., Monday through Friday.

AGENDA

ADMINISTRATIVE MATTERS: (Items 1 - 4)

At this time, members of the public may ask the Partnership to be heard on the following items as those items are called.

1. Welcome and Introductions
2. *Revised title* - Receive status update from ad hoc committee; discussion of options for crime rate study; and make recommendations to ad hoc committee ~~Discussion and approval of Crime Study contract with UCI~~
(Continued from 3/28/13, Item 3)
3. Proposed changes to bylaws
4. Realignment Updates:
 - Probation
 - Sheriff
 - District Attorney
 - Public Defender
 - Courts
 - Health Care/Mental Health
 - Local Law Enforcement
 - Board of Supervisors
 - Social Services
 - OC Community Resources
 - OC Department of Education
 - Community-Based Organization (Representative)
 - CSP (Victims Representative)

PUBLIC & PARTNERSHIP COMMENTS:

At this time members of the public may address the Orange County Community Corrections Partnership on any matter not on the agenda but within the jurisdiction of the Partnership. The Partnership or Chair may limit the length of time each individual may have to address the Partnership.

PUBLIC COMMENTS:

PARTNERSHIP COMMENTS:

ADJOURNMENT

NEXT MEETING:

June 27, 2013 Regular Meeting, 1:00 P.M.

ORANGE COUNTY COMMUNITY CORRECTIONS PARTNERSHIP
AGENDA ITEM #2
THURSDAY, MAY 23, 2013

At the March 28, 2013 meeting of the Community Corrections Partnership (CCP), an ad hoc committee of members Sentman, Hutchens and Raney was established in response to the 2011-12 Grand Jury's recommendation that the CCP initiate a study to compare crime rates in Orange County for the periods of October 2010 through September 2011 and October 2011 through September 2012 (one year pre- and post-AB109). The ad hoc committee was established to develop a scope of work for the study to be presented to the Grand Jury in response to their recommendation.

While the Grand Jury's recommendation was for the CCP to provide a comparison of crime rate data pre- and post-AB109, the CCP previously expressed a desire to take it a step further and provide a more comprehensive report. Consistent with that concept, the Sheriff's Department volunteered to work with the University of California, Irvine (UCI) for a possible partnership in developing such a report. UCI was already working with the Public Policy Institute of California (PPIC) related to the potential gathering of AB109-related data for a study to be conducted by PPIC, so it was thought that a report could be developed in a timely manner. This has proven not to be the case.

Members of the ad hoc committee met with representatives from UCI and PPIC on April 15, 2013. At that time, it became apparent that the results of the study to be completed by PPIC would not be available for some time. The data gathering process is set to begin in approximately six months. Data will be gathered from 10 "preferred" counties including Orange County. Specific timing for release of the data is unknown at this time, so use of this report to provide a timely response to the Grand Jury's recommendation is not feasible. In addition, the study to be conducted by PPIC will not include pre-AB109 data.

In order to meet the reporting requirement as recommended by the Grand Jury, the ad hoc committee discussed two options:

1. Utilize data soon to be released by the Department of Justice (DOJ) to compile a report consistent with the Grand Jury's recommendation. The data to be released by the DOJ is the crime rate data submitted by local law enforcement agencies. This data could be used by Probation's Research Division to develop a basic report. While it would not take it a step further as hoped for by the CCP, it would meet the recommendation of the Grand Jury. The more comprehensive report desired by the CCP could be addressed through provision of data to the PPIC. The CCP's response to the Grand Jury could indicate that the PPIC is in the process of working with counties on data gathering and reporting, so additional information will be available at a later date. However, the PPIC study would not include pre-AB109 data.

2. Establish a contract for development of the more comprehensive report (this could be the report generated in response to the Grand Jury's request, or in addition to providing the data described in Section #1 above). The contract would be established consistent with county policy as outlined in the Contract Policy Manual. Options include:
 - a. A sole source contract with UCI based on their existing knowledge in this area and existing and future relationship with the County and PPIC. This would require Board approval if the contract exceeds a total amount of \$50,000 or a two year consecutive term regardless of dollar amount.
 - b. If a sole source contract is not justified based on the existence of other entities with similar consultant services capabilities, a request for proposal (RFP) process could be conducted. This option would require approximately six months for completion. Board approval would be required for a contract award exceeding \$100,000.

At this time, the ad hoc committee seeks input from the CCP related to the various options available and to the direction to be taken.

**BY-LAWS
OF THE ORANGE
COUNTY COMMUNITY CORRECTIONS PARTNERSHIP**

ARTICLE I

NAME

The name of this organization shall be THE ORANGE COUNTY COMMUNITY CORRECTIONS PARTNERSHIP.

ARTICLE II

AUTHORIZATION

This organization is authorized by Penal Code Section 1229, *et seq.*

ARTICLE III

PURPOSE

The Orange County Community Corrections Partnership shall play a critical role in developing programs and ensuring appropriate outcomes for low-level offenders. Pursuant to Penal Code Section 1230, the Partnership shall provide advice concerning Probation's community corrections program as defined in subdivision (c) of Penal Code Section 1229 and shall recommend a local plan to the Orange County Board of Supervisors for the implementation of the 2011 Realignment Legislation addressing public safety as expressed in AB 109, AB 117 and AB 118 of 2011.

ARTICLE IV

MEMBERSHIP

1. The Partnership shall consist of the Chief Probation Officer, serving as the Chairperson of the Partnership and the presiding judge of the superior court, or his or her designee, a county supervisor or the chief administrative officer for the county, the district attorney, the public defender, the sheriff, a chief of police, the head of the county department of social services, the head of the county department of mental health, the head of the county department of employment, the head of the county alcohol and substance abuse programs, the head of the county office of education, a representative from a community-based organization with experience in successfully providing rehabilitative services to persons who have been convicted of a criminal offense, an individual who represents the interests of victims.

2. The Partnership shall have an Executive Committee ~~that will serve as the voting body of the Partnership and shall be comprised of the following members designated as follows:~~ the chief probation officer of the county (chairperson), a chief of police, the sheriff, the district attorney, the public defender, ~~the presiding judge or his or her designee,~~ one department representative from one of the following, as designated by the county board of supervisors: (1) the head of the county department of social services; (2) the head of the county department of mental health; or (3) the head of the county department alcohol and substance abuse programs.

Comment [a1]: This section is being modified to address the constitutional prohibition against judges simultaneously holding non-judicial offices.

~~2.3. The Chief Probation Officer of the County shall serve as the Chairperson of the Partnership pursuant to Penal Code section 1230(b)(2). Should the Chief Probation Officer be unable to attend a meeting, the Chief may declare an alternate to attend in his/her place pursuant to paragraph 4 below. If an alternate attends on behalf of the Chief of Probation, the alternate shall assume the duties of Chairperson for that meeting.~~

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~~The Executive Committee shall vote on the local plan to be recommended by the Partnership to the Orange County Board of Supervisors~~

Comment [a2]: This section replaces Article V below.

Comment [a3]: This section is no longer required/relevant as the plan has already been voted on and approved by the Board of Supervisors.

~~3. The Partnership may also consist of non-voting members as follows: a representative from the Board or CEO's office; a representative from the County Department of Education; a Non-Profit Community based social service/rehabilitation service organization representative; a representative from the Workforce Investment Board; an individual who represents the interests of victims; and a representative from the Social Services Agency, Health Care Agency Mental Health Services and Health Care Agency Drug and Alcohol Services if not appointed to the Executive committee.~~

Comment [M4]: This section should be deleted as statute does not provide the Executive Committee with the authority to appoint additional non-voting members to the Partnership.

~~4. Voting members shall be nominated by the Chief Probation Officer and appointed by a majority vote of the Board of Supervisors.~~

Comment [M5]: This section can be deleted as the voting members are declared by the by-laws; and for the plan, the voting members were identified by statute. If the Partnership wants to add voting members, it can be done in paragraph 2, so there should not be a separate by-law that addresses the ability to appoint a voting member.

~~5. Partnership membership may be terminated upon a motion from the Partnership Chairperson and a majority vote of the Partnership members present and approval of the Board of Supervisors. Failure to attend three (3) consecutive Partnership meetings without an authorized absence or attendance by an alternate shall may result in termination of Partnership membership.~~

Comment [M6]: Because the purpose of the Partnership is to be inclusive and bring together various stakeholders in the community, having a by-law that would allow/require termination of a member for lack of attendance is not recommended.

~~6. A member may resign at any given time by giving written notice to the Partnership. The resignation shall take effect as of the date the notice is received or at a later time specified in the notice; the resignation need not be accepted to be effective.~~

Comment [M7]: This section is not required or needed.

~~7.4. Replacement of Partnership member:~~

~~a. Upon resignation or termination of an appointed Executive committee Partnership member, the Partnership Chairperson shall notify the Board of Supervisors and make recommendations for appointment.~~

Comment [M8]: This section is not needed as there are no "appointed" executive committee members except the one designated by the Board of Supervisors from the three possible offices. All of the members of the executive committee are not "people" but rather "officers", thus if a person no longer holds the identified office, then the new person who holds the identified office would automatically assume the position on the executive committee.

~~ab.~~ If an ~~Executive Committee~~ Partnership member is unable to attend a meeting of the _____ Partnership, he or she may designate, in writing, an alternate who _____ shall attend ~~in~~ his or her behalf.

~~be.~~ Alternates of Executive ~~C~~ommittee Partnership members shall not have a vote on specific issues unless authorized by the Executive Committee Partnership member in writing.

ARTICLE V

OFFICERS

~~1. Officers of the Partnership shall be a Chairperson, a Vice Chairperson, and an Acting Chairperson and such other officers as the Partnership may choose to elect.~~

~~2. Responsibilities of Officers:~~

~~a. Chairperson—In accordance with Section 1230(b)(2) of the Penal Code, the Chief Probation Officer shall serve as the Partnership Chairperson. The Chairperson shall supervise and direct the Partnership's activities, affairs, and officers. The Chairperson shall preside at all Partnership meetings. The Chairperson shall have such other powers and duties as the Council or By laws may prescribe.~~

~~b. Vice Chairperson—In the absence or disability of the Chairperson, the Vice Chairperson shall perform all duties of the Chairperson. When so acting, the Vice Chairperson shall have all the powers of, and be subject to, the restrictions of the Chairperson. The Vice Chairperson shall have such other powers and perform other duties of the Partnership or the By laws prescribe. The Probation Department's Chief Deputy Probation Officer—Operations Support Bureau shall serve as Vice Chairperson.~~

~~e. Acting Chairperson—In the event of the temporary absence of the Chairperson and Vice Chairperson, another Partnership member may be designated to serve as the Acting Chairperson to preside at Partnership meetings.~~

~~3. Term of Office:~~

~~The term of office for the Partnership Chairperson shall be concurrent with his/her term as Chief Probation Officer. Each Partnership member shall serve an indefinite term; concurrent with his/her service to the organization he/she represents, until membership is terminated, or the Partnership member resigns.~~

Comment [M9]: This section is being replaced by Article IV, Paragraph 3. Because the Executive Committee is the voting body of the Partnership, designation of "officers" is not needed. The Chief of Probation is the Chair by law, and per the bylaws, as a member of the executive committee, he is able to designate an alternate to attend and vote in his place.

ARTICLE VI

MEETINGS AND PROCEDURES

The Partnership and its Committees shall be governed by the Brown Act and all meetings shall be open to the public.

1. Regular Meetings

Regular meetings shall be set by the Partnership and are to take place on the fourth Thursday of the month at 2: 00 p.m. unless an alternate date and time is announced in advance. The regular meeting location shall be at the Probation Department training facility, located at 1001 S. Grand Avenue, Santa Ana, California 92705, unless an alternate location is announced in advance. Any scheduled meeting may be canceled upon order of the Chair, or a majority of the Executive Committee members of the Partnership.

2. Special Meetings

Special meetings may be called at any time by the Committee Chair. Each member of the Committee shall be given adequate written notice of such meetings.

3. Quorum and Voting Procedure

- a. A simple majority of the Executive Committee members of the Partnership shall constitute a quorum for the transaction of business at any meeting of members.
- b. Decisions shall be reached through majority voting which is defined as a majority of the quorum members present.
- c. The Partnership shall use parliamentary procedures (the current edition of Robert's Rules of Order) to conduct business.

4. Setting the Agenda

The Chairperson ~~and Vice Chairperson~~ shall designate items on the agenda. Anyone wishing to provide input shall request inclusion on the agenda by contacting the Chairperson ~~and the Vice Chairperson~~ no later than one week prior to the scheduled meeting.

5. Public Comments

Public comments at meetings are limited to three (3) minutes for each agenda item for individuals and five (5) minutes for each agenda item for representatives of organizations. The Chairperson has the discretion to extend the time based on the complexity of the issue.

ARTICLE VI

COUNCILS, COMMITTEES AND TASK FORCES

1. Standing Committees may be created by vote of the Partnership Executive Committee to perform on-going functions. The Chairperson of a Standing Committee will be appointed annually by the Partnership Chairperson and must be a member of the Executive Committee. Each Standing Committee shall report to the Partnership on a regular basis.
2. Task Forces may be formed to deal with a specific need or issue as approved by the Partnership. When their objectives are met, they will be disbanded. The Task Force Chair shall be appointed by the Partnership Chairperson.
3. Membership on Standing Committees and Task Forces may include non-voting Partnership members, technical consultants and/or citizens from the community at large.

ARTICLE VII

AMENDMENTS

These By-laws may be adopted, amended or repealed by a majority vote of the Partnership Executive Committee after written proposal for such action has been in the hands of the Partnership for thirty (30) days.

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Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS
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TANI G. CANTIL-SAKAUYE
Chief Justice of California
Chair of the Judicial Council

STEVEN JAHR
Administrative Director of the Courts

MARY M. ROBERTS
Chief Counsel

April 5, 2013

Hon. Paul Zellerbach
District Attorney, Riverside County
3960 Orange Street
Riverside, California 92501

Dear District Attorney Zellerbach:

At the request of the Superior Court of California, County of Riverside, we write to address court participation on the county's Community Corrections Partnership (CCP). While we understand that active court participation might be viewed as desirable, as discussed below, there are countervailing concerns for courts. Some could argue, for example, that a judge who accepts membership on the CCP runs afoul of the constitutional prohibition against simultaneously holding nonjudicial public office. In addition, nonjudicial court officers or employees whom a presiding judge may designate to serve on the CCP must be mindful of appearance issues, avoiding actions that could jeopardize public confidence in the impartiality of the judiciary.

The prohibition against a judge's holding simultaneous nonjudicial office is stated in article VI, section 17 of the California Constitution, which provides in pertinent part:

A judge of a court of record . . . during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment or judicial office *Acceptance of the public office is a resignation from the office of judge. . . .*¹

¹ Italics added.

Abbot v. McNutt,² is the seminal case interpreting the above provision. There, the Supreme Court held that the provision precluded two judges from serving on a qualification board that a county charter established to determine eligibility of candidates for the county executive position.³ Membership on the board, the court concluded, would qualify as an improper “dual office.”⁴ In reaching this conclusion, the court observed that the position was created by law, required the performance of governmental functions, and entailed a tenure that was continuous, rather than “transient, occasional, or incidental.”⁵

The court also noted that the constitutional prohibition against a judge’s accepting another public office was intended to reserve a judge’s time for the performance of judicial duties and to avoid partisan entanglements that might compromise judicial impartiality.⁶ Service on the county qualification board, the court reasoned, might consume a judge’s time, impeding proper discharge of judicial functions. It also might subject a judge to “partisan suspicions” if, for example, a judge later had to rule on the validity of official acts of the county executive or to preside over a trial in which the executive was accused of misfeasance.⁷

Some could argue that similar considerations also apply for a judge considering membership on the county’s CCP, as such membership conceivably could be considered a public office. Membership on the CCP is created by law and requires a continuous tenure. CCP members also arguably perform duties that are governmental in nature and, as discussed further below, may confront entanglements that create doubts for some about their impartiality.

In determining whether CCP members perform a governmental function, case law indicates one must consider the degree of decisionmaking authority or influence. Although broadly characterized as an advisory body, the CCP has a close relationship under the law to the entities designated as the ultimate decisionmakers. The CCP is simultaneously led by and advises the county probation department.⁸ This close relationship between the advisory body (the CCP, chaired by Chief Probation Officer) and the decisionmaking body (the community corrections program, which the county probation department develops and implements) suggests that the CCP’s recommendations generally are likely to be adopted. Indeed, publicly available materials describing CCPs statewide suggest that many are viewed locally as the “governing” or decisionmaking body, at least on some issues, including, for example, the allocation or expenditure of portions of counties’ realignment funding.

² *Abbot v. McNutt* (1933) 218 Cal. 225.

³ *Id.* at pp. 230–231.

⁴ *Id.* at p. 231.

⁵ *Id.* at pp. 230–231.

⁶ *Id.* at p. 229.

⁷ *Id.* at p. 230.

⁸ See Pen. Code, § 1230(b)(2) (The Chief Probation Officer chairs the CCP); *id.*, § 1230(b)(1) (The county probation department develops and implements the community corrections program, which the CCP advises).

Recommendations that a CCP makes to the county board of supervisors for implementation of the 2011 public safety realignment law are even more likely to be adopted. By law, the board is deemed to have accepted the CCP's implementation plan unless four of the five board members reject it.⁹ If a board does reject the recommended plan by this margin, the plan "goes back to the [CCP] for further consideration."¹⁰ Absent near unanimity among the five-member board of supervisors, therefore, a CCP's realignment implementation plan will become effective. These plans typically include significant decisions about local corrections programming, funding allocations, staffing levels, and resource management. CCP members collectively, therefore, have a close relationship to—and significant impact on—decisionmaking about key local issues (community corrections and realignment). Arguably members perform a governmental function, suggesting that they also could be said to hold a public office for purposes of article VI, section 17 of the state Constitution.

Finally, CCP membership conceivably could subject a judge to entanglements, creating partisan suspicions that might compromise the appearance of impartiality. CCPs address many issues in which courts have an interest (e.g., compliance with court orders and conditions of supervision), signifying that membership could create "entanglements" for participating judges, possibly provoking questions for some about their impartiality. A judge could be asked to vote or express a view as a CCP member, for example, about allocation of a county's realignment funding. If the judge were to vote in favor of funding the public defender's office, while voting against funding the district attorney's office—or vice versa—some could perceive those votes as reflecting partiality for one over the other. It is also conceivable, as observed in *Abbot v. McNutt, supra*, that a CCP recommendation could come before the courts in litigation, putting a court in a difficult situation if its judicial officers participated in that recommendation.

The concern about "entanglements" is equally applicable to non-judge court representatives whom the presiding judge may designate to serve on the CCP.¹¹ Any court representative to the CCP (judge or non-judge) would have to avoid taking positions that might injure public confidence in the impartiality of the judiciary.¹² This may include, for example, abstaining from voting as a CCP member on proposals submitted by entities that regularly appear before the

⁹ *Id.*, § 1230.1(c). See also, Gov. Code, § 25000(a) (a county board of supervisors has five members).

¹⁰ Pen. Code, § 1203.1(c).

¹¹ See *id.*, §§ 1230(b)(2)(A), 1230.1(b) (The superior court presiding judge may designate another person to serve on the CCP and its executive committee, respectively, in place of the presiding judge).

¹² See, e.g., Cal. Code Judicial Ethics, canon 1 ("An independent, impartial, and honorable judiciary is indispensable to justice in our society"); *ibid.* ("A judge should participate in establishing, maintaining, and enforcing high standards of conduct"); Code of Ethics for the Court Employees of Cal. ("Exemplary conduct by court employees inspires public confidence and trust in the courts, and conveys the values of impartiality, equity, and fairness that bring integrity to the court's work"), available on-line at www.courts.ca.gov/documents/codethic-courtemp.pdf.

Hon. Paul Zellerbach

April 5, 2013

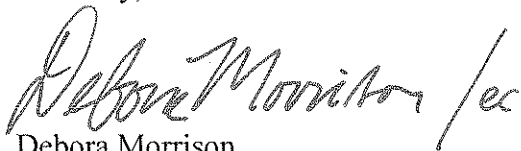
Page 4

court if voting could create the impression that the court favors one side over another in litigation.

Finally, superior courts, including the Superior Court of Riverside County, currently are experiencing enormous strains due to significant continuing state budget cuts and escalating judicial caseloads. As the state Supreme Court observed in *Abbot v. McNutt, supra*, public policy generally favors conserving “the time of the judges for the performance of their work as judges.”¹³ Given this policy, and the risk that some could contend a judge’s acceptance of CCP membership constituted resignation from his or her judicial office, many presiding judges may prefer to designate a nonjudicial court officer or employee for CCP membership instead. Any such designee, however, will have to be mindful of ethical and appearance considerations, and may have to refrain from participating in CCP decisionmaking on certain issues to avoid damaging public confidence in the impartiality of the judiciary.

We hope this information assists you.

Sincerely,

A handwritten signature in cursive script that reads "Debora Morrison /ec". The signature is written in black ink and is positioned above the typed name and title.

Debora Morrison
Senior Attorney

MMR/RC/DM/ec

cc: Hon. Mark Ashton Cope, Presiding Judge, Superior Court of Riverside County
Ms. Sherri R. Carter, Executive Officer, Superior Court of Riverside County
Ms. Mary M. Roberts, Chief Counsel, Administrative Office of the Courts (AOC)

¹³ *Abbot, supra*, 218 Cal. at p. 229.