



Office of the
**Alternate
Defense
Counsel**

JUDICIAL BRANCH

**OFFICE OF THE
ALTERNATE DEFENSE COUNSEL**

**FISCAL YEAR 2018-2019
July 01, 2018**

PERFORMANCE PLAN

Lindy Frolich, 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	
	Ensure Adequate Contractor Rates	5
	Contain Case Costs	5
	Provide High-Quality Annual Trainings	6
	Provide Cost-Effective Research Tools and Assistance	6
	Monitor and Evaluate Contractors	7
	Strengthen OADC's Social Worker Program	8
	Strengthen OADC's Juvenile Division	8
IV.	Strategies	
	Increase Compensation Rates	10
	Provide Ongoing Training	10
	Conducting Periodic Evaluations	10
	Improved and Cost-Effective Research Tools	10
	Institute Paperless and Administrative Efficiency	10
	Ancillary Services to reduce Attorney Hours	11
	Fraud, Waste, & Abuse Prevention	11
V.	Performance Evaluations	
	Contractor Survey and Evaluation	11
	The OADC Staff Evaluations	11
	Evaluation of Prior Year Performance	12

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 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 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, evaluation, and the effective use of modern technology and evidence based practices.*

II. Major Functions of the Agency

Statewide Representation

The OADC contracts with approximately 430 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 Legal, Social Science and Juvenile eLibrary; 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 10th 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. Pursuant to SB18-203, the OADC is beginning the process of coordinating the evaluation of municipal defenders.

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 Legal, Social Sciences and Juvenile eLibrary. 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, utilizing legal researchers, case assistants and interns, assisting with eDiscovery in certain case types and jurisdictions, and expanding its social worker program.

III. Performance Measures & Goals

Performance Measure A: Ensure Adequate Contractor Rates

For the FY18–19 Budget Request the OADC submitted a Decision Item regarding an increase to COLA Based Contractor hourly rates by 6.7%. The Joint Budget Committee approved that Decision Item and the OADC was appropriated an additional \$2,306,291 to accommodate the rate increase.

		FY 09-14 Actual	FY 15-17 Actual	FY18 Actual	FY19 Budget	FY20 Anticipated	FY21 Anticipated
OADC average hourly Attorney Rates	Target	\$75	\$75	\$75	\$80	undetermined	undetermined
	Actual	\$65	\$75	\$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.

		FY16 Actual	FY17 Actual	FY18 Budget	FY19 Budget	FY20 Anticipated	FY21 Anticipated
Average Cost per Case	Target	n/a	\$1,581	\$1,523	\$1,523	\$1,523	\$1,523
	Actual	\$1,581	\$1,523				
Keep ancillary costs per case to a minimum.	Target	\$135	\$120	\$120	\$107	\$107	\$107
	Actual	\$120	\$107				

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.

	FY17 Actual	FY18 Actual	FY19 Anticipated	FY20 Anticipated	FY21 Anticipated
Total Number of Trainings	16	14	15	15	14
Total Number of Hours	155	356	192	138	211
Total Number of Attendees	871	1,154	956	803	1,120

These numbers do not include Social Worker or Juvenile specific trainings, as those numbers are reflected in performance measures F & G respectively.

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 eLibrary;
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 10th Circuit of the United States Court of Appeals, 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 matter such as COCCA, Habitual Criminal Cases, Post-Conviction Matters, Out-of-State Subpoenas and co-authoring the 3rd edition of the Juvenile Defense Manual, which was released in April 2018.

		FY17 Actual	FY18 Budget	FY19 Request	FY20 Anticipated	FY21 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	7,000	7,500	7,500
	Actual documents	7,750				
	Target users*/queries	1000/month	1200/month	1,700/month	2,000/month	2000/month
	Actual users*/queries	1,850				

Performance Measure E: Monitor and Evaluate Contractors

The OADC has a process to ensure that all OADC lawyers, investigators, and social workers are under a current contract. This process includes interviewing and evaluating potential and renewing current 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 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.

		FY17 Actuals	FY18 Actual	FY19 Request	FY20 Anticipated	FY21 Anticipated
Evaluate Renewing Attorney Applicants	Target	100%	100%	100%	100%	100%
	Actual	100%	100%			
Evaluate Renewing Investigator Applicants	Target	100%	100%	100%	100%	100%
	Actual	100%	100%			
Court Room Observations	Target	75	75	75	75	75
	Actual	52	77			
Mock Oral Arguments	Target	10	12	12	12	12
	Actual	9	5			
Oral Arguments	Target	20	16	16	16	16
	Actual	17	11			
Review Pleadings	Target	100	100	150	150	150
	Actual	150	150			

Performance Measure F: Strengthen OADC’s Social Worker Program

To facilitate the use of social workers 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 eLibrary
3. Social Worker related trainings

		FY17 Actual	FY18 Budget	FY19 Request	FY20 Anticipated	FY21 Anticipated
Number of Cases with Social Workers	Target	125 cases	200 cases	300 cases	350 cases	400 cases
	Actual	263 cases				
Number of Social Worker Contractors	Target	10 contractors	15 contractors	21 contractors	24 contractors	26 contractors
	Actual	16 contractors				
Number of Social Worker Interns	Target	5 interns	3 interns	4 interns	5 interns	5 interns
	Actual	2 interns				
Social Work Training	Hours	12 hours	18 hours	12 hours		8 hours
	Attendees	12 Attendees	110 Attendees	12 Attendees		40 Attendees
Social Sciences specific materials	Target documents	500	500	1,300	1,500	1500
	Actual documents	1,290				

Performance Measure G: Strengthen the OADC’s Juvenile Division

In FY17, the OADC created a specialized Juvenile Division of attorneys with the skills, knowledge and experience necessary to competently represent juvenile clients in delinquency and adult court. The OADC is applying lessons learned through this process to improve the quality and efficiency of OADC juvenile defense. The OADC is bringing juvenile specific training to areas outside of the Denver Metropolitan area, where there are fewer available and qualified juvenile attorneys. It is difficult for attorneys in these 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 some training in-person. Further, the OADC is assisting contract attorneys in incorporating other professionals in their defense teams. This includes specialists in education advocacy, appeals, mental health and competency, and sex offense defense, as well as non-legal professionals such as social workers, mitigation specialists, investigators, paralegals and researchers. In addition, the Juvenile Coordinator regularly observes Juvenile Division contractors and conducts contract renewal interviews to ensure continued high quality juvenile defense.

		FY17 Actual	FY18 Budget	FY19 Request	FY20 Anticipated	FY21 Anticipated
Sponsor X number of Juvenile-specific trainings annually for attorneys.	Target	2	3	5	5	5
	Actual	4	3			
Screen 100% of attorneys doing juvenile work and up for contract renewal, to ensure competency in juvenile representation.	Target	25	25	25	25	25
	Actual	0*	7*			
Incorporate a social worker into juvenile defense teams where appropriate.	Target	50 cases	50 cases	50 cases	60 cases	60 cases
	Actual	45	61			
Provide specialized education law assistance to juvenile defense teams where appropriate.	Target	20	20	20	25	30
	Actual	19	31			
Juvenile Trainings	Hours	22 hours	24 hours	20 hours	20 hours	24 hours
	Attendees	182 Attendees	120 Attendees	100 Attendees	100 Attendees	120 Attendees
Juvenile specific materials	Target documents	500	500	1,200	1,500	1,500
	Actual documents	1,118				

*The OADC conducts contract renewal screenings at the end of each calendar year. 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 screened at the end of that calendar year. In addition, because most contractors were given two or three-year contracts beginning on January 1, 2017, there were fewer renewal screenings at the end of 2017 than there will be moving forward.

IV. Strategies

Increase Compensation Rates

As mentioned in the Performance Measures and Goals section of this plan, the OADC submitted a Decision Item regarding an increase to COLA Based Contractor hourly rates by 6.7% for the FY18-19 budget request. The Joint Budget Committee approved that Decision Item and the OADC was appropriated an additional \$2,306,291 to accommodate the rate increase.

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, continues to enhance 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 eLibrary 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 continues to enhance 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 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 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. Attorney access to electronic court records pursuant to HB 08-1264;
4. Expanding and promoting the eLibrary;
5. Providing legal research, motion drafting, and other case related assistance;
6. Evaluating contractor efficiency and auditing billing;
7. Closely monitoring requests for expert assistance;
8. 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. Quarterly 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 the Agency conducted two contractor surveys. The first survey covered contractors and their understanding of the new statewide E-Discovery system and its effectiveness on their practice. The second OADC survey was from our Social Worker division and polled contractors on their use and understanding of forensic social workers and forensic clinical advocates.

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, Juvenile Defense Coordinator, or Controller/Budget Manager) 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 FY19 budget request, the Agency requested and received a 6.7% rate increase for its contractors. However, this still falls significantly below the federal government's court-appointed attorney¹ hourly rate of \$132/hour for non-capital cases, and for capital crime (death penalty) cases, an hourly rate of \$185/ 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 12)

Performance Measure C: Provide High-Quality Annual Trainings: As can be seen by the chart on page 6 of 12, the agency provided 14 trainings, consisting of over 350 hours, and reaching 1,154 attendees, an increase from the projected 958.

Performance Measure D: Provide Cost-Effective Research Tools and Assistance: As the chart on page 6 of 12 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, and exceeded its goal of court room observations by 3 as seen in the chart on page 7.

Performance Measure F: Strengthen OADC's Social Worker Program: The Agency's Social Worker program has continued to expand. Since the hiring of a full time Social Worker Coordinator 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 8 of 12 indicates, it is anticipated that this program will continue to expand. Unfortunately, due to the success of this program, cases are going without social workers as the Agency has reached its saturation point without additional resources to further expand the Program.

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.

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