

ANNUAL REPORT
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
 September 1, 2010
 Submitted by: Robin Huseby, Executive Director

The Commission on Legal Counsel for Indigents was established in 2005. The mission statement for this executive branch agency 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 district court with misdemeanors and felonies throughout North Dakota who are indigent, and provide indigent persons involved in some juvenile and miscellaneous matters. For a one year period beginning July 1st, 2009, through July 1st, 2010, , we provided counsel in approximately 9,100 cases. * 44% of those cases were handled by the full time public defenders, and 56% were handled by private attorneys who independently contract with the agency to provide legal services. Of those cases, 3094 were felonies, 3172 were misdemeanors, 1586 were juvenile matters, and the rest of the caseload consisted of appeals, post conviction petitions, and miscellaneous cases.

Cases are handled by a combination of the 16 full time public defenders and private attorney “contractors” throughout the state. We work with approximately 42 licensed attorneys who take excess or conflict cases for us in the state. Some of these contractors, in places such as Bismarck , Fargo, Devils Lake, Rugby, and Valley City, to name a few, have monthly contracts with us and some of the contractors, in places such as the Northwest Judicial District (Minot, Williston, and Watford City) and the Southwest Judicial District, (Dickinson, Bowman, Rhame) we have attorneys who take conflicts on a case by case basis and bill us for their work. In the areas where there are monthly contracts and public defender offices, conflict cases have to also go to private attorneys. These are the types of cases which can cause budget fluctuations as one

2-Annual Report 2010

never knows how much the case will cost. For example, if the Bismarck Public Defender office and all the area contractors have a conflict with the defendant (for example in a multiple party drug bust), then outside conflict counsel has to be hired. Robin, Jean and the Financial Officer all monitor legal services billing.

A ever present problem is finding attorneys willing to take indigent cases. We are always on the look out for interested attorneys. In some areas this problem could turn into a crisis if we cannot find someone willing to take cases for us.

The Commission on Legal Counsel for Indigents is currently staffed with 30 full time employees and seven part time employees. We have six public defender offices located throughout North Dakota; Williston, Dickinson, Minot, Bismark, Grand Forks and Fargo. Our administrative office is located in Valley City. 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. 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 and Representative Duane Dekrey. The Commission meets quarterly, and notices of said meetings are provided to the Secretary of State. We have written minutes of the meetings on file at our administrative office.

In the past 5 years we have adopted performance standards for adult criminal providers and juvenile providers. We have created a case reporting system used by all attorneys to enter their case assignments and closure hours which has dramatically helped our office not to be swamped in paperwork (we used to have attorneys send in a form for each case assignment). We have adopted a fraud risk assessment, and have hired a financial officer, to name a few accomplishments. Many of our standards, forms, and procedures can be reviewed by all on our website, www.nd.gov/indigents.

Our agency budget, as approved by the legislature, consists of \$11,420,365.00 for the 2009-2011 biennium; \$9,470,148 will be received from general fund dollars, and \$1,950,217 is generated from court fees paid by defendants-the court administration fee (\$100.00), and the

3-Annual Report 2010

indigent application fee (\$25.00). In terms of expenditures, using the same one year period of time used to count cases-July 1st, 2009 through July 1st, 2010, approximately 49% of our budget was spent on contracted (non public defender) cases, and related services such as Doctor fees, private investigator fees, and miscellaneous case costs.

We were very pleased to have our new financial office, Aaron Petrowitz, on board. Aaron had worked for the State Auditor's office . We hired Aaron in 2009 and are grateful that we were allowed this FTE. Aaron assisted us in May, 2010, when we underwent our 2nd financial audit performed by the State Auditor's office. While the final audit has not been provided to me or the Commission, from preliminary contacts with the auditor who we worked with, it appears there are no significant issues of concern. That audit should be filed by the end of the year. We had complied with all informal recommendations from our first audit two years ago.

Our governing statute requires the annual report to state needs for the agency for the next year. We plan on asking the legislature for three FTE positions to staff a public defender office in the North East District, which includes Devils Lake, Grafton, Pembina, Rugby, Cavalier and other cities. We are having difficulty finding attorneys willing or able to take indigent cases in that region. We also are asking for funds to raise the rate for legal services from \$65.00 an hour to \$70.00 an hour. This raise will hopefully encourage more attorneys to work with us on indigent defense cases. \$65.00-\$75.00 an hour is about mid-range around the country for what attorneys are paid in indigent cases.

There are two looming issues currently being studied by interim legislative committees that could affect our agency dramatically. One is the issue of responsibility for attorney services in civil commitment of sexual offender cases. Currently they are the responsibility of individual counties. The Association of Counties is lobbying to have some state agency take those over. The interim Judicial Process Committee has asked for our agency input on potential legislation which would have our agency take over the legal services in this area.

Further, there is a study to have the Commission on Legal Counsel take over the legal services in all mental health cases in ND. Currently the counties pay for mental health legal services. How would the addition of one or both of these programs affect us? We would have to

3-Annual Report

separate our criminal matters from the civil matters, and hence form a new “civil” division. We would not want our criminal based budget wrapped up with the civil expenditures. I have publically gone on the record and indicated it is not my desire to see our agency grow by taking on new missions, but of course we will do what we are asked by the legislature to do, as long as we would get the appropriate funding. We are watching these matters closely. The public defenders we now have would not be taking on either one of these types of cases (that is, civil commitment of sexual offenders or mental health respondents). Of the contractors we have doing work for us, only a couple that I know of have taken on the defense in civil commitment of sexual offenders. The vast majority will not take them as these cases are long and drawn out, and require significant expertise as they are driven by expert psychiatric testimony. In terms of mental health cases, some contractors who do indigent defense in the state do take on mental health work for counties; I have not conducted a survey to see who they are.

One issue that should be resolved whether we take on either one of these programs or not is the equity issue regarding attorney compensation. Attorneys are paid different rates across the state for services rendered on civil commitment. and in mental health cases.

We held our agency sponsored training in June, 2010, in Grand Forks, ND, and have encouraged the attorneys to take in other free continuing legal education events in North Dakota throughout the year. We hold one free training each summer for public defenders, contractors who do public defense, legal service providers, and federal public defenders. We usually invite law students for free, as well. We also sent two attorneys to the Western Trial Advocacy School in Laramie, Wyoming (one of the best in the United States) in June, 2009 and June 2010. We plan to send two attorneys each year to this school. I am on the Court Improvement Committee for the Supreme Court and we usually get to send two of our agency attorney or contractors a year to free training around the country on Juvenile Law issues, courtesy of a federal grant awarded to the Court Improvement Committee.

4-Annual Report 2010

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 1st day of September, 2010

Robin Huseby, Executive Director
Commission on Legal Counsel for Indigents
Department 188

*The case assignment number for the year is most probably higher than 9100 as some people may have been late in getting assignments on the case reporting system.