



**Office of the**  
**Alternate  
Defense  
Counsel**

JUDICIAL BRANCH

**OFFICE OF THE  
ALTERNATE DEFENSE COUNSEL**

**FISCAL YEAR 2017-2018**

**July 01, 2017**

**PERFORMANCE PLAN**

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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. *See Colorado Rules of Professional Conduct*, §§ 1.7-1.10.

## 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. At a minimum, this representation ***must*** meet 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 ensuring 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 feedback, and the effective use of modern technology.*

## II. Major Functions of the Agency

### Statewide Representation

The OADC contracts with approximately 400 private lawyers across Colorado to represent indigent defendants and juveniles where the OSPD has an ethical 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 ensuring that the representation is of the highest quality possible. Today, in every courtroom in Colorado, there are the OADC contract lawyers available to accept court appointments in both juvenile delinquency and adult criminal cases.

### Effective Court Appointed Counsel

Prior to the issuance of any contract, the OADC reviews the application and attachments, and conducts a personal interview with the applicant. Following this process, the contractor is either granted or denied a contract with the agency. This includes all attorneys, investigators and social workers. Each contractor is on a contract renewal cycle. During the renewal process, the OADC requests and receives feedback from judicial districts and visits courtrooms across the state to monitor and evaluate the level of practice. The 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 relevant legal opinions issued by the Colorado Court of Appeals, the Colorado Supreme Court, the 10<sup>th</sup> Circuit of the United States Court of Appeals, 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. The OADC has created manuals on restitution claims, CRE 404(b) evidence, COCCA legislative history, and out-of-state subpoenas.

### 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 monthly by the executive staff of the Agency.

1. **Average hours per case:** Historical analysis, combined with current trends, allow the agency to monitor for isolated anomalies that affect costs and provide 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 Sciences and Juvenile Library. This Web-based repository streamlines case related research, thereby lowering case costs.
3. **Ancillary services:** The Agency continues to explore innovative ways to control costs using ancillary services, including its in-house appellate and post-conviction case management system, assisting with e-Discovery in certain case types and jurisdictions, and expanding its social worker program.

### III. Performance Measures & Goals

**Performance Measure A: Ensure 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 the rate increase.

		FY 09-14 Actual	FY 15-17 Actual	FY18 Budget	FY19 Anticipated	FY20 Anticipated
The OADC average hourly Attorney Rates	Target	\$75	\$75	\$75	undetermined	undetermined
	Actual	\$65	\$75			

**Performance Measure B: Contain Case Costs**

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

		FY15 Actual	FY16 Actual	FY17 Budget	FY18 Budget	FY19 Anticipated	FY20 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	16.57	15.91				
Keep ancillary costs per case to a minimum.	Target	\$128	\$135	\$120	\$120	\$120	\$120
	Actual	\$135	\$120				
Average Cost per Case	Target	n/a	n/a	\$1,581	\$1,581	\$1,581	\$1,581
	Actual	\$1,722	\$1,581				

**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 the OADC contractors.
2. Organize and present trainings for the OADC lawyers, investigators, paralegals, and social workers.
3. Facilitate access to trainings through in-person attendance, DVD reproduction, and webcasting.

	<b>FY16 Actual</b>	<b>FY17 Actual</b>	<b>FY18 Anticipated</b>	<b>FY19 Anticipated</b>	<b>FY20 Anticipated</b>
Appellate Training		5 hours 34 Attendees		14 hours 80 Attendees	5 hours 34 Attendees
Research and Motions Practice			6 hours 40 Attendees	6 hours 40 Attendees	6 hours 40 Attendees
Ethics for Lawyers	7 hours 35 Attendees	7 hours 40 Attendees	7 hours 35 Attendees	7 hours 35 Attendees	7 hours 35 Attendees
Trial Practice Institute	35 hours 45 Attendees	38 hours 60 Attendees	38 hours 52 Attendees	38 hours 52 Attendees	38 hours 52 Attendees
Juvenile Trainings	20 hours 100 Attendees	22 hours 182 Attendees	20 hours 100 Attendees	20 hours 100 Attendees	20 hours 100 Attendees
Post-Conviction Training		5 hours 33 Attendees			5 hours 33 Attendees
Social Work Training	12 hours 12 Attendees	12 hours 12 Attendees	12 hours 12 Attendees	12 hours 12 Attendees	
Investigator Training	12 hours 90 Attendees	8 hours 81 Attendees	12 hours 90 Attendees	12 hours 90 Attendees	8 hours 80 Attendees
Sentencing	7 hours 50 Attendees		7 hours 50 Attendees	7 hours 50 Attendees	
Adobe Prof. Training		8 Hours 20 Attendees	40 hours 50 Attendees	40 hours 50 Attendees	8 Hours 20 Attendees
Legal Technology	6 hours 30 Attendees				6 hours 30 Attendees
Paralegal Training	6 hours 35 Attendees	8 hours 52 Attendees	6 hours 50 Attendees	6 hours 70 Attendees	8 hours 70 Attendees
Evidence Based Practices	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

	<b>FY16 Actual</b>	<b>FY17 Actual</b>	<b>FY18 Anticipated</b>	<b>FY19 Anticipated</b>	<b>FY20 Anticipated</b>
Train the Trainers	7 hours 24 Attendees	7 hours 21 attendees	7 hours 24 Attendees	7 hours 24 Attendees	7 hours 24 Attendees
Organized Crime Act	6 hours 25 Attendees	7 hours 100 attendees			6 hours 60 Attendees
Evidence and Objections	7 hours 35 Attendees	8 hours 44 Attendees	7 hours 35 Attendees	7 hours 35 Attendees	7 hours 35 Attendees
Plea Bargaining and Negotiation	6 hours 50 Attendees			6 hours 50 Attendees	
Jury Selection	7 hours 50 Attendees		6 hours 50 Attendees		
Forensics			6 hours 40 Attendees	6 hours 40 Attendees	
Leadership/Team Building Training			7 hours 30 Attendees	7 hours 40 Attendees	
Incorporating Social Workers on Legal Teams	7 hours 40 Attendees				
Westlaw Training					
Race and Bias in the Criminal Justice System			7 hours 100 Attendees	14 hours 100 Attendees	
Communication skills		8 hours 10 attendees			8 hours 10 attendees
Immigration and criminal litigation		4 hours 80 attendees			4 hours 80 attendees
Experts in litigation		16 hours 63 attendees			
Veterans in criminal litigation		8 Hours 20 Attendees			
Parole board training		3 hours 13 Attendees			
Total Number of Trainings	16	18	16	18	16
Total Number of Hours	167	189	203	231	158
Total Number of Attendees	866	1,065	958	1,113	903

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

To advance quality and efficiency in the 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 Sciences and Juvenile Library;
2. Providing legal research, motion drafting, and other assistance to contractors, using lawyers and non-lawyers;
3. Providing timely case law summaries (both written and podcast) of new criminal legal opinions issued by the Colorado Court of Appeals, the Colorado Supreme Court, the 10<sup>th</sup> Circuit of the United States Court of Appeals, and the United States Supreme Court;

4. Analyzing and introducing best practice applications to the OADC contractors;
5. Creating comprehensive manuals on complex but frequently used subject matter such as COCCA, Habitual Criminal Cases, Post-Conviction Matters, and Out-of-State Subpoenas.

		FY16 Actual	FY17 Budget	FY18 Request	FY19 Anticipated	FY20 Anticipated
On-Line Research Tools and Resources to the OADC Contractors (including Juvenile, Social Sciences and Mental Health specific materials)	Target documents	6,000	6,000	6,000	7,000	7,500
	Actual documents	7,000				
	Target users*/queries	250*	1000/month	1200/month	1,700/month	2,000/month
	Actual users*/queries	1,700/month				
Juvenile specific materials	Target documents	na	500	500	1,200	1,500
	Actual documents	825				
Social Sciences specific materials	Target documents	na	500	500	1,300	1,500
	Actual documents	1,000				
Mental Health specific materials	Target documents	na	500	500	500	500
	Actual documents					

Legal Research Assistance (Includes Social Science and Mental Health Issues)	Target cases	300	400	500	500	500
	Actual cases	410				
Social Sciences Issues in Criminal Cases Assistance	Target	na	40	50	50	50
	Actual	30				
Mental Health Issues in Criminal Case Assistance	Target cases	na	40	60	60	60
	Actual cases	20				

Provide summaries of new opinions.	Target weekly summaries	50	50	50	50	50
	Actual weekly summaries	52				



**Performance Measure E: Monitor and Evaluate Contractors**

The OADC has a process to ensure that all the OADC lawyers, investigators, and social workers are under a current contract. This process includes interviewing and evaluating potential and renewing contract attorneys, investigators and social workers. To accomplish this the Agency:

1. Has created a data base to track all attorney, investigator, and social worker contractors, including contract renewal dates;
2. Requests renewal applications from contractors, interviews and evaluates contractors, and renews contracts if appropriate;
3. Solicits feedback from judicial districts concerning the OADC lawyers;
4. Verifies attorney status with the Office of Attorney Regulation;
5. Monitors and evaluates court room practices through courtroom observations;
6. Reviews written submissions from contractors and provides feedback as needed;
7. Mandates testing for investigators prior to initial contract issuance;
8. Conducts audits and time-efficiency studies of selected the OADC contractors;
9. Runs reports on the 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.

		<b>FY16 Actual</b>	<b>FY17 Actual</b>	<b>FY18 Request</b>	<b>FY19 Anticipated</b>	<b>FY20 Anticipated</b>
Evaluate Renewing Attorney Applicants	Target	100%	100%	100%	100%	100%
	Actual	93%	100%			
Evaluate Renewing Investigator Applicants	Target	100%	100%	100%	100%	100%
	Actual	64%	100%			
Court Room Observations	Target	75	75	75	75	75
	Actual	61	52			
Mock Oral Arguments	Target	10	10	12	12	12
	Actual	12	9			
Oral Arguments	Target	15	20	16	16	16
	Actual	16	17			
Review Pleadings	Target	100	100	100	150	150
	Actual	120	150			

**Performance Measure F: Support the use of Evidenced Based Practices (EBP)**

To ensure the use of Evidence Based Practices in juvenile and criminal defense the Agency provides contractors with the following:

1. Contract Social Workers;
2. A separate social science component to the Agency’s Web-based Library (See Performance Measure D above);
3. Training focused on EBP (See Performance Measure C above).

		<b>FY16 Actual</b>	<b>FY17 Budget</b>	<b>FY18 Request</b>	<b>FY19 Anticipated</b>	<b>FY20 Anticipated</b>
Number of Cases with Social Workers	Target	100 cases	125 cases	200 cases	300 cases	350 cases
	Actual	181 cases				
Number of Social Worker Contractors	Target	6 contractors	10 contractors	15 contractors	21 contractors	24 contractors
	Actual	11 contractors				
Number of Social Worker Interns	Target	3 interns	5 interns	3 interns	4 interns	5 interns
	Actual	3 interns				

**Performance Measure G: Strengthen the OADC’s Juvenile Division**

In FY17, the OADC underwent a comprehensive and rigorous process of re-constituting the panel of contract attorneys representing juveniles on behalf of the OADC. With the help of the National Juvenile Defender Center, the OADC thoroughly screened attorneys wishing to represent juveniles, and created a Juvenile Division of attorneys with the skills, knowledge and experience necessary to competently represent juvenile clients in delinquency and adult court. Through this process, the OADC identified some training needs and areas that need attention moving forward.

First, the OADC is bringing juvenile specific training to rural areas, where there are fewer available and qualified juvenile attorneys. It is often difficult for attorneys in rural areas to travel to the metro area for training, and while some seminars can be viewed on DVD or through webinars, it is important

to conduct a certain amount of training in-person to ensure that the those who need the training are engaged.

Second, the OADC is encouraging and assisting contract attorneys in incorporating other professionals in the defense team. This includes offering a Special Education Specialist who can efficiently gather relevant records and advise the contractor on how the educational needs of the client impact his or her behavior and the likelihood of the success of various interventions or sentencing options. In addition to a Special Education Specialist, the OADC offers other specialists and researchers who increase the effectiveness and efficiency of the defense team.

Third, now that the new Juvenile Division has been formed, the Juvenile Coordinator will continue to ensure that the OADC contract attorneys are providing high quality juvenile defense by observing hearings and reviewing court and billing records. The Juvenile Coordinator will conduct contract renewal interviews of all juvenile contract attorneys as their contracts come due.

		FY16 Actual	FY17 Budget	FY18 Request	FY19 Anticipated	FY20 Anticipated
Sponsor X number of Juvenile-specific trainings annually for attorneys.	Target	2	2	3	5	5
	Actual	4	4			
Screen 100% of attorneys doing juvenile work and up for contract renewal, to ensure competency in juvenile representation.	Target	90	25	25	25	25
	Actual	70	0*			
Incorporate a social worker into juvenile defense teams where appropriate.	Target	na	50 cases	50 cases	50 cases	50 cases
	Actual	49 cases	45			
Provide specialized education law assistance to juvenile defense teams where appropriate.	Target	15	20	20	20	20
	Actual	13	19			

\*Normally OADC conducts contract renewal screenings at the end of each calendar year. However, in 2016 the OADC created a Juvenile Division, and screened all attorneys who applied to represent juveniles in the summer of that year. Therefore, no juvenile attorneys were re-screened at the end of that calendar year. Beginning with FY17, attorneys will again be regularly screened as their contracts come due.

## **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 FY18-19 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.

### **Improved and Cost-Effective Research Tools**

As described in the Performance Measures and Goals, the OADC will continue to provide 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 imperative 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.

### **Paperless and Administrative Efficiencies**

The Agency's revamped web-based billing system (CAAPS) went live on July 23, 2015. Each individual contractor bill is reviewed online for reasonableness and accuracy. This overhaul has significantly enhanced the Agency's monitoring capabilities, benefiting not only internal auditing procedures but also the annual fiscal note process and individual contractors' payment monitoring options.

### **Ancillary Services to Reduce Attorney Hours**

To increase the quality and efficiency of the OADC contract attorneys, the Agency has implemented and continues to seek out measures that 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 large-volume 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, motion drafting, and other case related assistance;
7. Evaluating contractor efficiency and auditing billing;
8. Closely monitoring requests for expert assistance;
9. Identifying and promoting technologies that increase contractor efficiency.

### **Fraud, Waste, & Abuse Prevention**

The OADC diligently monitors all financial transactions. In addition to the annual audit performed by the Office of the State Auditor, the Agency reviews **all** payments, ensuring appropriate documentation and support, utilizing segregation of duties, second level approvals, and executive review of over-the-maximum requests. Semi-annual vendor totals are also audited for anomalies. The Agency verifies monthly payroll through the state financial and payment processing system.

## **V. Performance Evaluation**

### **Contractor Survey and Evaluations**

This year's annual contractor survey focused on paralegal contractors. The responses to this survey are assisting the Agency in preparing for paralegal trainings in FY18.

### **The 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 (Director, Deputy Director, or Controller) to discuss the

results, concerns, and overall performance of each employee. The Agency also underwent a StrengthsFinder staff evaluation process to improve team dynamics and performance.

### **Evaluation of Prior Year Performance**

**Performance Measure A: Ensure 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 attorney<sup>1</sup> hourly rate of \$129 per hour for non-capital cases, and for capital crime (death penalty) cases, an hourly rate of \$183 per hour.

**Performance Measure B: Contain Case Costs:** The Agency continues to contain (and reduce) its attorney hours per case and keep ancillary costs per case to a minimum. (See chart on page 5 of 14)

**Performance Measure C: Provide High-Quality Annual Trainings:** As can be seen by the chart on pages 6-7 of 14, the agency provided 18 trainings, consisting of over 250 hours, and reaching over 1,000 attendees, a significant increase from the projected numbers.

**Performance Measure D: Provide Cost-Effective Research Tools and Assistance:** As the chart on page 8 of 14 demonstrates, the Agency continues to meet and exceed its goals in this area.

**Performance Measure E: Monitor and Evaluate Contractors:** The Agency met its goal of evaluating 100% of renewing attorneys and investigators. However, it did fall short of meeting its goal of conducting 75 court room observations, and oral arguments. This occurred due to the resignation and replacement of its Evaluator & Training Coordinator and time necessary for the new employee to be trained and have time for these observations. The goal for FY18 should be met.

**Performance Measure F: Support the use of Evidence Based Practices (EBP):** The Agency's Social Worker program has continued to expand, due to the hiring of a full time Social Worker Coordinator. Once this person began, in September 2016, the Agency expanded the number of Social Worker contractors, and therefore the number of cases with social workers. As the chart on page 10 of 14 indicates, it is anticipated that this program will continue to expand.

**Performance Measure G: Strengthen the OADC's Juvenile Division:** The OADC successfully implemented its new Juvenile Division, and anticipates that the efficacy of this program will increase as it moves forward.

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<sup>1</sup> Federal court-appointed attorneys are referred to as Criminal Justice Act (CJA) lawyers.