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BENTON COUNTY OFFICE OF PUBLIC DEFENSE

SUPERVISION AND QUALITY CONTROL PLAN – LFO ADDENDUM

Quality Representation – Fiscal Accountability

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INTRODUCTION & PURPOSE

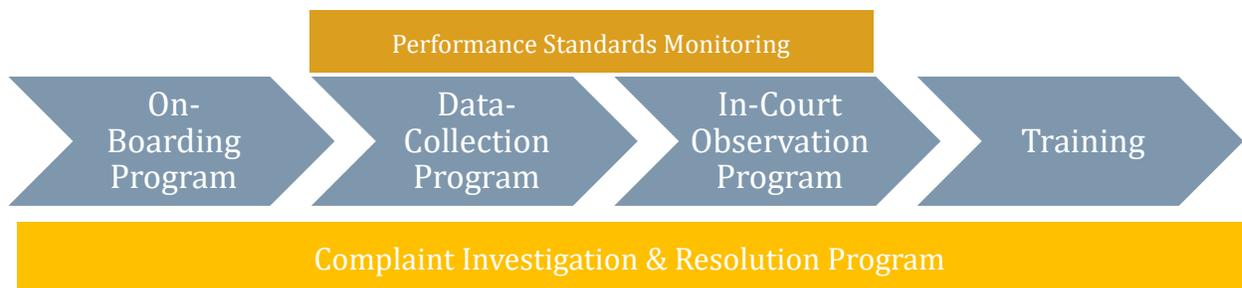
Introduction & Purpose

This addendum supplements OPD's overall Supervision and Quality Control Plan with a focus on Supervision and Quality Control of legal financial obligation ("LFO") defense cases. Issues relating to LFOs in criminal cases have come under increased scrutiny by Washington appellate courts as well as outside advocacy groups. The purpose of this addendum and the policies contained within are to ensure that OPD and its staff and contract defenders always effectively advocate for, and defend, the rights of clients when it comes to LFO matters in their cases.

OVERVIEW

Overview

Quality control for LFO cases in Benton County will be accomplished by a number of interlinked steps.



On-Boarding

WHAT IS ON-BOARDING

Please see the OPD Supervisory and Quality Control Plan for information about the overall On-Boarding process.

ON-BOARDING WITH REGARD TO LFO DEFENSE

In the on-boarding process, special attention will be paid to ensure that new staff and contract defenders understand the importance of LFO issues and are also equipped to be effective in that regard. Topics that will be addressed at this time include:

1. The difference between mandatory and discretionary LFOs at sentencing.
2. Addressing LFOs in plea negotiations
3. Standards and required findings before imposition of discretionary LFOs.
4. The different standards between imposition and collection of LFOs.
5. Standards and required findings before using incarceration to enforce LFOs.
6. Burden of proof for LFO proceedings.

PERFORMANCE STANDARDS MONITORING - DATA COLLECTION

Performance Standards Monitoring - Data Collection

WHAT IS DATA COLLECTION

The Data Collection Program uses the collection and review of multiple data points to provide a broad picture of public defender effectiveness and competence on LFO cases.

WHAT DATA IS COLLECTED

A comprehensive set of Performance Standards data is collected on LFO case defense. This data is different than what is collected with other criminal defense cases because of the difference in type of defense work done and difference in LFO docket practices.

DATA COLLECTED

DATA POINT	SOURCE	IMPORTANCE
Time in court on LFO dockets providing general representation	Reports from public defenders.	LFO defenders often provide provisional and oftentimes clerical assistance to defendants on LFO dockets to assist them in communicating with the court or obtaining necessary documents for the court. This documents how much time LFO defenders spend on such matters.
Time preparing for court general representation including meeting with prosecutors, Clerk's Office or Probation Department	Reports from public defenders.	This helps gauge the amount of time that LFO defenders are putting into working on and negotiating their cases.
Time spent on "office hours" at Justice Center	Reports from public defenders.	LFO defenders meet with clients primarily during set office hours at the courthouse. This is done for the convenience of clients and to minimize the number of trips they need to make to the courthouse.
Time spent off-site assisting clients with collecting proof of disability	Reports from public defenders.	Lack of proof of disability (primarily SSI status) is a major hurdle for disabled clients who face LFO collection proceedings. While not necessarily required of them, LFO defenders often spend time off-site (at the Social Security office primarily) assisting clients with obtaining proof of disability both for

PERFORMANCE STANDARDS MONITORING - DATA COLLECTION

		client convenience and judicial efficiency.
Number of Motions for Remissions or (agreed) Orders of Remission Filed	Reports from public defenders.	Orders for remission are a very effective way to defend LFO cases. These orders are appropriate when a defendant is unable to pay (most often as a result of disability) and continuing to enforce the LFO would be a significant hardship on their family. The number of remission motions filed (contested) or number of remission orders entered (agreed upon) are a good gauge of public defender effectiveness.
Number of assigned cases with substantive or contested hearings where extrinsic evidence presented	Reports from public defenders.	
Number of assigned cases with clients in custody for failure to appear for summons	Reports from public defenders.	

PERFORMANCE STANDARDS MONITORING - COURT OBSERVATION

Performance Standards Monitoring - Court Observation

As useful as objective data may be in evaluating performance, it is not complete without actual observation of public defender in-court performance. Therefore, the second prong to the Performance Standards Monitoring Program is Court Observation.

WHAT IS COURT OBSERVATION

Court Observation is the actual in-court observation and evaluation of public defenders conducted by the Public Defense Manager or designee and is designed to ensure that each public defender has his/her in-court performance observed at least once per quarter.

WHAT IS EVALUATED DURING COURT OBSERVATION

Court Observation is conducted in a uniform manner and records are kept about the performance of public defenders both on a general docket and attorney/case-specific basis.

During each Court Observation session, the following information is recorded and performance criteria evaluated:

GENERAL DOCKET CRITERIA

CRITERIA	IMPORTANCE
Are all assigned defenders present (or, if not present, have they notified OPD and made arrangements for coverage)?	It is important for good client service, as well as for docket and judicial efficiency, that public defenders are in court when required.
Does there appear to be excessive discussions in court with in-custody or out-of-custody clients prior to calling cases?	Public defenders are expected to meet with their clients in advance of court sessions. Meeting with clients in court not only disrupts the flow of court proceedings, but also increases the risk that clients have insufficient time to discuss issues or consider options. It is understood, however, that factors including uncooperative clients or shifting time frames, may make it difficult to meet with clients before court appearances – a dynamic that is especially pronounced in LFO cases.
Are any defenders not in the courtroom when required?	Clearly public defenders must be in court when required.

ATTORNEY/CASE-SPECIFIC CRITERIA

CRITERIA	IMPORTANCE
In or Out-of-custody?	Cases where the client is in-custody always require more diligence and quicker action since

PERFORMANCE STANDARDS MONITORING - COURT OBSERVATION

Status of case	continued incarceration has significant impacts on clients and their families. Careful attention is paid (and records kept) on the purpose of the hearing and what was (or wasn't) accomplished.
Was the case continued without much action taken and if so was there a reasonable justification?	Particular attention is paid to cases where nothing much is accomplished and the case is simply continued to another date. Excessive continuing of cases can be indicative of insufficient efforts to handle the case or other issues relating to attorney competence or efforts. Reasons for continuances are always noted and evaluated if provided on the record.
Any indication that client meetings outside of courtroom have taken place?	It is important that public defenders are meeting with clients before court though it is understood that particularly with LFO cases, clients often don't keep in good touch with their attorneys, making pre-court communication difficult.
Does defender appear prepared?	This indicator often goes hand in hand with indicators of client meetings before court. Obviously being prepared for court (and whatever transaction or action is being planned) is of paramount importance in effective representation.
Does defender appear effective in advocating for client?	Public defenders will be evaluated on their willingness and effectiveness in advocating for their clients.
Any significant problems noted?	If any significant issues of concern are noted, then the time, case name and number, and details are noted for further follow up.

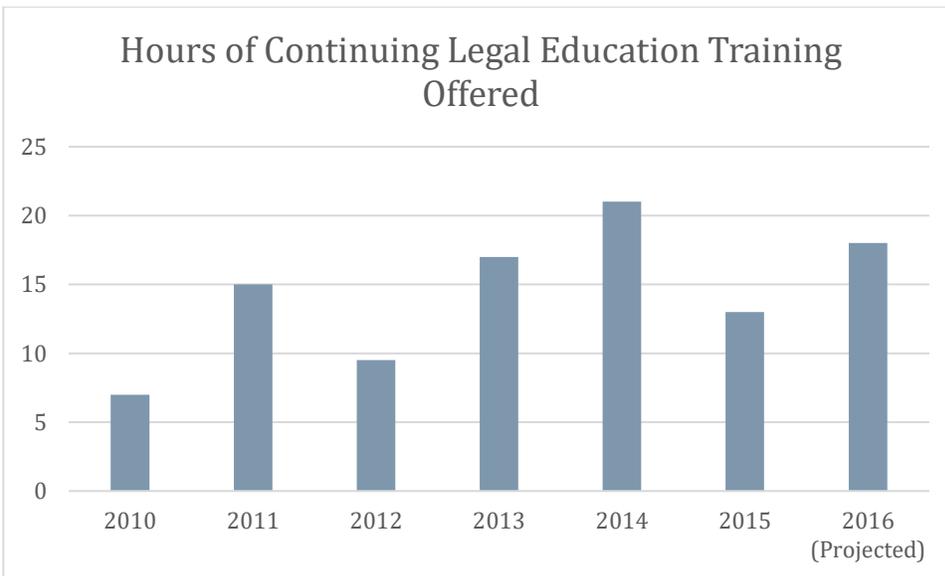
All Court Observation records are archived and indexed for easy retrieval. Contract public defenders are informed about the Performance Standards Monitoring Program and advised that the results of both the Data Collection and Court Observation prongs of the Program will be used to assist with contract award, transfer, and promotional decisions. When significant client complaints are received, the records collected through the Performance Standards Monitoring Program are also anticipated to be useful in resolving them appropriately.

TRAINING

Training

Benton County OPD has, and will continue to be, committed to supporting its public defenders by providing them with local, free, training on topics that relevant and helpful to their public defense practice through the OPD In-House Training Program. Training is always approved by the Washington State Bar Association for Continuing Legal Education (“CLE”) credits since OPD is an approved CLE training provider, and is also always provided at no cost to the taxpayers due to a fee waiver by the Bar Association and a network of attorneys and professionals who provide training at no cost.

In addition to other training topics, special emphasis will be placed on LFO-related topics and at least one session will be offered every year on this topic.



COMPLAINT INVESTIGATION & RESOLUTION

Complaint Investigation & Resolution

OPD has developed a very well-defined complaint resolution program for client complaints against public defenders. The program is intended to strike a balance between the many competing interests when it comes to complaints, including:

1. Accessibility to clients of complaint process
2. Limitation of complaint process to legitimate complaints only (ie weeding out complaints by anyone else other than clients except when clients are incapacitated or mentally ill)
3. Encouragement of clients and public defenders to take steps toward better working relationships before formal complaints are considered by clients
4. Facilitation of better client/public defender communication without a need for a formal complaint (and therefore preserving attorney-client relationships and leading to better representation and outcomes)
5. Thoroughness of investigations
6. Facilitation of quick and appropriate resolutions
7. Communication with clients

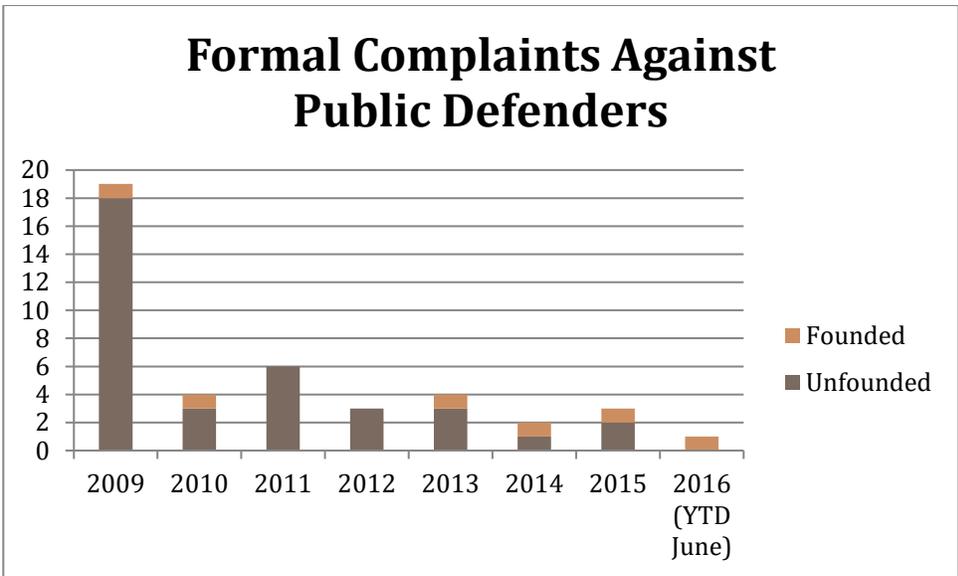
It features multiple and well-publicized ways for complaints to be received, a defined process (including timeframes) for investigation, and a clear resolution to each. More information about OPD's Complaint Investigation & Resolution Program can be found on the [Client Complaint page](#) of our website.

PROGRAM SUCCESS

The success of this program is apparent in the fact that unfounded complaints now comprise a significantly lower percentage of overall formal complaints than before with a number of recent founded complaints resulting in appropriate disciplinary action against contract defenders¹. OPD has even received compliments from the State Office of Public Defense who has informed us that they even suggest other jurisdictions review OPD's [Client Complaint Page](#) when working on putting together their own policies and procedures.

¹ In addition to outright contract termination, sometimes contract defenders are also offered contract caseload limitations or transfers to a more appropriate contract as a means of addressing problems raised.

COMPLAINT INVESTIGATION & RESOLUTION



Exit Interviews

The final piece to the quality control equation is conducting exit interviews with outgoing contract defenders and staff defenders (who are leaving on good terms). Through experience, it is quite apparent that feedback received is much more honest and candid when contract and continued employment considerations are no longer a factor. Still a work in progress, the ultimate goal of exit interviews is to use a combination of in-person interviews and on-line questionnaires to gather as much information as possible about what OPD is doing well and should continue doing, what OPD is not doing well and should discontinue or do differently, and what practices OPD may want to consider incorporating.

CONCLUSION

Conclusion

Ensuring the quality of public defense services is the number one priority at the Benton County Office of Public Defense. This whitepaper has outlined OPD's multi-faceted approach to monitoring public defense quality. As Benton County and OPD's needs change and evolve, and as the legal landscape of public defense in Washington State changes, modifications will be made to this approach. If you are interested in learning more about OPD's operations or changes to its public defense quality monitoring efforts, please visit [OPD's website](http://BentonCountyDefense.org) (BentonCountyDefense.org) and review its [Annual Reports and Strategic Plans](#).

Special note about Performance Standards Monitoring: The results of the Data Collection prong of Performance Standards Monitoring are published in [OPD's Quarterly Reports](#). Quarterly Reports are posted on OPD's website after they have been presented formally to the Benton County Board of County Commissioners.