



Office of the
**Alternate
Defense
Counsel**

JUDICIAL BRANCH

**OFFICE OF THE
ALTERNATE DEFENSE COUNSEL**

FISCAL YEAR 2016-2017

July 01, 2016

PERFORMANCE PLAN

Lindy Frolich, Alternate Defense Counsel Director

Table of Contents

I.	Agency Overview	
	Background	3
	Statutory Mandate/Directive	3
	Mission	3
	Vision	3
II.	Major Functions of the Department	
	Statewide Representation	4
	Effective Court Appointed Counsel	4
	Controlling Case Costs	4
III.	Performance Measures & Goals	
	Insure Adequate Contractor Rates	5
	Contain Case Costs	5
	Provide High-Quality Annual Trainings	6
	Provide Cost-Effective Research Tools and Assistance	7
	Monitor and Evaluate Contractors	9
	Support the use of Evidence Based Practices	10
IV.	Strategies	
	Increase Compensation Rates	11
	Provide Ongoing Training	11
	Conducting Periodic Evaluations	11
	Improved and Cost Effective Research Tools	11
	Institute Paperless and Administrative Efficiency	12
	Ancillary Services to reduce Attorney Hours	12
	Fraud, Waste, & Abuse Prevention	12
V.	Performance Evaluations	
	Contractor Survey and Evaluation	13
	OADC Staff Evaluations	13
	Evaluation of Prior Year Performance	13

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 OADC 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 OADC 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 the Department

Statewide Representation

The OADC contracts with approximately 400 private lawyers across Colorado to represent indigent defendants and juveniles where the OSPD has a conflict of interest. Each of these lawyers is an independent contractor. Investigators, paralegals, social workers, 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 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, investigators, and social workers. All attorneys, investigators, and social workers are on a contract renewal cycle. During this renewal process, OADC requests and receives feedback from 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, paralegals, and social workers. This training is generally webcast 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 Legal, Social Science and Juvenile Library; legal research and motion drafting assistance; weekly 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; comprehensive manuals on complex but frequently used subject matters such as updating and revising existing manuals on COCCA elements, self-defense issues, character evidence and ineffective assistance of counsel claims. OADC has created manuals on Restitution claims, CRE 404(b) evidence and COCCA legislative history.

Controlling Case Costs

The OADC has several key functions in controlling case costs including average hour per case analysis, providing cost effective research tools, and offering ancillary services on cases. These functions are monitored and reviewed on a monthly basis by the executive staff of the Agency.

1. **Average hours per case:** Analysis of these measures is 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 costs but also provides appropriate forecasts for the upcoming budget request cycle.
2. **Cost effective research tools:** Another tool the OADC uses in controlling case costs is the web based Legal, Social Science and Juvenile Library. This web-based repository 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 web based Library the Agency has an in-

house appellate and post-conviction case management system, provides eDiscovery in certain case types and jurisdictions, and is expanding its social worker program.

III. Performance Measures & Goals

Performance Measure A: Insure Adequate Contractor Rates

In the FY14–15 Budget Request the OADC submitted a Decision Item regarding an increase to Contractor hourly rates by \$10. The Joint Budget Committee approved that Decision Item and the OADC was appropriated an additional \$3,559,986 to accommodate that rate increase.

		FY 09-14 Actual	FY15 Actual	FY16 Budget	FY17 Request	FY18 Anticipated	FY19 Anticipated
OADC average hourly Attorney Rates	Target	\$75	\$75	\$75	\$75	undetermined	undetermined
	Actual	\$65	\$75	\$75			

Performance Measure B: Contain Case Costs

The OADC analyzes the cost per case on a monthly basis and strives to find innovative and effective strategies to contain those costs.

		FY14 Actual	FY15 Actual	FY16 Budget	FY17 Request	FY18 Anticipated	FY19 Anticipated
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	17.91	16.57				
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	16.19	15.21				
Contain the total Attorney hours per Death Penalty case.	Target	2,788	2,788	2,788	2,788	2,788	2,788
	Actual	2,600	1,767				
Contain the total Attorney hours per Type A Felony case.	Target	46.44	46.44	46.44	46.44	46.44	46.44
	Actual	46.43	47.78				
Contain the total Attorney hours per Type B Felony case.	Target	15.48	15.48	15.48	15.48	15.48	15.48
	Actual	14.89	13.46				
Contain the total Attorney hours per Adult Misdemeanor/Juvenile.	Target	7.24	7.24	7.24	7.24	7.24	7.24
	Actual	6.13	6.79				
Keep ancillary costs per case to a minimum.	Target	\$133	\$128	\$135	\$135	\$135	\$135
	Actual	\$128	\$135				

Performance Measure C: Provide High-Quality Annual Trainings

The Agency has developed three basic components to its training program.

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

	FY15 Actual	FY16 Actual	FY17 Request	FY18 Anticipated	FY19 Anticipated
Appellate Training	14 hours 99 Attendees		8 hours 30 Attendees	14 hours 80 Attendees	14 hours 80 Attendees
Research and Motions Practice				6 hours 40 Attendees	6 hours 40 Attendees
Ethics for Lawyers	7 hours 45 Attendees	7 hours 35 Attendees	7 hours 35 Attendees	7 hours 35 Attendees	7 hours 35 Attendees
Trial Practice Institute	39 hours 52 Attendees	35 hours 45 Attendees	38 hours 52 Attendees	38 hours 52 Attendees	38 hours 52 Attendees
Juvenile Training	25.5 hours 240 Attendees	20 hours 100 Attendees	20 hours 100 Attendees	20 hours 100 Attendees	20 hours 100 Attendees
Post-Conviction Training	5 hours 42 Attendees		5 hours 42 Attendees		
Social Work Training	12 hours 10 Attendees	12 hours 12 Attendees	12 hours 12 Attendees	12 hours 100 Attendees	12 hours 12 Attendees
Investigator Training	13 hours 155 Attendees	12 hours 90 Attendees	12 hours 90 Attendees	12 hours 90 Attendees	12 hours 90 Attendees
Sentencing	7.25 hours 54 Attendees	7 hours 50 Attendees	7 hours 50 Attendees	7 hours 50 Attendees	7 hours 50 Attendees
Adobe Prof. Training				40 hours 50 Attendees	40 hours 50 Attendees
Legal Technology	7 hours 44 Attendees	6 hours 30 Attendees			
Paralegal Training	3 hours 65 Attendees	6 hours 35 Attendees	6 hours 70 Attendees	6 hours 70 Attendees	6 hours 70 Attendees
Evidence Based Practices		7 hours 45 Attendees	7 hours 45 Attendees	7 hours 45 Attendees	7 hours 45 Attendees
Criminal Law Update	15 hours 200 Attendees	15 hours 200 Attendees	15 hours 200 Attendees	15 hours 200 Attendees	15 hours 200 Attendees
Train the Trainers		7 hours 24 Attendees		7 hours 24 Attendees	7 hours 24 Attendees
Organized Crime Act		6 hours 25 Attendees			
Evidence and Objections	7 hours 41 Attendees	7 hours 35 Attendees	7 hours 35 Attendees	7 hours 35 Attendees	7 hours 35 Attendees

Continued from previous page

	FY15 Actual	FY16 Actual	FY17 Anticipated	FY18 Anticipated	FY19 Anticipated
Plea Bargaining and Negotiation	6.5 hours 54 Attendees	6 hours 50 Attendees	6 hours 50 Attendees	6 hours 50 Attendees	6 hours 50 Attendees
Jury Selection		7 hours 50 Attendees			
Forensics				6 hours 40 Attendees	6 hours 40 Attendees
Leadership/Team Building Training				7 hours 40 Attendees	7 hours 40 Attendees
Incorporating Social Workers on Legal Teams		7 hours 40 Attendees			
Westlaw Training	10 hours 50 Attendees				
Race and Bias in the Criminal Justice System				7 hours 100 Attendees	14 hours 100 Attendees
Westlaw Training				6 hours 120 Attendees	6 hours 120 Attendees

Performance Measure D: Provide Cost-Effective Research Tools and Assistance

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 its web based Legal, Social Science and Juvenile Library;
2. Providing legal research and motion drafting assistance to contractors, using lawyers and non-lawyers;
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 COCCA, Habitual Criminal Cases, and Post-Conviction Matters.

Performance Measure D.		FY15 Actual	FY16 Budget	FY17 Request	FY18 Anticipated	FY19 Anticipated
Provide Cost-Effective On-Line Research Tools and Resources to OADC Contractors	Target	Over 5,000 documents. Average users per month: 250	Over 6,000 documents with ability to Browse subject matters in three different areas (General Legal, Juvenile and EBP/Social Sciences). Increase average users to 250 per month	Juvenile materials, 500 documents.	Juvenile materials, 1000 documents.	Juvenile materials, 1000 documents.
				Social Sciences materials, 500 documents.	Social Sciences materials, 1000 documents.	Social Sciences materials, 1000 documents.
					Mental Health materials, 100 documents	Mental Health materials, 500 documents
	Total Documents	5,000	6,000	6,000	7,500	8,000
	Total users or queries per month	250 users	250 users	1,000 Queries	1,200 Queries	1,500 Queries
Actual	5,400 documents	7,000 documents				
Provide Cost-Effective Personalized Legal Research Assistance	Target	200 cases	300 cases	400 cases	500 cases	500 cases
	Actual	360 cases				
Provide Cost-Effective Personalized Assistance Specific to Mental Health Issues in Criminal Case	Target	na	na	40 cases	50 cases	50 cases
	Actual	na	na			
Provide Cost-Effective Personalized Assistance specific to Social Sciences Issues in Criminal Cases	Target	na	na	40 cases	50 cases	50 cases
	Actual	na	na			
Provide summaries of new opinions.	Target	50 weekly summaries	50 weekly summaries	50 weekly summaries	50 weekly summaries	50 weekly summaries
	Actual	52 weekly summaries				

Performance Measure E: Monitor and Evaluate Contractors

		FY15 Actual	FY16 Budget	FY17 Request	FY18 Anticipated	FY19 Anticipated
Evaluate Renewing Attorney Applicants	Target	100%	100%	100%	100%	100%
	Actual					
Evaluate Renewing Investigator Applicants	Target	100%	100%	100%	100%	100%
	Actual					
Court Room Observations	Target	na	75	75	75	75
	Actual	38	61			
Mock Oral Arguments	Target	na	10	10	12	12
	Actual	10	13			
Oral Arguments	Target	na	15	20	16	16
	Actual	na	16			
Review Pleadings	Target	na	100	100	100	100
	Actual	112				

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 contractors and contracting with investigators. This process has been expanded to include social workers as well. To accomplish this the Agency:

1. Has created a data base to track all attorney, investigator, and social worker contractors that includes contract renewal dates;
2. Contacts and requests renewal applications from contractors, interviews and evaluates contractors, and renews contracts if appropriate;
3. Solicits feedback from judicial districts concerning OADC lawyers;
4. Verifies attorney status with the Office of Attorney Regulation;
5. Monitors and evaluates court room practices through courtroom observations;
6. Reviews pleadings submitted by contractors and provides feedback where needed;
7. Mandates training and testing for investigators prior to contract issuance and renewal;
8. Conducts audits and time-efficiency studies of selected OADC contractors;
9. Runs reports on OADC contractors using the new Court Appointed Attorney Payment System (CAAPS);
10. Requires at least 5 hours of juvenile or defense specific CLE training per year.

Performance Measure F: Support the use of Evidenced Based Practices

		FY15	FY16	FY17	FY18	FY19
		Actual	Budget	Request	Anticipated	Anticipated
Expand the OADC Social Worker Program	Target	70 cases	100 cases	100 cases	200 cases	275 cases
	Actual	75 cases	134 cases			
Increase the number of Social Worker Contractors	Target	6 contractors	6 contractors	16 contractors	17 contractors	18 contractors
	Actual	9 contractors	10 contractors			
Provide on-line EBP / social sciences materials on the Social Science Library	Target	250 documents	1000 documents	500 documents	1000 documents	1000 documents
		10 users/month	30 users/month			
	Actual	290 documents	721 documents			
Ensure that a part of OADC's training program is focused on EBP.	Target	3 trainings	3 trainings	3 trainings	3 trainings	3 trainings
	Actual	3 trainings	3 trainings			

Evidence Based Practices (EBP)

In 2011, the legislature amended the “purposes of sentencing,” C.R.S. §18-1-102.5. These changes were the first substantive changes in nearly 30 years. The changes represent the embracing of standardized risk/needs assessments and supervision and treatment tailored to reduce recidivism. In addition, the cost of alternative sentences is to be considered by judges. Statewide endeavors in agencies such as probation, parole, corrections, Colorado Commission on Criminal Juvenile Justice (CCJJ), and other stakeholder agencies, to enact and monitor EBP, have gained both funding and legislative support. The OADC has, since 2011, acknowledged and worked at implementing these changes in the sentencing structure, and although committed to this implementation process, change has been sporadic. The purpose of performance measure F is to create an implementation strategy to effectuate Evidence Based Practices in juvenile and criminal defense with the following components:

1. Expand the OADC Social Worker Program;
2. Create a separate social science component to the Agency’s web based Library;
3. Ensure that a part of the OADC’s training program is focused on EBP.

IV. Strategies

Increase Compensation Rates

As mentioned in the Performance Measures and Goals section of this plan, the OADC received a rate increase in FY14-15, pursuant to the Agency's FY14-15 budget request. In the Performance Measures and Goals relating to Contractor Rates, the Agency indicates that a potential rate increase for FY17-18 is still 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

The Performance Measures and Goals section provides a list of the OADC's commitment to trainings in the upcoming 3 fiscal years. The types of trainings provided are based on an assessment of the needs of the OADC contractors.

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 went into effect on July 23, 2015, has enhanced the Agency's ability to monitor and evaluate its contractors. The OADC will also be conducting annual system-wide surveys to help improve the functionality of this automated billing system.

Improved and Cost Effective Research Tools

As described in the 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 Web Based Library 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 contractors while simultaneously improving the effectiveness of representation. This library has expanded to include a separate juvenile and social sciences section, and will eventually include a separate mental health section.

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's revamped billing system (CAAPS) went live on July 23, 2015. This overhaul has significantly enhanced the Agency's monitoring capabilities, benefiting not only internal audit procedures but also the annual fiscal note process and individual contractors' 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 Web Based Library;
6. Providing legal research and 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 implementation of the statutorily mandated statewide discovery system should contain or reduce discovery costs paid by the State of Colorado;
10. Identifying and promoting technologies that increase contractor 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. Performance Evaluation

Contractor Survey and Evaluations

This year's annual contractor survey focused on suggestions for improvements to the Agency's on-line billing system. The responses to this survey are assisting the Agency in polishing its billing system (CAAPS) that was rolled out on July 23, 2015.

OADC Staff Evaluations

The Agency has continued its employee self-evaluations. This annual evaluation includes such topics as; Job Knowledge, Work Quality, Attendance/Punctuality, Initiative, Communication/Listening Skills, and Dependability. Each staff member completed a self-evaluation, and met with their supervisor (Executive Director, Deputy Director, or Controller) to discuss the results, concerns, and overall performance of each employee.

Evaluation of Prior Year Performance

Insure Adequate Contractor Rates: In its FY15 budget request, the Agency requested and received a \$10.00 per hour rate increase for its attorney contractors, and a \$5.00 per hour rate increase for its investigators and paralegals. However, this still falls significantly below the federal government's court-appointed attorney¹ hourly rate of \$127 per hour for non-capital cases, and for capital crime (death penalty) cases, an hourly rate of \$181 per hour.

Contain Case Costs: The Agency continues to contain its attorney hours per case and keep ancillary costs per case to a minimum. The implementation of cost saving measures as listed in the following paragraphs is assisting in containing attorney billable hours and therefore case costs.

1. Legal Resources and Technology
2. Discovery and Document Management
3. Appellate and Post-Conviction Case Management
4. Auditing of Contractors
5. Training

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