

Chapter IV—Assuring Statewide Consistency

Introduction

Historically, the provision of public defender attorneys was handled on a county-by-county basis. Between 1985 and 2003, the state reimbursed counties for the cost of providing public defender services to adults involved in cases before district courts. In February 2004, the American Civil Liberties Union filed a class action lawsuit alleging that Montana had failed to provide constitutionally and statutorily adequate legal representation to indigent adults. Later that year the lawsuit was put on hold in anticipation of legislative action to create a statewide public defender system. Title 47 of the Montana Code Annotated, otherwise known as the “Montana Public Defender Act” (Act), was enacted by the 2005 Legislature.

When the Public Defender Commission (PDC) and the Office of the State Public Defender (OPD) were created in 2005, agency management had to start from scratch. New policies and procedures had to be created, office space had to be secured, and staff had to be hired within a limited timeframe because the system was required to begin taking clients on July 1, 2006. As noted in this report, we identified a variety of inconsistencies in agency activities related to contracting and indigency determination. During audit work, OPD management acknowledged some of the inconsistencies between regions may be due to a lack of direction from the OPD central office (OPD Central) initially. OPD was reluctant to mandate changes to the regional offices which already existed and had their own policies and procedures in place. While the agency is still dealing with some of these issues, active management of program activities is needed, not only to ensure compliance with statute, but also to assure the system is administered efficiently and effectively.

Defined Expectations and Oversight Could Strengthen Consistency

Currently, each region within the public defender system enjoys a high level of autonomy. A management control structure which provides operational direction to and ensures compliance by the regional offices must be developed to increase consistency throughout the system. Assuring this consistency was one of the main purposes in creating the statewide system.

The first step in developing this structure would be for management at the PDC and OPD to define comprehensive, agency-wide expectations for regional activities. To assure compliance with the requirements of the Act, management should, for example, provide guidance about the types of remedial action appropriate for addressing poor

performance by contract attorneys or the process for verifying client-reported financial information during the indigency determination process.

Management Information Vital for Monitoring Agency Activities

After expectations are defined, management will need to assure regional compliance through ongoing monitoring and analysis of management information regarding agency activities. Program information is a vital tool to be utilized by agency management for making key decisions regarding budgeting, staffing, and program direction. Information and records should be consistently managed and maintained, and should be readily available for examination.

Currently, Management Information Is Limited

During our review, we found the department has limited management information regarding its activities. Overall, we found information about the agency's contracting activities to be documented inconsistently or not at all. Specifically, we noted:

- ♦ There is no uniform method for recording information about contractor performance, client complaints, or the attorney pool.
- ♦ There were no "complete" set of contract attorney files at any location.
- ♦ OPD caseloads of contractors are tracked to different extents in each region—some regions use the agency's internal case-weighting procedure to determine the case weight for contractor workloads while others do not appear to track caseloads at all.
- ♦ The agency does not accurately track the regions in which contractors are working or if payments are made without a current Memorandum of Understanding in place.

We also found incomplete and inconsistent management information related to its indigency determination process. OPD currently has no method for calculating the total number of determinations made each year. Further, information regarding the number of income/asset verifications completed and determinations of ineligibility is not readily available.

Management Information Is Important for Demonstrating Compliance

Without periodic management oversight, operational inconsistencies will continue. During this audit, we noted instances where OPD Central directed regional staff to complete specific tasks or provide information, yet the regions did not satisfy the requests. In instances where several requests were made by OPD Central, there were

no consequences when regional staff did not provide the requested information. For example, management cannot rely on reports extracted from its information system to contain accurate agency-wide data. Currently, when a report is run, OPD Central must request that the regional offices fill in any “gaps” in the information and correct any discrepancies.

Without management information, OPD cannot demonstrate its use of contract attorneys or process for determining client indigence is fair and consistent, as required by statute. OPD also cannot show it has the information necessary to ensure contract attorneys are qualified, competent, and providing effective assistance of counsel to OPD’s clients. It is vital that OPD Central take a leadership role and provide direction to the agency’s regional offices in order to reduce the inconsistencies we identified.

RECOMMENDATION #9

We recommend the Public Defender Commission and the Office of the State Public Defender assure compliance with statute regarding contracting and indigency determination activities by:

- A. *Establishing defined, agency-wide expectations.*
 - B. *Identifying and collecting key management information regarding those expectations.*
 - C. *Monitoring statewide consistency through analysis of management information.*
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LEGISLATIVE PERFORMANCE AUDIT RECOMMENDATION # 9 AND AGENCY RESPONSE

Recommendation #9:

We recommend the Public Defender Commission and the Office of the State Public Defender assure compliance with statute regarding contracting and indigency determination activities by:

- A. Establishing defined, agency-wide expectations.*
- B. Identifying and collecting key management information regarding those expectations.*
- C. Monitoring statewide consistency through analysis of management information.*

Response: We concur. The Chairman of the Montana Public Defender Commission will assign this recommendation and its development, implementation, and oversight to the Commission's Strategic Planning Committee. This committee can use the conclusions of the ACLU/AU reports to support this effort.