

ANNUAL REPORT

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS-DEPT. 188

November 1st, 2013

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. Pursuant to §54-61-03 (2)(f) the agency Executive Director must submit an annual report to the legislative council.

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 to indigent persons who are parties in some juvenile and miscellaneous matters. We do not provide legal counsel for cases in the federal system, or municipal courts in the state.

For a one year period , from September 1st, 2012, to August 31st, 2013, we provided legal counsel on approximately **11,168** case assignments. This number represents approximately a **19% overall increase** from two years ago, however, it does not reflect the much larger percentages of increase in case assignments in the oil country counties. In **McKenzie County**, case assignments went from 89 to 197 in two years, which is a **121% increase**. Prior to 2012 we had McKenzie County covered by the Williston public defender, but we now have to have a separate attorney assigned only for McKenzie County due to the escalation of cases. Equally as impacting is **Williams County**, where the assignments went from 456 to 703 in a two year period. (**54%**). **Burleigh County** is not immune from this upward spiral; their case load has

increased by **34%** in two years.

Approximately **87%** of our cases are **criminal matters**, and approximately **13%** of the cases assignments are **juvenile matters**; the percentages of criminal cases visa-vi the juvenile matters has increased 3% in a years time. We supplied attorneys in 61 appeals to the North Dakota Supreme Court in a years period of time , and in 62 post conviction relief petitions.

THE AGENCY

The Commission on Legal Counsel for Indigents is currently staffed with 33 full time employees, and several part time employees . We were granted three new employees pursuant to legislation in 2013; one attorney and two legal assistants to be placed in the western half of the state. We have seven public defender offices located throughout North Dakota; Grand Forks, Fargo, Williston, Dickinson, Bismarck, and two in Minot-the main one and an adjunct office with one attorney and one part time staff. The adjunct office provides assistance with Minot conflict cases and Williams County cases.

Each office operates much like an independent law office providing the legal services mentioned above. The Dickinson office is staffed with two attorneys, one administrative assistant, and one part-time legal secretary. The Williston office is staffed with two attorneys, one temporary attorney, one administrative assistant, one legal assistant, and one part-time legal secretary. The Fargo and Grand Forks offices each have three attorneys, one legal assistant, one administrative assistant, and one part-time legal secretary. The Minot office has three attorneys, two administrative assistant, and one part-time legal secretary. The Minot adjunct office has one attorney and one part-time legal secretary. The Bismarck office has three attorneys, one legal assistant, one administrative assistant, and two part time administrative assistants.

Indigent cases in any one of the seven judicial districts are handled by either one of our public defenders or one of the approximate 45 private attorneys our agency contracts with throughout the state.

The agency is administered from our main office in Valley City. From the Valley City office, bills are processed, payroll is processed, expense requests of the various offices and

contracted attorneys are approved, and all other administrative tasks are performed to run the agency. The Executive Director and Deputy Director travel extensively throughout the state, performing office visits and collaborating with court personnel. One 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 or weekly basis.

We are governed by a commission of seven persons who serve on staggering terms, including two from each legislative assembly; one Senator and one Representative. The other commission members are chosen by the North Dakota Supreme Court (two members), the North Dakota State Bar Association (one member), and the Governor's 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 three 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 2012. There have been no formal recommendations for us, and as for any informal recommendations or management letter recommendations, all have been complied with by the agency. Our last audit was presented at the October, 2012, Legislative Audit and Review Committee of the North Dakota Legislature and there were no questions or concerns about the contents of the audit. We have a financial officer who oversees our financial business and he assists in preparing for the audits.

FINANCING OF THE AGENCY

Our agency budget, as approved by the legislature in 2013, consists of **\$11,923,410 in general fund dollars** for the current biennium. We also have authority to spend monies from out of our **special fund in the amount of \$2,497,866**. 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. This fund is a continuing appropriation. The collection of these fees are not 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 district courts also have the ability to collect reimbursement of attorney fees, and pursuant to §12.1-32-08, §27-20-49, and §29-32.1-05, our agency sets a “presumed rate” for the reimbursement in various types of cases. We utilize data collected from agency and private attorneys which they enter on our web-based case reporting system. The commission takes this matter up yearly. The amounts of the presumed reimbursement are based upon what the averages are, across the state, for time spent on particular types of cases.

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

BUDGET FOR THE AGENCY 2013-2015/OIL BOOM CRISIS

At our October, 2013, commission meeting, I expressed concern over our budget for this present biennium. We gratefully received an approximate **23% budget increase from the 2011-2013 biennium**, but it is obvious from what we have spent since July 1st, 2013, and what our rising case load numbers are projected to be, that we will be deficit spending by the end of this biennium. The only thing that combats a rising case load is to provide more counsel services, which means we have had to enter into more contracts with independent attorneys from Bismarck, Minot, and places east of there to provide services to cover the increasing case load in the western half of the state, particularly Williston, Watford City, and Dickinson. We are attempting to add attorneys in each of those areas as we speak. As mentioned above, Bismarck is also a hot spot in terms of rising case load. We therefore are adding more contracts in Bismarck than ever anticipated we would even as late as the last biennium.

It is important to note that the added expenses are not only for counsel fees. We have housing issues, pay equity issues, general inflationary increases, and other problems with being able to afford services in the areas of the state affected by the oil industry and accompanying growth. Our agency is directly impacted by other services and agencies' growth. The Judiciary has added two Judges, one in Williston and one in Watford City. That impacts us greatly. Law

enforcement has received increased state funding through the Attorney General's office, and increased law enforcement increases our case load. We have received no energy impact funds.

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. Private counsel must adhere to certain agency policies, standards and practices, and provide to us proof of malpractice insurance. One of the "Ten Principles" of indigent defense as adopted by the American Bar Association is that a well balanced agency should provide services by both the private bar and from full time public defenders, and we are complying with that tenet.

Procurement of private attorneys is a constant battle we face, and I rank this as one of our top problems for the agency. In 2012 our commission raised the hourly rate of pay for our contract attorneys from \$65.00 to \$75.00, but this amount is low when compared to what a private attorney charges to represent a client charged with a crime. A raise of \$10.00 an hour for each and every case has a fairly significant financial impact on our agency and therefore is not done lightly. Attorneys in the private sector who take on criminal matters, especially in Bismarck, Mandan, and other cities in western North Dakota, report having no problem in obtaining clients so, in other words, in this field, too, business is 'booming'.

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 who want to do indigent defense work at all. Many are consumed with oil related civil work, and it is not uncommon for criminal defendants to be reaching out to Bismarck and points east for attorneys to represent them in Williston, for example. We have had attorneys from Grand Forks assigned on cases in Williston or Watford City, and of course that generates large amounts of costs not otherwise associated with a particular type of case.

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**. Our agency attorneys, and to a certain extent our private contract attorneys, need to adhere to these standards and policies in dealing with the agency.

2. Our agency has developed **attorney performance standards** for criminal, juvenile, and appellate cases. Contracts with private attorneys mandate 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 case 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. We work to improve this system yearly with ITD.

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

6. 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.

We have recently buttressed the extent of our legal support in Williston, Dickinson, Watford City, Minot, and Bismarck by adding independent contracts with attorneys willing to take on legal matters in the areas mentioned. We are mindful that the most important factor is to provide competent and effective counsel to the defendant in a timely manner, and we must do whether it is with attorneys from the same area or not.

NEEDS OF THE AGENCY

We need to have an increase in general fund dollars. The case load continues to grow, and it doesn't look like that trend will change in the next biennium.

We need to continue to look at ways to recruit attorneys. We are currently having several of our more experienced attorneys 'mentoring' younger, newer attorneys who show an interest in criminal defense. We also are pursuing ways to increase our interns from the law school in order to generate interest in indigent defense.

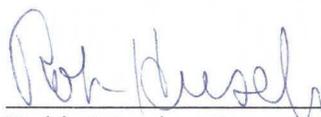
We have discussed with our commission and our Human Resource liaison the need to look at our agency salaries. Ms. Schmidt from HR has indicated we could raise our salaries within their ranges and be within norms for the state. However, we have budgetary concerns that need to be considered. The state salaries are not keeping pace with private attorney salaries. It is currently a good time to be an attorney in North Dakota, from what we have seen with our attorneys moving into the private sector, so a serious conversation about salaries needs to occur.

We have detailed case number reports for all areas of the state, as well as monthly

8/Annual Report/Huseby

financial statements for our agency which can be in as much detail as a person would desire, and should any of the legislators want to see any of this data or information, please feel free to contact the Executive Director, Robin Huseby, or Deputy Director, Jean Delaney, anytime.

Dated this 1 day of November, 2013



Robin Huseby, Executive Director
Commission on Legal Counsel for Indigents
Department 188
P.O. Box 149
Valley City, ND 58072
701 845-8632
rhuseby@nd.gov