

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS - DEPT 188
ANNUAL REPORT
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Submitted by H. Jean Delaney, Executive Director

MISSION STATEMENT

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.

ELIGIBILITY FOR SERVICES

The Commission is governed by North Dakota Century Code Chapter 54-61. Section 54-61-01 provides that the Commission was "established for the purpose of developing and monitoring a process for the delivery of state-funded legal counsel services for indigents which are required under the Constitution of North Dakota and the United States Constitution and any applicable statute or court rule. The commission shall provide indigent defense services for indigent individuals determined by the court to be eligible for and in need of those services pursuant to standards and policies of the commission governing eligibility for such services."

The Commission has established Guidelines to Determine Eligibility for Indigent Defense Services. In order for a person to have counsel provided by the Commission, the person must apply for services, be found to be "indigent," and it must be a type of case in which one has a right to counsel at public expense.

Application for services is made on the Commission's standard forms. The court, or its designee, reviews the application and determines eligibility.

Generally, there is a right to counsel at public expense for indigent persons in who are charged with felonies and misdemeanors in North Dakota state district court, those who are parties in matters brought under the Uniform Postconviction Procedure Act, and in some juvenile

and miscellaneous matters. There is also a right to counsel at public expense for indigent persons in appeals from these matters to the North Dakota Supreme Court. There is no right to counsel provided by the Commission in most civil matters, municipal court matters, and in federal court.

Under the Guidelines, indigency is determined by looking at income resources, non-income resources (assets) of the applicant's household, and exceptional factors that might otherwise justify a finding of indigency. Income guidelines are set at 125% of the federal poverty level threshold as defined by the federal Department of Health and Human Services. Currently, for a household of three, gross income can not exceed \$2,093. The asset guideline is set at \$20,000. Thus, if an applicant for services is in a household of three, and has gross income of \$3000 per month, or has \$25,000 in equity in a home, the applicant would not be considered indigent, absent some exceptional factors that could otherwise justify a finding of indigency. These exceptional factors could include such things as large medical bills being paid by the applicant.

Part of the Commission's mission is to provide services at reasonable cost to the community. Services should be provided only to those persons who are eligible. The Guidelines note that "[i]t is in the interest of all parties, the court, and the public, to insure that indigent defense services are provided in appropriate cases. However, there are abuses to the system, both intentional and unintentional. Applicants are not always forthcoming with their income information, and do not always inform the court of changes which could effect their eligibility. Additional screening is necessary to curb abuses, and to insure that services are available for those who are truly indigent." The Commission does seek additional screening and review of applications by the court in questionable cases. Additionally, the Commission has implemented an Indigency Task Force to investigate possible abuses of the system and looks at strategies for improvement. The Task Force members include Representative Kim Koppelman, who is one of the Commission's members, two judges, public defenders and contract attorneys, a court clerk, and a director of juvenile court services.

The Legislature has directed the Commission to "report to the sixty-fifth legislative assembly regarding the effectiveness of limits and procedures used to ensure that defense services are provided only to indigent clients." The Commission will be prepared to do this.

DELIVERY OF SERVICES

The Commission provides services through its full time state employee public defenders in eight offices across the state, and through its monthly and conflict contractors. By statute, the Commission is required to contract for services at a minimum level of fifty percent of its biennial caseload.

The Commission's monthly contractors each take some specified portion of cases in some specified geographic region. The conflict contractors take cases on a case assignment by case assignment basis. The Commission currently has approximately 60 monthly contractors. The conflict contractors are paid at the rate of \$75.00 per hour, and the monthly contractors' payments are calculated to correspond to that same rate based on yearly average number of case assignments and average hours worked per assignment. The monthly contractors include seven appellate contractors who contract to take appeals and post-conviction matters. These attorneys are critically important as the appeals can be exceedingly time consuming for trial counsel.

The system is administered through the agency's administrative office in Valley City. The administrative office provides support services, training, some research services, and assists in conflict reassignments. H. Jean Delaney was appointed by the Commission to be the agency's second executive director, effective August 1, 2015.

CASE ASSIGNMENTS

The Commission uses the term "case assignment" rather than "case" when referring to assignments, and has defined the term based on case type (such as criminal, probation revocation, juvenile delinquency, etc.). "Case assignment" rather than "case" is used so that assignment numbers from different areas of the state will mean the same thing across the state. For example, for a criminal case assignment, all cases arising from the same event are considered part of the "case assignment" whether the prosecution has charged the defendant in multiple complaints, each with its own case number, or whether the defendant has been charged in one complaint with multiple counts, but one case number. A criminal case assignment that includes a felony is

considered to be a felony assignment, even if some of the charges in the assignment are misdemeanors. Thus, it is one felony case assignment where the attorney represents a person charged with a felony DUI and a misdemeanor DUS arising from the same traffic stop.

The Commission has an internet accessed case reporting system which the attorneys use to provide case assignment information. The attorneys are required enter assignments within one month of the assignment, and closing within one month of the conclusion of the case assignment. Closing information includes hours worked, disposition, and other salient information. This system is crucial to the agency for tracking individual, office, and district caseloads.

INCREASING CASE LOADS

Caseloads continue to increase. For FY2015, the Commission provided legal counsel services in more than 13,500 case assignments. This number represents an approximately 10% increase from FY2014, and a 45% increase from FY11.

The Northwest and North Central Judicial Districts have continued to see extreme increases in case assignments, especially felony assignments which take significantly more attorney time. For FY2015, attorneys in the NWJD handled 983 felony case assignments, which is a 29% increase from FY2014, and a 478% increase from FY2011. For FY2015, attorneys in the counties comprising the NCJD handled 795 felony case assignments, a 20% increase from FY2014, and a 143% increase from FY2011.

It wasn't just the "oil patch" areas showing increases. Services were provided by attorneys in the Northeast Judicial District in 1275 case assignments in FY2015, an increase of 43% from FY2014; this district also saw a large increase in felony assignments, with a 72% increase from FY2014 to FY2015.

Increases in case numbers, especially when the increases are in the type of cases which take more attorney time, result in higher costs for the Commission. An attorney has only so much time in which to provide services; the attorney can only handle so many case assignments and still provide quality representation to the clients. More case assignments require more attorneys. Unfortunately, many of the private attorneys in the "oil patch" have been busy with

their private clients and have not had the time to take indigent defense cases, nor the inclination, as they cannot bill the Commission their normal rates. To provide representation then, the Commission must often import attorneys from other areas to handle matters. Similarly, attorneys in rural areas are often few and far between. In order to cover the case assignments in some of the rural districts, attorneys must be imported from other areas. This leads to additional costs, such as for travel time.

FINANCING OF THE AGENCY

The 2013-15 budget was insufficient to sustain agency through June 30, 2015. The Legislature recognized the increased need of this agency for additional funding, and provided a deficiency appropriation of \$700,000 from the general fund to provide funding for expenses resulting from increased caseloads. The Legislature also provided a \$200,000 transfer of appropriation authority from the state contingencies appropriation.

The Commission's budget for the 2015-17 biennium consists of \$18,304,103 in general fund dollars, and \$2,106,914 from other funds. These other funds consist of \$200,000 from the strategic investment and improvements fund as one-time funding for contract services fees for the 2015-17 biennium, and \$1,906,914 from the Commission's special fund. The special fund consists of statutory fees paid by defendants - the court administration fee (\$100), and the indigent defense application fee (\$35). This special 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 impose the fees, have the discretion to wave the fees in any particular case.

The district courts also have the authority to order reimbursement of attorney fees. Pursuant to statute, the Commission sets a "presumed rate" for the reimbursement of attorney fees in various types of cases. Any fees recouped go into the general fund, not the agency's special fund.

The Commission applies for no grants and receives no federal money for any programs.

GOALS FOR FY2016

The Commission will receive findings and strategies for improvement from the Indigency Task Force. The Commission will review and implement as appropriate to help ensure that indigent defense services are provided only to indigent clients. The Commission will be prepared to report to the Legislative Assembly regarding the effectiveness of limits and procedures used to ensure that defense services are provided only to indigent clients.

The Commission will need to encourage the interest of new attorneys in public defense. This can be done by continuing to encourage its public defenders and contract attorneys to mentor new attorneys who show an interest in indigent defense. The Commission must encourage and support its offices in having interns and externs from the law school.

The Commission will need to reassess its employees' compensation. The Commission has lost several good employees to other agencies because of salary. The Commission is therefore in the process of reviewing the salaries of its agency attorneys and support staff, and those of attorneys and support staff in other federal, state, and local government, in addition to those in the private sector.

Respectfully submitted, this 3rd day of December, 2015


