



Department of Legislative Services Office of Legislative Audits

Office of Public Defender

Report dated February 10, 2011



Department of Legislative Services Office of Legislative Audits

Audit Overview

- The Office of the Public Defender (OPD) provides legal services to eligible indigent individuals charged with violating State, county, and/or municipal laws involving possible incarceration.
- OPD services are provided in criminal and juvenile proceedings, post-conviction proceedings, probation and parole revocations, involuntary commitments to public or private institutions, and termination of parental rights proceedings.
- FY 2010 operating expenditures totaled \$86 million, primarily for payroll costs. Services are provided through a central headquarters and 41 field offices (including 12 district offices).
- The audit report included seven findings, one of which was repeated from the preceding audit report.



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Audit Overview

Prior Performance Audit

In response to a request included in the 2008 *Joint Chairmen's Report*, on November 19, 2009 OLA issued a performance audit report on certain aspects of OPD operations. Due to the short period of time since we issued our performance audit report, we did not include an assessment of the status of these findings in this report.

Recent Court Cases Could Impact OPD Operations

Two recent court cases have and/or could have a significant impact on the OPD eligibility determination process and the scope of services for which OPD will need to provide legal representation.

According to OPD records, there has been a 10% increase in their caseload as a result of one of these cases and the other case, which could further increase OPD caseloads, is currently under appeal.



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Key Audit Issues

- OPD policies and procedures for determining client financial eligibility were not sufficiently comprehensive.
- OPD lacked adequate procedures to ensure administrative and court-ordered fees due from clients were recorded in the accounts receivable records and were pursued for collection. Certain internal controls over accounts receivable were not in place.
- OPD spent approximately \$1.9 million during FYs 2007 through 2010 for two contractual employees to perform network and database management services instead of pursuing less costly State positions to perform these services.



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Client Eligibility

OPD district offices determine the financial eligibility of individuals requesting services. During CY 2009, OPD opened 216,500 new cases.

- Policies and procedures for determining eligibility were not comprehensive. (**Finding 1**)
 - Applicants were not required to submit documentation to support reported expenses, which were used to determine whether the client had the ability to pay for legal representation.
 - The policies and procedures did not define the circumstances under which applicants' reported income and expenses would be verified with available third party data as authorized by State law. According to OPD management, no such verifications have been conducted.
 - Eligibility decisions were not always properly supported, as required by the OPD *Intake Manual*, and there was a lack of evidence that such determinations were subject to independent supervisory review and approval (**Finding 2**).
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Client Billing

Background

State regulations require applicants seeking representation to enter into an Administrative Fee Agreement (AFA) at the time of application, which commits them to pay OPD an administrative fee of \$25 for juveniles and \$50 for adults. State law also provides for the applicant to reimburse OPD for the cost of the legal services in the amount, time, and method of payment determined by the court.

OPD intake workers enter the applicable fees into OPD's case management system and, on a monthly basis, the fees are electronically interfaced with OPD's accounts receivable system.

As of June 30, 2010, accounts receivable related to these fees and court-determined reimbursements totaled \$19.4 million and \$3.9 million, respectively. Collections on these accounts totaled \$1.7 million during FY 2010, of which \$1.1 million was collected via the State's Tax Refund Intercept Program (TRIP).



Client Billing (continued)

OPD lacked adequate procedures to ensure administrative fees were recorded in the accounts receivables records and were pursued for collection. (Finding 3)

- Fees for 40,000 cases opened during FY 2010, totaling approximately \$1.9 million, were not recorded in the accounts receivable records to help ensure they are tracked and pursued for collection.
- OPD management advised us that these accounts were recorded in the case management system (CMS), but they did not interface (post) to the receivable records because of errors in some of the applicant data in the CMS.
- The failure to record assessed fees in the accounts receivable records has been commented upon in our five preceding audit reports dating back to December 1995.



Client Billing (continued)

OPD did not assess administrative fees in certain instances and did not ensure clients were billed for court-ordered fees as required by State regulations. (Finding 4)

- According to our estimates, during FY 2010, administrative fees totaling \$330,000 were not assessed on certain applicants. For example, OPD did not assess fees totaling \$78,400 on applicants that were denied services. State regulations require that “an applicant *seeking representation* by the office shall be required to enter into an agreement to pay an administrative fee at *the time of application*.”
 - OPD had not established adequate procedures for ensuring clients were billed for court-ordered fees. OPD attorneys were not required to report, for each case, whether or not a fee was assessed by the court. Also, there was no independent verification that amounts assessed were properly recorded.
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Client Billing (continued)

OPD did not properly segregate accounts receivable duties and did not require independent approval for critical transactions (**Finding 5**).

- One OPD employee had unilateral control over client accounts receivable records and related activity, including processing adjustments, deleting client accounts, and maintaining the related accounts receivable control account.
 - There was no documented supervisory review and approval for accounts receivable transactions or for any adjustments made to the client accounts during the audit period.
 - Other than CCU abatements, non-cash credits did not require prior supervisory approval, and OPD could not readily generate a report of all adjustments or deletions to the client accounts. In FY 2008, OPD abated 574,563 client accounts, totaling \$28 million and, in FY 2010, processed \$103,000 in credits due to duplicate AFA numbers.
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Information Technology Services

OPD expended approximately \$1.9 million during fiscal years 2007 through 2010 (average annual cost of \$464,000) for two individuals, under contract, to perform network and database management, instead of pursuing State positions to perform these services. OPD advised that these services would be needed for the foreseeable future. (Finding 6)

- Although the aforementioned contract was procured with Department of Budget and Management (DBM) and Department of Information Technology approvals, OPD should have worked with DBM to authorize two full-time State positions to perform the services as provided for in State law.
 - The use of State employees for these positions could result in significant cost savings. For example, a database specialist supervisor, which earns a FY 2010 salary of up to \$78,173 under the State's personnel system, has job responsibilities similar to one of these contractual positions.
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Conclusion

OPD needs to ensure that :

- Policies and procedures for determining client financial eligibility are sufficiently comprehensive.
- Administrative and court-ordered fees due from clients are recorded in the accounts receivable records and pursued for collection.
- Accounts receivable duties are properly segregated and critical transactions are subject to independent review and approval.
- It pursues obtaining State positions (when available and cost beneficial) to perform ongoing operational functions instead of using contractors.