



JUDICIAL BRANCH
**OFFICE OF THE
ALTERNATE DEFENSE COUNSEL**

FISCAL YEAR 2014-2015

PERFORMANCE PLAN

Lindy Frolich, Alternate Defense Counsel Director

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I. Agency Overview

Background

The United States and Colorado Constitutions provide every accused person with the right to be represented by counsel in criminal prosecutions. U.S. Const., amend. VI; Colo. Const., art. II, §16. This constitutional right has been interpreted to mean that counsel will be provided at state expense for indigent persons in all cases in which incarceration is a possible penalty.

The Office of the Alternate Defense Counsel (OADC) was established pursuant to C.R.S. § 21-2-101, *et. seq.* as an independent governmental agency of the State of Colorado Judicial Branch. The OADC is funded to provide legal representation for indigent persons in criminal and juvenile delinquency cases where the Office of the State Public Defender (OSPD) has an ethical conflict of interest.

Statutory Mandate/Directive

The Office of the Alternate Defense Counsel is mandated by statute to "provide to indigent persons accused of crimes, *legal services that are commensurate with those available to non-indigents*, and conduct the office in accordance with the Colorado Rules of Professional Conduct and with the American Bar Association Standards relating to the administration of criminal justice, the defense function." C.R.S. § 21-2-101(1) (emphasis added).

Mission

The mission of the Office of the Alternate Defense Counsel is to provide indigent individuals (adults and juveniles) charged with crimes the best legal representation possible. This representation *must* uphold the federal and state constitutional and statutory mandates, ethical rules, and nationwide standards of practice for defense lawyers. As a state agency, the OADC strives to achieve this mission by balancing its commitment to insuring that indigent defendants and juveniles receive high quality, effective legal services with its responsibility to the taxpayers of the State of Colorado.

Vision

- ★ *To foster high-quality, cost-effective legal representation for indigent defendants and juveniles through exemplary training, thorough evaluation, and the effective use of modern technology.*

II. Major Functions of Department

State Wide Representation

The OADC contracts with approximately 400 private lawyers across Colorado to represent indigent defendants where the OSPD has a conflict of interest. Each of these lawyers is an independent contractor. Investigators, paralegals, experts, and other ancillary services are available to these lawyers through the OADC. The Agency is committed to insuring that the representation is of the highest quality possible. Today, in every courtroom in Colorado, there are Office of Alternate Defense Counsel (OADC) contract lawyers available to accept court appointments in both juvenile delinquency and adult criminal cases.

Effective Court Appointed Counsel

The OADC interviews and approves or denies contracts with all contract attorneys and investigators. All attorneys and investigators are on a contract renewal cycle. During this renewal process, OADC requests and receives feedback from all judicial districts and visits courtrooms across the state to monitor and evaluate the level of practice. OADC has a rigorous training program for lawyers, investigators and paralegals. This training is also generally webcasted to allow contractors all over the state to attend. All contractors have access to a number of legal and technical resources including the web based Brief and Motions Bank; legal research and motion drafting assistance; timely case law summaries of new criminal legal opinions issued by the Colorado Court of Appeals, the Colorado Supreme Court, the 10th Circuit, and the United States Supreme Court; and comprehensive manuals on complex but frequently used subject matters such as character evidence, self-defense, sex offenders, juvenile, and conspiracy charges.

Controlling Case Cost

The OADC has several key functions in controlling case cost which include Attorney hour per case analysis, cost effective research tools, and ancillary services. These functions are monitored and reviewed on a monthly basis by the executive staff of the Agency.

- 1.) **Attorney hours per case:** Analysis of these measures are broken down by case type (i.e. Type A & B felony, Adult Misdemeanor, Juvenile, and Death Penalty). Historical analysis combined with current trending activity allows the agency to not only monitor for isolated anomalies that affect cost but also helps provide appropriate justification and forecasts for the upcoming budget request cycles.
- 2.) **Cost effective research tools:** Another highly utilized tool the OADC uses in controlling case cost is the Brief and Motions Bank. This web-based software streamlines case related research, thereby lowering case costs.
- 3.) **Ancillary Services:** The Agency continues to explore new ways to control costs through the use of ancillary services. In addition to the Brief and Motions Bank the Agency has an in-house appellate and post-conviction case management system, provides, eDiscovery in

certain case types and jurisdictions, and has recently implemented a pilot social worker program.

III. Performance Measures & Goals

Contractor Rates

In the FY2014 – 2015 Budget Request the OADC submitted a Decision Item regarding a permanent increase to Contractor hour rates by \$10. The Joint Budget Committee approved that Decision Item and OADC was appropriated an additional \$3,559,986 to accommodate for that rate increase.

Performance Measure A.		FY 08 Actual	FY 09-13 Actual	FY 14 Budget	FY15 Request	FY16 Request	FY17 Request
OADC hourly Attorney Rates	Target	\$67.50	\$75	\$75	\$75	\$75	undetermined
	Actual	\$60	\$65	\$65	\$75		

Containing Total Number Of Attorney Hours Per Case

The OADC analyzes the Attorney Hours per Case on a monthly basis and strives to find innovative and effective strategies in containing those measures.

Performance Measure B.		FY12 Actual	FY13 Actual	FY14 Budget	FY15 Request	FY16 Request	FY17 Request
Contain the total number of Attorney hours per case. Includes all case type hours.	Target	19.64	19.64	19.64	19.64	19.64	19.64
	Actual	18.91	17.94				
Contain the total Attorney hours per case excluding Death Penalty cases.	Target	18.65	18.65	18.65	18.65	18.65	18.65
	Actual	16.78	15.85				
Contain the total Attorney hours per Death Penalty case.	Target	2,362.27	2,697.46	2,787.74	2,787.74	2,787.74	2,787.74
	Actual	2,697.46	2,787.74				
Contain the total Attorney hours per Type A Felony case.	Target	46.44	46.44	46.44	46.44	46.44	46.44
	Actual	44.76	43.00				
Contain the total Attorney hours per Type B Felony case.	Target	15.48	15.48	15.48	15.48	15.48	15.48
	Actual	14.81	13.83				
Contain the total Attorney hours per Adult Misdemeanor/Juvenile.	Target	7.24	7.24	7.24	7.24	7.24	7.24
	Actual	7.20	6.94				

Keep ancillary costs per case to a minimum.	Target	\$124.07	\$120.38	\$132.78	\$132.78	\$132.78	\$132.78
	Actual	\$116.80	\$132.78				

Annual Trainings

Based on the Performance audit of 2006 the Agency recognized the need for additional evaluation, monitoring and training of contractors. Since then the Agency has developed three basic components to its training program.

1. Assess and determine the types of training needed for OADC contractors and court personnel.
2. Organize and present continuing legal education training for OADC lawyers, investigators, and paralegals.
3. Facilitate access to trainings through in-person attendance, DVD reproduction, and webcasting.

Performance Measure C.	FY13	FY14	FY15	FY16	FY17
Appellate Training	17 hours 102 Attendees		20 hours 120 Attendees	20 hours 120 Attendees	20 hours 120 Attendees
Research and Motions Practice			6 hours 40 Attendees		6 hours 40 Attendees
Ethics for Lawyers	7 hours 38 Attendees	5 hours 30 Attendees	7 hours 30 Attendees	7 hours 30 Attendees	7 hours 30 Attendees
Trial Practice Institute	35 hours 35 Attendees	35 hours 35 Attendees	35 hours 45 Attendees	35 hours 45 Attendees	35 hours 45 Attendees
Juvenile Training	8 hours 60 Attendees	15 hours 75 Attendees	7 hours 50 Attendees	14 hours 100 attendees	14 hours 100 attendees
Post-Conviction Training	5.5 hours 40 Attendees	7 hours 40 Attendees		7 hours 40 Attendees	
Social Work Training			12 hours 10 Attendees	12 hours 10 Attendees	12 hours 10 Attendees
Investigator Training	6.5 hours 56 Attendees	6 hours 45 Attendees	6 hours 35 Attendees	12 hours 100 attendees	12 hours 100 attendees
Sentencing	13 hours 59 Attendees	12 hours 50 Attendees	7 hours 50 Attendees	7 hours 50 Attendees	7 hours 50 Attendees
Adobe Prof. Training	24 hours 54 Attendees	12 hours 25 Attendees	8 hours 25 Attendees	8 hours 25 Attendees	8 hours 25 Attendees
Legal Technology			8 hours 30 Attendees	8 hours 30 Attendees	
Paralegal Training		4 hours 25 Attendees	6 hours 25 Attendees	6 hours 25 Attendees	6 hours 25 Attendees
Communication for Trial Lawyers		6 hours 10 Attendees			6 hours 10 Attendees
Criminal Law Update	15 hours 225 Attendees	15 hours 200 Attendees	15 hours 200 Attendees	15 hours 200 Attendees	15 hours 200 Attendees
Train the Trainers	15 hours 21 Attendees	15 hours 25 Attendees		15 hours 25 Attendees	15 hours 25 Attendees
Organized Crime Act	5.5 hours 69 Attendees	5 hours 25 Attendees		5 hours 25 Attendees	
Evidence and Objections			6 hours 35 Attendees	6 hours 35 Attendees	6 hours 35 Attendees
Plea Bargaining and Negotiation			6 hours 50 Attendees		6 hours 50 Attendees
Office of the Alternate Defense Mental Health Pleas and Defenses			6 hours 40 Attendees		

Cost-Effective Research Tools

To advance quality and efficiency in OADC contractors, the Agency recognized the need for providing cost-effective research tools and resources. To accomplish this, the Agency is:

1. Improving and expanding the Brief and Motions Bank;¹
2. Providing legal research and motion drafting assistance to contractors;
3. Providing timely case law summaries of new criminal legal opinions issued by the Colorado Court of Appeals, the Colorado Supreme Court, the 10th Circuit, and the United States Supreme Court;
4. Analyzing and introducing best practice applications to OADC contractors;
5. Creating comprehensive manuals on complex but frequently used subject matters such as character evidence, self-defense, sex offenders, juvenile, and conspiracy charges.

Performance Measure D.		FY12 Actual	FY13 Actual	FY14 Budget	FY15 Request	FY16 Request	FY17 Request
Provide Cost-Effective Research Tools and Resources to OADC Contractors	Target	Update and improve Brief and Motions Bank. 40% increase in monthly users.	Continue to populate and update Brief and Motions Bank, and populate 80% of the browse categories. Train contractors on use. 20% increase in monthly users.	Continue to populate and update Brief and Motions Bank and populate 100% of existing browse categories. Add categories as needed. Increase usage to 50% of OADC contractors.	Over 5,000 documents. Average users per month: 250	Over 5,000 documents. Average users per month: 250	Over 5,000 documents. Average users per month: 250
	Actual	Over 3,000 documents. Average users per month: 161	Over 3,600 documents. Average users per month: 180				
Provide legal research assistance	Target	30 cases	60 cases	120 cases	200 cases	200 cases	200 cases
	Actual	47 cases	120 cases				
Provide summaries of new opinions	Target	N/A	Quarterly summaries	12 monthly summaries	50 weekly summaries	50 weekly summaries	50 weekly summaries
	Actual		Monthly Summaries				

¹The Brief and Motions Bank is an electronic data base containing high quality briefs and motions that have been indexed by topic. OADC contractors can use this resource as a starting point to efficiently address important legal issues in their cases.

Contract Applicants

Performance Measure E		FY13 Actual	FY14 Budget	FY15 Request	FY16 Request	FY17 Request
Interview contract applicants; evaluate contractors prior to contract renewal date, and ongoing performance monitoring. Contract with investigators.	Target Attorney	100%	100%	100%	100%	100%
	Actual	99%				
	Target Investigator	100%	100%	100%	100%	100%
	Actual	99%				

Pursuant to the state performance audit of 2006, the OADC began a process to insure that all OADC lawyers and investigators are under a current contract. This process includes interviewing and evaluating all attorney contractors and contracting with investigators. To accomplish this, the Agency has developed 7 basic components:

1. Maintain a tracking system for all attorney and investigator contractors that include contract renewal dates.
2. Contact and request renewal applications from attorney contractors, interview and evaluate contractors, and renew contracts if appropriate.
3. Receive feedback from judicial districts concerning OADC lawyers.
4. Verify attorney status with the Office of Attorney Regulation.
5. Monitor and evaluate lawyer court room practices.
6. Mandate training and testing for investigators prior to contract issuance.
7. Conduct audit and time-efficiency studies of select OADC contractors.
8. Require at least 5 hours of juvenile or defense specific CLE training per year.

IV. Strategies

Increase Compensation Rates

As mentioned in the Performance Measures and Goals section of this plan, the OADC received a rate increase beginning FY14-15, as requested in the Agency's FY14-15 budget request. In the Performance Measures and Goals relating to Contractor Rates, the Agency has indicated that a potential rate increase for FY15-16 is undetermined. The Agency, in conjunction with its Commission, will continue to explore future rate increases based on cost of living increases and the state of the economy.

Provide Ongoing Trainings

Also mentioned in the Performance Measures and Goals section is a list of the OADC's commitment to 15 trainings per year in the upcoming 3 fiscal years, a significant increase from the 12 trainings in FY14.

Conducting Periodic Evaluations

Section V (Recent Performance Evaluations) outlines several tools that the Agency uses to evaluate its programs. The Agency's billing system overhaul, which goes into effect on July 1, 2015, will enhance the Agency's ability to monitor and evaluate its contractor performance. The OADC will also be conducting annual system surveys to help improve the functionality of its automated billing system.

Improved and Cost Effective Research Tools

As described in Performance Measures and Goals the OADC will continue to provide legal resources and technology to its contractors. A highly utilized resource that the Agency has developed is a centralized, online, legal research and information platform called the Brief and Motions Bank that continues to expand and assist many of the Agency's contractors. This asset is vital to the Agency because it reduces average case costs by streamlining research time for the attorney contractors while simultaneously improving the effectiveness of representation.

Institute Paperless and Administrative Efficiencies

In order to keep administrative costs low and use state resources to pay contractors directly, the OADC began developing its automated payment system, WEBPAY, in FY02. By FY05,

all regular contractors were billing on line and continue to do so today. The Agency continues to refine this system, including moving toward a paperless billing system.

The Agency is in the process of overhauling its Court Appointed Counsel (CAC) billing system, which will go live on July 1, 2015. This overhaul will significantly enhance the Agency's monitoring capabilities, benefiting not only internal audit procedures but also the annual fiscal note process and contractors own payment monitoring options.

Ancillary Services to Reduce Attorney Hours

The OADC reviews each individual contractor bill for reasonableness and accuracy. In an effort to increase the quality and efficiency of the OADC contract attorneys, the Agency has implemented and will continue to seek out measures that will reduce billable contractor hours and associated ancillary costs. These measures include:

1. Continuing the in-house appellate case management system that streamlines the OADC appellate cases from inception through transmittal of the record on appeal.
2. Continuing the in-house post-conviction case management system to include triage and per case fee contracting.
3. Contracting with document management and paralegal professionals who specialize in organization and distribution of discovery in Colorado Organized Crime Control Act (COCCA) cases, death penalty cases, and other voluminous cases.
4. Attorney access to electronic court records pursuant to HB 08-1264.
5. Expanding and promoting the Brief and Motions Bank.
6. Providing expert legal research and legal motion drafting assistance.
7. Evaluating contractor efficiency and auditing contractor billing.
8. Closely monitoring expert requests.
9. Coordinating cost reduction methods for electronic and paper discovery charges from individual district attorney offices across the state. The OADC director is participating in the statutorily mandated Discovery Task Force in the hopes of containing or reducing discovery costs paid by the State of Colorado.
10. Identifying and promoting technologies that increase attorney efficiency.

Fraud, Waste, & Abuse Prevention

The OADC continues to be diligent in monitoring all financial transactions processed by the Agency. In addition to the annual audit performed by the Office of the State Auditor, the Agency reviews all payments, insuring that there is appropriate documentation and support, and utilizes segregation of duties throughout this process. This includes, payment processing, and second level approvals, as well as executive review of over the maximum requests. Semiannual vendor totals are also audited for anomalies and/or invoicing abnormalities. The Agency also verifies all internal monthly payroll functions by using the State financial and payment processing system.

V. Recent Performance Evaluations

Contractor Evaluations

In response to several SMART Act requirements the OADC sent out an Agency Performance Survey to its approximately 600 contractors. The survey included questions regarding the ability and effectiveness of the OADC's case assignment process, current billing system, communication, trainings, and overall performance. The responses to this survey provided significant insight into the Agency's overall services, and assisted in drafting the FY14-15 request for contractor rate increases and constructing a new and robust billing system that will be rolled out in FY15-16. The Agency has decided to administer this survey on an annual basis.

OADC Staff Evaluations

Another important process that the Agency completed in February and March of 2014 was employee self-evaluations. This survey included such topics as; Job Knowledge, Work Quality, Attendance/Punctuality, Initiative, Communication/Listening Skills, and Dependability. Each staff member completed the survey and met with the Executive Director or Deputy Director to discuss the results, concerns, and overall performance of each employee. The OADC will also be completing the evaluations on an annual basis.

Evaluation of Prior Year Performance

1. **Compensation Rates:** For the last five fiscal years, the OADC has not requested a rate increase due to the uncertainty of the economy and state budget shortfalls. Prior rate increases assisted with recruitment and retention of competent lawyers.

On January 1, 2010, the federal government raised its court-appointed attorney's² hourly rate to \$125 per hour and for capital crime (death penalty) cases, the hourly rate was \$178 per hour. Per memo of the Administrative Office of the United States Court dated August 22, 2013, this rate was reduced for work performed from September 1, 2013 through September 30, 2014 by \$15.00 per hour, to \$110 per hour and \$163 per hour respectively.

2. **Containing Total number of Attorney Hours:** The Agency continues to contain the number of billable hours per case. The implementation of cost saving measures as listed in the following paragraphs is assisting in containing attorney billable hours.

² Federal court-appointed attorneys are referred to as Criminal Justice Act (CJA) lawyers.

3. **Legal Resources and Technology:** The OADC Brief and Motions Bank, coupled with the legal research assistance to OADC contractors, have created a centralized system of legal resources and technology available to all contractors to reduce duplication of efforts. This past year OADC has highlighted the creation of practitioner manuals in specific topic areas (character evidence, self-defense, sex offenders, juveniles, and conspiracy charges to name a few) as a priority. As one contractor commented,

I am reading your memo on self-defense now and I'll check out the materials in our motions and brief bank. This is just what I need. Thank you all very much!!!

In FY13, the Bank grew to over 3,500 documents, broken down into searchable categories. The Agency has also recognized a need for legal research and drafting assistance. The Agency receives numerous requests for this assistance every week. The following comment comes from a contractor with over 20 years of criminal defense experience,

Thank you very much for your help, it saved me a day's worth of research.

Another contractor stated,

Thank you SO much! This information has been incredibly helpful.you are definitely earning your keep!

4. **Discovery:** The OADC continues to provide electronic distribution of discovery in certain cases. Contracting with document management and paralegal professionals has allowed the OADC to take thousands of pages of paper discovery and reduce it to an electronic format, costing very little to reproduce. Although OADC's use of modern technology has reduced the distribution cost of discovery in complex cases, the discovery costs paid to many district attorneys' offices statewide continues to increase. The OADC is participating in a state-wide Discovery Steering Committee (SB14-190) that is working toward creating a statewide discovery sharing system.
5. **Appellate and Post-Conviction Cases:** The Agency has successfully reduced the number of attorney hours per case for appellate appointments. The Agency's former appellate paralegal pilot program has transitioned to an appellate case management position, and now also includes case management for post-conviction cases. Each post-conviction case is triaged by a very experienced post-conviction lawyer who produces a memorandum suggesting a course of action for the assigned lawyer. Based on this memorandum a contract price is assigned to the case. This process has dramatically shortened the time that post-conviction cases are open by providing the attorneys with significant information regarding the case at the time of appointment. Feedback from OADC contractors, court clerks and judges has all been positive. As one OADC contractor stated:

As an ADC attorney whose caseload contains mostly of postconviction 35c cases, the process ADC has installed for obtaining and providing initial court documents to the attorney

works effectively and efficiently. The process saves me time and saves ADC money.

OADC is also currently involved in an *ad hoc* brainstorming group with other stakeholders (Court of Appeals judges and staff, Department of Law Appellate Division, and the OSPD Appellate Division) to explore options to streamline post-conviction appeals.

6. **Auditing of Contractors:** The OADC continues to audit individual contractors and analyze their billing procedures and patterns. The OADC has tailored trainings to address time management inefficiencies to reduce the number of hours per case.
7. **Death Penalty:** Capital cases are the most expensive case class. This includes attorney time, investigator time, paralegal time, and ancillary costs. As long as there is a death penalty in Colorado, and OADC has a case, it will be expensive. Currently there are two death penalty cases proceeding under the Unitary Appeal Bill, and both defendants are represented by OADC contractors. All of these death penalty cases arise out of prosecutions from the 18th Judicial District.
8. **Trainings:** The OADC met its training program target. The attendance at the trainings surpassed expectations and feedback was excellent. The Agency was able to train on a variety of subjects that concern its contractors. For contractors who are unable to attend in-person, most trainings are webcast and accessible to anyone with a high speed internet connection and/or recorded and reproduced on DVD. As one contractor commented,

Webcasting CLE's is invaluable for me, a lawyer in Grand Junction. I have attended a half dozen CLE's via webcasts. It is likely I would have attended at best one or two of those CLE's if I had to travel to Denver, where CLE's typically are given.

During FY12, the OADC recognized a need to provide increased technology training for its contractors and provided hands-on training in technology tools such as Adobe Acrobat Professional for use with electronic discovery and transcript review. The demand and provision of this type of training continued in FY13 and FY14.

9. **Applicants and Contract renewals:** the Agency has essentially interviewed and approved or denied contracts with all contract attorneys and investigators. All attorneys and investigators are on a contract renewal cycle. The Agency has a procedure in place to process applications from new attorneys and investigators and is continuing its training and screening/testing process prior to issuance of investigator contracts.