

ANNUAL REPORT
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
April 11th, 2012
Submitted by: Robin Huseby, Executive Director

GENERAL DESCRIPTION

The Commission on Legal Counsel for Indigents was established in 2005. The governing statute is §54-61-01, et. seq., of the North Dakota Century Code. The mission statement for this executive branch agency, as adopted by the commission, is as follows:

“The North Dakota Commission on Legal Counsel for Indigents’ mission is to provide high quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota statutes and rules, at reasonable cost to the community.”

In achieving that mission, we provide indigent legal services to persons charged in state district court with misdemeanors and felonies throughout North Dakota who are indigent, and provide counsel to indigent persons who are parties in some juvenile and miscellaneous matters. We do not provide legal services for cases in the federal system.

For a one year period , from October 1st, 2010, to September 31, 2011, we provided legal counsel on approximately **9,000** case assignments. Approximately **84%** of our cases are criminal matters, and approximately **17%** of the cases assignments are juvenile matters. Statistically, there are about equal amounts of misdemeanors assigned as felonies. We supply attorneys in approximately 50 appeals to the North Dakota Supreme Court a year , and in 60 ‘post conviction’ petitions a year.

THE AGENCY

The Commission on Legal Counsel for Indigents is currently staffed with 31 full time employees, and several part time employees who serve as administrative aides. We have six public defender offices located throughout North Dakota; Williston, Dickinson, Minot, Bismark,

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Grand Forks and Fargo. Each office operates much like an independent law office providing the legal services mentioned above. The Dickinson and Williston office each have two attorneys and one and one-half administrative staff, and the other offices have three attorneys, one legal assistant, and one full and one part-time administrative staff. The offices are able to assist other offices when conflicts arise. However, if an attorney in a particular office has a conflict, then all the attorneys in that same office have a conflict and the case must be sent out for alternative legal representation.

The agency is administered from our administrative office in Valley City, ND. We have four administrative employees; Robin Huseby, executive director, Jean Delaney, deputy director, Aaron Petrowitz, financial officer, and Tanya Zachrison, administrative officer. Our financial officer works out of the Bismarck public defender office suites. From the Valley City office, bills are processed, payroll is processed, expense requests of the various offices and contracted attorneys are approved, and all administrative tasks are performed to run the agency. Our primary task at the administrative office is to ensure that the appropriate attorney is assigned for each indigent criminal case throughout the state, so we network with clerks of courts and Judges across the state on a daily basis.

We are governed by a commission of seven persons who serve on staggering terms, including two from each legislative assembly. Those two members are presently Senator Stanley Lyson , Williston, and Representative Duane Dekrey, Pettibone. The other commission members are chosen by the North Dakota Supreme Court (two members), the North Dakota State Bar Association (one member), and the Governors office (two members). The commission meets quarterly in varying spots around the state, and notices of said meetings are provided to the North Dakota Secretary of State. All persons are welcome to attend. We have written minutes of the meetings on file at our administrative office.

We have had two financial audits conducted by the North Dakota State Auditor's Office since we were formed in 2005, the last one being in the spring of 2010. There have been no formal recommendations for us, and as for any informal recommendations, all have been complied with by the agency.

FINANCING OF THE AGENCY

Our agency budget, as approved by the legislature, consists of \$9,808,430.00 of general fund dollars for the 2011-2013 biennium. We also have authority to spend monies from a special fund in the amount of \$1,970,852.00. These latter funds are received from court fees paid by defendants-the court administration fee (\$100.00), and the indigent application fee (\$25.00), the collection of both being allowed by statute. The collection of these fees are not necessarily guaranteed to be consistent from year to year as the District Judges, who order the payments, have discretion in waiving the fees in any particular case. (The amounts have been consistently collected, however, over the years). The clerks of the district courts collect the fees and remit them to the state.

The agency applies for no grants and receives no federal money for any program.

DELIVERY OF INDIGENT SERVICES

Persons who need indigent counsel first apply for services on an application provided to them by the clerk of court or our office. That completed application is reviewed by a District Judge, or a designee of the Judge, and if the person is deemed to have income in an amount less than 125% of the federal poverty guideline and own less than \$20,000.00 in assets, then the Judge will approve the appointment of counsel. Once it is determined a person is eligible for services, our agency then facilitates the appointment of counsel. For example, if a person lives in a household with 3 people where the combined income shows a monthly gross income of \$1,930.00 or less, and he/she owns little or no assets, he or she would be eligible for an attorney. The attorneys who take indigent cases are either private bar attorneys contracted with our agency to provide those services, or are full time public defenders who are employees of the agency. Those attorneys who contract with us either have a monthly, flat rate contract, or a contract to take individual cases which are conflicts for the public defenders offices or area contractors.

Procurement of private attorneys is a constant battle we face, and I rank this as one of our top problems for the agency. We recently have raised the hourly rate of pay for our contract

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attorneys from \$65.00 to \$75.00, but this amount is still paltry when compared to what a private attorney charges to represent a client charged with a crime. Another factor affecting the ability to recruit counsel stems from the plain and simple fact that it is difficult to find attorneys in some parts of the state. We do routinely use the varying public defender offices to fill in the voids where we cannot get an attorney to take a case. That procedure is not always the most efficient where extensive travel is involved. No where is this problem more evident than in the western portions of the state which is highly impacted by oil production. We have had to try many techniques out west to attract attorneys willing to do indigent defense work, and I will now discuss that area specifically.

THE OIL BOOM-BOOM OR BUST?

The increase in population, the influx of money, and the changing demographics in the western half of the state have all had a dramatic impact of our agency and our offices in Minot, Dickinson, and Williston. We have more cases, different types of cases, and we can't keep up. We have resorted to adding pay onto salaries, called 'salary add ons', to try to compensate our 11 full time employees in those areas. That impacts us financially. We have rented an apartment in Williston to allow for our visiting attorneys to stay overnight, since traveling is a nightmare. This is certainly an event I never thought I would see. We are trying to be pro-active to this ever increasing crisis. The overwhelming problem for us out west is twofold: a rising case load and inability to find attorneys; both public defender employees and conflict, private attorneys. You may have read the recent article in the Bismarck or Fargo paper about the influx of lawyers in the oil patch. Those are not attorneys taking on indigent defense cases. We need help from the legislature. We will need more money, and more staff. We would like to open an adjunct office to help handle conflict cases from Dickinson and Williston, and points in between. We need money to pay the attorneys from other parts of the state to travel to the high traffic areas and help our public defenders. We need money for more part time staff. We currently are looking for a full time public defender as one has given notice, and where is this new person supposed to live? When we can't find attorneys for indigent cases, or provide the support staff necessary for the

attorneys to provide adequate legal representation, the whole court system is adversely affected.

We are nervous about disruptions in the system due to the current crunch in Williston and Dickinson.

AGENCY ACCOMPLISHMENTS

I will highlight some of what I believe to be our most significant accomplishments since 2005.

1. The agency has developed a method of approving **standards and policies** which includes having the commission preliminarily approve the matter at hand, sending it out interested party for comments, and finally bringing it back to the commission, after an appropriate period of time, for amendment, adoption or rejection.

2. Our agency has developed **attorney performance standards** for criminal, juvenile, and appellate cases. Contracts with private attorneys require the compliance with said standards.

3. We have adopted an agency **“business code of ethics”**.

4. We have created, and do maintain, a web based case **reporting system** with the assistance of the state IT department. A reporting system is vital to a criminal justice agency. That system allows all attorneys doing legal work for us to input their case information, in particular opening and closing information (how many cases, what type, and hours worked on the case), on the web based system. We, in turn, are able to glean and review statistics about case numbers from the information.

4. We have an agency **website**, which we frequently update, with salient information, forms and policies. www.indigents.nd.gov

5. We are actively involved in making legal **training** available for our hired attorneys and our contractors, and hold two trainings yearly; one summer training for two days, and a one day winter training, the latter being primarily for our hired staff. We make every effort to see that our attorneys obtain their continuing legal education credits free of charge, and in effectuating that goal, we often partner with the State Bar Association, various legal groups in the state, and Legal Services of North Dakota, to provide free training opportunities. We do not exclude our support staff from these training opportunities and make sure they also can avail

themselves of training programs.

NEEDS OF THE AGENCY

We need to have an increase in general fund dollars. In my opinion we must continue to pay contractors at least \$75.00 an hour. We want to open an adjunct public defender office in the western portion of the state to assist with conflicts, and we need to provide the offices out there further staff. We continue to struggle with finding attorneys for the Northeast Judicial District, which encompasses an area from Pembina County over to Burke County, and includes Pembina, Devils Lake, Grafton, Bottineau, and areas between those cities. We had asked for full time employees to open an office in the Devils Lake area in the last two legislative sessions, but were not granted that request, and depending on what occurs there during this biennium, we may be back with another similar request in 2013. We are monitoring that situation.

I want to specifically address the **HAY GROUP** study that was conducted last year and being implemented by HRMS. Because of the new classification system of employees, and new minimum points for salaries, we are going to have to alter employee salaries in a serious fashion. At least 1/3 of our employees are impacted by the recommendations and mandates, and we will be increasing our salaries and commensurate benefits by a sizable amount each and every year. We are working with HRMS on the details. We are going to be asking for general funds to pay for those unexpected salary adjustments.

If any of the legislators or commissioners of the agency have any questions regarding our agency or this report, either I, or my deputy director, Jean Delaney, are available for questions at 701 845-8632.

Dated this ____ day of _____, 2012

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