



**Department of Legislative Services
Office of Legislative Audits**

**Presentation to Senate
Judicial Proceedings Committee**

Office of the Public Defender

Report dated August 21, 2014

**Joshua S. Adler, CPA, CFE
Sandra C. Medeiros**



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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, probation and parole revocations, involuntary commitments to institutions, and termination of parental right proceedings.
 - FY 2013 operating expenditures totaled \$93 million, primarily for payroll costs. According to OPD, in CY 2012, 241,000 new cases were opened.
 - The August 2014 audit report included 3 findings. Additionally, 3 findings from the preceding report (dated February 10, 2011) were repeated. We also determined the current status of certain findings from our November 2009 performance audit report on OPD's budgeting and financial management practices.
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Key Audit Issues

- An April 2010 court decision regarding the OPD client eligibility determination process has impacted client services.
- OPD did not ensure that applications for representation were supported with income and expense documentation, as required by State regulations, so there was a lack of assurance that certain clients were eligible for services.
- OPD did not ensure that administrative fees were assessed to all applicable clients.
- Follow-up of findings from our 2009 performance audit report noted similar concerns with the need to improve OPD's financial budgeting and its efforts to meet attorney caseload standards.



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Significant Court Decisions

Client Eligibility

As disclosed in our February 2011 report, the Court of Appeals decided in April 2010 that OPD had been erroneously rejecting potential clients when determining the client's financial ability to pay representation costs. Specifically, its eligibility criteria solely considered income and assets, without considering expenses. In May 2010, OPD changed its eligibility criteria to consider expenses and its records indicated that there was a 10% increase in cases.

Right to Counsel at Initial Bail Hearings

In September 2013, the Court of Appeals issued a decision that an indigent defendant is entitled to State-furnished counsel at the defendant's initial appearance before a District Court Commissioner. Chapter 462, Laws of MD 2014, restricted \$10 million in the Judiciary's FY 2015 budget to be used to provide such counsel. We were advised that OPD would not have an official role in the implementation of this decision.



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Client Eligibility

Background

- State law generally provides that client eligibility shall be determined by the need of the applicant and specifies certain financial factors to be considered.
 - According to State regulations, an applicant seeking OPD's services is required to complete a form disclosing all assets, income, and expenses and provide documentary evidence of all financial information, such as pay stubs, reported on the form.
 - OPD's *Intake Manual* states that, in instances where the applicant claims to have no income or expenses, the applicant shall complete a form documenting the individual's financial support was provided by another person. This would also include the other person's contact information for verification purposes.
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Client Eligibility (continued)

OPD did not ensure that applications for services were supported and subject to supervisory review. Consequently, there was a lack of assurance that certain clients were eligible to receive services (**Finding 1**). Our test of 40 cases disclosed:

- OPD could not find the applications for 4 cases and for 32 cases there was no documentation to support the income and expenses reported by the clients on the applications.
 - For all 40 cases there was no evidence of independent supervisory reviews of the eligibility determinations completed by intake workers.
 - OPD's *Intake Manual* did not require supporting documentation of client information or independent supervisory reviews.
 - In the prior audit report we noted that OPD did not verify certain client-reported information, and that eligibility determinations were not always properly supported nor subject to a documented independent review and approval.
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Client Eligibility (continued)

Finding 1 Recommendation and Response

OLA's Finding 1 recommendations were that OPD ensure that

- eligibility determinations are properly supported and reviewed and approved by supervisory personnel (repeat), and
- the *Intake Manual* is revised to require supporting documentation from applicants for reported financial information and the aforementioned documented supervisory review (repeat).

OPD responded that it

- was planning to seek a change in regulations so that it would no longer be required to obtain documentary evidence of financial information; although, until the regulations were changed, OPD would strive to obtain such documentation, and
 - it would perform supervisory reviews of eligibility determinations and would modify its policies to require such reviews.
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Client Billings

Background

- State regulations require applicants seeking representation, except for unaccompanied juveniles and clients confined to a mental institution, to pay an administrative fee of \$50 for adults and \$25 for juveniles.
- According to OPD's records for FY 2013, administrative fee billings totaled \$6.9 million, collections totaled \$2 million and the accounts receivable balance totaled \$24.3 million, as of June 30, 2013.



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Client Billings (continued)

OPD did not ensure that administrative fees were properly assessed to all applicable clients (**Finding 2**).

- Our comparison of new cases recorded in OPD's case management system in CY 2012 with the related accounts receivable (AR) records of cases charged administrative fees disclosed approximately 12,200 cases for which administrative fees were not assessed.
 - Our test of 20 of these cases disclosed 8 cases that were not properly assessed fees. OPD acknowledged that fees should have been charged in 3 of these cases, but asserted that for the other 5 cases, OPD had not charged the fees because the client had a previous, unrelated case. However, there is no provision exempting a client from the fee in such an instance.
 - In the prior audit report we noted OPD did not ensure that all fees were recorded in the AR system and pursued for collection. Our comparison of FY 2010 new cases found 40,000 cases were not posted to AR records due to interface problems.
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Client Billings (continued)

Finding 2 Recommendation and Response

OLA's Finding 2 recommendation was that OPD assess administrative fees to applicants, as required by State regulations (repeat).

OPD responded that it would review and amend State regulations, as necessary, to reflect its policy for assessing administrative fees, and assess fees, accordingly.



Performance Audit Follow-Up

Background

- In response to a request in the April 2008 *Joint Chairmen's Report*, OLA conducted a performance audit, dated November 19, 2009, addressing certain aspects of OPD's operations. In November 2001 OLA issued an earlier performance audit report on the OPD's budgetary and financial management practices.
- The 2009 performance audit focused on assessing the effectiveness of OPD's budgetary practices and the related procedures regarding funding decisions. Additionally, we reviewed the procedures and controls over case management.
- The 2009 performance audit report included 8 detailed recommendations. During our most recent fiscal/compliance audit, we conducted a follow-up review of the actions taken by OPD to address certain recommendations.



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Performance Audit Follow-Up (continued)

Follow-Up Analysis

OPD still needs to improve its financial budgeting and its efforts to meet attorney caseload standards. For example, we noted the following:

- OPD had held discussions with the Department of Budget and Management (DBM) to resolve budgeting concerns, but OPD still required deficiency appropriations for FY 2011, 2012 and 2013. Additionally, since OPD lacked sufficient appropriations to fund its expenses at year-end, it paid certain expenses from the subsequent year's appropriation (**Prior Objective 1**).
 - We were advised by OPD management that it could not meet its current caseload standards with existing staffing levels. Furthermore, due to funding considerations, OPD had not implemented a process to determine whether caseload standards needed to be updated nor had it developed case management tools to more efficiently manage its caseload (**Prior Objective 2**).
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Performance Audit Follow-up (continued)

Follow-up Recommendation 1 and Response

- OLA recommended that OPD continue to work with DBM to resolve budgeting issues, identify ways to meet its budgeted appropriation, and improve financial reporting and expenditure monitoring.
- OPD responded that it was in regular contact with DBM re: budget issues and reducing costs, and that it would evaluate the feasibility of (implementing) reporting and monitoring systems for certain costs.

Follow-up Recommendation 2 and Response

- OLA recommended that OPD develop and implement the most appropriate strategy for meeting its caseload standards, periodically determine if those standards need to be modified, and as practicable, either develop case management tools or work with DBM to obtain funding for such tools.
 - OPD responded that it regularly considers standards when allocating attorney resources, routinely monitors actual caseloads and comparative statistics, and that DBM denied funding for a new case management system in FY 2015 budget submission.
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