

2009 Non-Mandated Expenditures Department Response

DEPARTMENT: PUBLIC DEFENDER
DEPARTMENT HEAD / ELECTED OFFICIAL: LOUIS F. STRIGARI
OCA TITLE: 470039- PUBLIC DEFENDER

Hamilton County departments and agencies have the opportunity to respond and provide insight to the Office of Budget and Strategic Initiatives (BSI) initial assessment as to non-mandated services. This response form should be used for each specific BSI assessment; not a general response for entire department. Take as much space as necessary for each question.

1. *Are there elements of the BSI non-mandated services that you believe are mandated? If so, provide the specific Ohio Revised Code (ORC) citation, Code of Federal Regulation (CFR) and/or relevant case law information. Please be especially diligent if there is a specific service or staffing level prescribed by law.*

Section 120.14 of the ORC defines the County Public Defender Commission's Powers and duties while sections 120-1-06 and 120-1-15 of the Ohio Administrative Code provide greater detail. Identified within these sections are the following key administrative, budgetary, operational and fiscal duties that are executed by the Deputy Public Defender, Fiscal Officer and Computer Programmer in support of the Public Defender Commission. In addition, the final completion of the Public Defender's Computer Information System Upgrade is critical to the execution and fulfillment of these responsibilities.

Orc 120.14 states in part:

(C) In administering the office of county public defender, the commission shall:

(1) Recommend to the county commissioners an annual operating budget which is subject to the review, amendment, and approval of the board of county commissioners;

(b) Make monthly reports relating to reimbursement and associated case data pursuant to the rules of the Ohio public defender commission to the board of county commissioners and the Ohio public defender commission on the total costs of the public defender's office.

(E) The commission may contract with any municipal corporation, within the county served by the county public defender, for the county public defender to provide legal representation for indigent persons who are charged with a violation of the ordinances of the municipal corporation.

(1) Comply with all standards established by the rules of the Ohio public defender commission;

(2) Comply with all standards established by the state public defender;

(3) Comply with all statutory duties and other laws applicable to county public defenders.

In addition, defined under section 120.15 of the ORC – County Public Defender – Powers and Duties Identified within this section are the following key budgetary, operational and fiscal duties that are executed by the Deputy Public Defender, Fiscal Officer and Computer Programmer in support of the Public Defender. ORC 120.15 states in part:

2009 Non-Mandated Expenditures Department Response

(B) In carrying out the responsibilities and performing the duties of his office, the county public defender shall:

(1) Maintain an office, approved by the commission, provided with a library of adequate size, considering the needs of the office and the accessibility of other libraries, and other necessary facilities and equipment;

(2) Keep and maintain financial records of all cases handled and develop records for use in the calculation of direct and indirect costs in the operation of the office and report monthly pursuant to the rules of the Ohio public defender commission to the county public defender commission and to the Ohio public defender commission on all relevant data on the operations of the office, costs, projected needs, and recommendations for legislation or amendments to court rules, as may be appropriate to improve the criminal justice system;

(3) Collect all moneys due from contracts with municipal corporations or for reimbursement for legal services under this chapter . . . All moneys collected or received by the public defender shall be paid into the county treasury to the credit of the general revenue fund.

(4) Appoint assistant county public defenders and all other personnel necessary to the functioning of the county public defender's office, subject to the authority of the county public defender commission to determine the size and qualifications of the staff pursuant to division (B) of section 120.14 of the Revised Code. All assistant county public defenders shall be admitted to the practice of law in Ohio, and may be appointed on a full or part-time basis.

120-1-06 Facilities for a county or joint county public defender office.

The supporting staff, facilities, and other requirements needed to maintain and operate an office of a county or joint county public defender shall be sufficient to allow effective representation and shall be substantially equivalent to that provided for other public components of the justice system. In applying this rule, the following criteria shall be governing:

(A) The budget of a public defender shall include:

(1) Adequate quarters and other facilities;

(2) An adequate library to meet the needs mandated by the duties of the office, considering the needs of the office and the availability of other libraries;

(3) Adequate tape-recording, photographic, and other investigative equipment of a sufficient quantity, quality, and versatility to permit preservation of evidence;

(4) Funds available for the confidential employment of experts and specialists, such as psychiatrists, pathologists, and other scientific experts in all cases where the same may be of assistance to the defense;

(5) Supportive services shall include secretarial, investigative, and other services necessary for an adequate defense. These shall include not only those services needed for an effective defense at trial, but also those that are required for effective defense participation in every phase of the process, including determinations on pretrial release, competency to stand trial, and disposition following conviction, appeals, and postconviction relief.

(B) The office of the county public defender or joint county public defender shall be located with consideration for the convenience to clients and access to the courts and other necessary services.

(C) Each defender shall have adequate office space to assure privacy in consultation with clients and efficiency in operations.

120-1-15 Adequate fee schedule for assigned/appointed counsel and public defender salaries.

(A) In establishing a fee schedule to be paid appointed counsel in indigent cases eligible for reimbursement pursuant to section [120.33](#) of the Revised Code, the county commissioners and county bar association shall establish a schedule that is comparable to the fees paid to retained counsel in the same type of cases. No county will be entitled to reimbursement from the state public defender if it can be demonstrated that its fee schedule is

2009 Non-Mandated Expenditures Department Response

inadequate for an appointed attorney to cover the costs of overhead while working on an appointed case and to generate a reasonable income for work performed.

(B) Salaries paid to public defenders should be equivalent to salaries paid to similar positions within the justice system.

- 2. Who are the recipients of the service or activity for the non-mandated service? How many recipients? Please note any internal customers, other county departments, jurisdictions, businesses, etc. If the service is geographic specific (i.e., a satellite probation office), please identify the neighborhood, township or municipality.*

All Public Defender (113) full-time and part time employees, all (45) contract attorneys, all (280) members of the assigned counsel panel and all of approximately (60,000) annual clients are recipients of the key services and activities provided by the Deputy Public Defender, Fiscal Officer, Computer Programmer and the Computer Information System.

These required services include the following:

Deputy Public Defender: All internal Administrative Activities, Management oversight, Seminars, Contracts, Employee Policy Manual Computer system oversight and Indigence Qualifications.

Fiscal Officer: Overall responsibility for \$13M General Fund Budget of all financial, accounting and audit functions of the department. Prepares mandatory monthly and annual financial and statistical reports to the State of Ohio, HCJFS and State Public Defender. Responsible for oversight of payroll, inventory, accounts payable, purchasing contract attorney payments, collection and recording of revenues, fee schedules and assigned counsel vouchers. Oversees all departments' Human Resource functions with part time assistance. Fiscal Officer interacts and provides services to County Auditor, Personnel, BSI, Treasurer and several judicial areas.

Computer Programmer: Responsible for the department's IT duties. Coordinates the computer system (CMS-PD) project improvements and enhancements with Pro Ware. This computer application is the key information system which provides overall attorney information, scheduling, case management, Seminar & CLE Tracking, statistical, financial and client eligibility information. Computer Programmer provides system security, troubleshooting, training and report development.

Training Coordinator (Vacant): Serves as the coordinator for legal training and education for all legal staff, contract attorneys, and the assigned counsel panels by assuming a managerial role in promoting, creating and expanding training opportunities for legal and administrative staffs of organizations providing legal services for the indigent citizens of Hamilton County. The recent NLADA report strongly supported the need for the development of training assessment instruments and processes, curricula for new attorneys, ongoing training for all legal and support staff, and an annual calendar of training activities.

Chief Attorney 2 (Vacant): This administrative position provides significant administrative oversight, employee performance evaluations, mentoring, handling felony/misdemeanor cases, supervisory responsibilities as assigned by the Public Defender. The recent NLADA report directed a strong

2009 Non-Mandated Expenditures Department Response

emphasis on establishing ongoing employee performance evaluations and the continuance of office re-organization efforts.

Computer Software Completion:

The NLADA recommended completion of the Computer Software System is critical to the department's ability to carry on day-today attorney scheduling, case management, client information indigence eligibility, statistical and financial information.

Final completion of the Public Defender's CMS and Juvenile software systems to include Juvenile Phase 2 - items #6 through #10 and GAL Items#1 through #9 detailed within the Addendum No. 5 to the CMS Support Agreement with Pro Ware are critical for Public Defender application Enhancements. This system serves all internal staff, contract attorneys and assigned counsel. County Administration and CMS has authorized Pro Ware as the approved vendor. Existing application for the GAL, Juvenile CMS and Billing are using antiquated FoxPro software which has not been supported for over several years. As a result any necessary modifications change or updates to the applications have been impossible. All phases include conversion of existing Public Defender data to the new database structure, installation and testing of new application modules and implementation to provide user support during system implementation and start-up of new application modules.

Interns: The year-round and seasonal interns provide key attorney support in lieu of sufficient paralegal and legal secretary staffing. The recent NLADA report recommended adding forty-seven legal secretaries to properly assist the office staff.

- 3. Are there county revenues associated with the non-mandated services? If so, please provide the methodology for any lost revenues. Please consider state or federal reimbursements, grants, fees, etc. Please note if the service or activity is included in the county's indirect cost plan.*

The revenue considerations for \$664,584 and 8.5 FTE's in non-mandated services pertain to the 25% state reimbursement amount of \$186,083. These services are a portion of the 2008 indirect cost plan reimbursed by the state in the amount of \$118,478 which represents an 86% increase over the 2007 amount of \$63,737. The Public Defender has also recommended BSI to pursue alternative revenue sources for the 25% state eligible reimbursement from the state PD Office for work provided by the general fund staff at Pre-Trial Services.

- 4. If the county did not provide the non-mandated service, is there the potential for increased expenditures in another jurisdiction within Hamilton County? If so, please list the specific municipality and/or township.*

The aforementioned duties, responsibilities and oversight provided by the Deputy Director, Fiscal Officer, Computer Programmer, Training Coordinator, Chief Attorney 2 and Legal Interns would result in undetermined level general fund expenditures by the offices of the County Auditor, Personnel, BSI, County Computer Support including Pro Ware and other contractual support.

2009 Non-Mandated Expenditures Department Response

5. *Does the non-mandated service include Board of County Commissioner policy via resolution or motion?*

The BOCC passed a resolution on September 1, 2004 superseding Fee Schedule established April 3, 200 pursuant to section 2941.51 of the Ohio revised Code. This resolution established the updated schedule of fees for the compensation of counsel appointed by the Court pursuant to 120.16 of the Ohio Revised code. The resolution stipulates that 'All attorneys providing service under this fee schedule must agree to comply with the Qualifications, Regulations and Standards of the Public Defender Commission'. The execution, oversight and compliance with the provisions of this resolution are the direct responsibility of the Deputy Public Defender and Fiscal Officer positions. Further the BOCC on December 7, 2005 passed Image 4812 authorizing the creation of a felony staff, appellate staff and upgrade in position classification from the retiring Deputy Administrator.

6. *Are there contracts or agreements that preclude the elimination of a non-mandated service? If so, please provide the specific language as to termination and/or amendment terms.*

Presently the office does not have any contracts or agreements relative to non-mandated services. However, we are under contract with Pro-Ware for enhancement of our computer system. The entire project was divided into two separate phases. Phase 1 deals with our Adult Division and part of our Juvenile Division. Phase 2 would finish our Juvenile division and finish our GAL Division.

The existing contract contains a bid from Pro-Ware for Phase 2 in the amount of \$128,800. This is a firm bid assuming the contract is executed in 2008. If we would be unable to sign this contract in 2008 the price most definitely will increase to well over \$200,000.

The ability to monitor and manage an office of 113 employees with more than 300 outside attorneys that are handling more than 60,000 cases is an impossible task without a functional computer system.

7. *What are the equipment/non-personnel expenditure considerations with discontinuing a non-mandated service? (i.e., surplus equipment).*

Discontinuation or elimination of the non-mandated Computer Software System Completion would render our department's computer equipment virtually ineffective. This CMS-PD system is critical to the department's ability to carry on day-to-day attorney scheduling, case management, client information indigence eligibility, statistical and financial information.

8. *Do any of the non-mandated services include employees represented by a bargaining unit? If so, please note the union and provide information as to reduction-in-force and job abolishment considerations.*

No.

2009 Non-Mandated Expenditures Department Response

9. *For positions within non-mandated services, are there are special circumstances that preclude a traditional job abolishment process? Separation costs will be addressed centrally including leave balance payouts, unemployment compensation and severance (based on current Commission policy).*

There are no special circumstances for positions within non-mandated services.

10. *In addition to positions associated with non-mandated services, the Budget Office included a review of management layers, support staff, and currently vacant positions. Please comment on the impact of eliminating these positions.*

Training Coordinator (Vacant): Serves as the coordinator for legal training and education for all legal staff, contract attorneys, and the assigned counsel panels by assuming a managerial role in promoting, creating and expanding training opportunities. The recent NLADA report strongly supported the need for the development of training assessment instruments and processes, curricula for new attorneys, ongoing training for all legal and support staff, and an annual calendar of training activities. Elimination of this position would limit training to outside fee-based seminars and leave a serious void in the staff development their knowledge base.

Chief Attorney 2 (Vacant): This administrative position provides significant administrative oversight, employee performance evaluations, mentoring, handling felony/misdemeanor cases, supervisory responsibilities as assigned by the Public Defender. The recent NLADA report directed a strong emphasis on establishing ongoing employee performance evaluations and the continuance of office re-organization efforts. These administrative duties would have to be re-assigned.

Interns: The year-round and seasonal interns provide key attorney support in lieu of sufficient paralegal and legal secretary staffing. The recent NLADA report recommended adding forty-seven legal secretaries to properly assist the office staff. Elimination of these services results in a burden on every attorney's workload.

11. *What is the performance impact of not providing the non-mandated service? For example, wait times, waiting lists, case loads, operating hours and other consequences of not providing the service.*

Deputy Public Defender: All internal Administrative Activities, Management oversight, Seminars, Contracts, Employee Policy Manual Computer system oversight and Indigence Qualifications. Elimination of these duties would result in a serious lack of internal management and oversight within the department and jeopardize the continuation of re-organizational accomplishments within the organization.

Fiscal Officer: Overall responsibility for \$13M General Fund Budget of all financial, accounting and audit functions of the department. Prepares mandatory monthly and annual financial and statistical

2009 Non-Mandated Expenditures Department Response

reports to the State of Ohio, HCJFS and State Public Defender. Responsible for oversight of payroll, inventory, accounts payable, purchasing contract attorney payments, fee schedules and assigned counsel vouchers. Oversees all departments' Human Resource functions with part time assistance. Fiscal Officer interacts and provides services to County Auditor, Personnel, BSI, Treasurer and several judicial areas. These duties would need to be re-assigned either internally or externally or you would jeopardize the fiscal oversight of the department.

Computer Programmer: Responsible for the department's IT duties. Coordinates the computer system (CMS-PD) project improvements and enhancements with Pro Ware. This computer application is the key information system which provides overall attorney information, scheduling, case management, statistical, financial and client eligibility information. Computer Programmer provides system security, troubleshooting, maintenance, training attorneys, personnel and report development. These duties would need to be out sourced to assure ongoing computer services for the department.

Training Coordinator (Vacant): Serves as the coordinator for legal training and education for all legal staff, contract attorneys, and the assigned counsel panels by assuming a managerial role in promoting, creating and expanding training opportunities for legal and administrative staffs of organizations providing legal services for the indigent citizens of Hamilton County. The recent NLADA report strongly supported the need for the development of training assessment instruments and processes, curricula for new attorneys, ongoing training for all legal and support staff, and an annual calendar of training activities. Without this position we would be unable to address the training needs as outlined by NLADA.

Chief Attorney 2 (Vacant): This administrative position provides significant administrative oversight, employee performance evaluations, mentoring, handling felony/misdemeanor cases, supervisory responsibilities as assigned by the Public Defender. The recent NLADA report directed a strong emphasis on establishing ongoing employee performance evaluations and the continuance of office re-organization efforts. These duties would need to be re-assigned within the organization.

Computer Software Completion:

The NLADA recommended completion of the Computer Software System that is critical to the department's ability to carry on day-today attorney scheduling, case management, client information indigence eligibility, statistical and financial information. Failure to complete this project would result in establishing manual case management and recording keeping

12. Are there any alternatives that result in savings to the general fund?

The early 2007 establishment of the in-house felony team has begun to impact the goal to reduce assigned counsel expenditures. Most notably the 2007 assigned counsel

2009 Non-Mandated Expenditures Department Response

expenditures were reduced by \$180,232 from 2006. It is estimated these savings could increase for 2008 and be applied to a portion of the non-mandated services.

13. *Are there more efficient ways to deliver a mandated service that may allow for the savings to offset the cost of a non-mandated service?*

Currently the method of assigning misdemeanor cases to contract attorneys is under review with an effort to maximize the number cases assigned to attorneys being paid a fixed rate. It is anticipated the revised scheduling method may provide savings to the Contract Attorney line item for 2009.

The early 2007 establishment of the in-house felony team has begun to impact the goal to reduce assigned counsel expenditures. Most notably the 2007 assigned counsel expenditures were reduced by \$180,232 from 2006. It is estimated these savings could increase for 2008 and be applied to a portion of the non-mandated services.

Other measures such as utilizing the Enterprise Car Rental contract to facilitate court-ordered visitations and the County-wide Cell-phone contract have resulted in budgetary savings that can be applied toward non-mandated services.

14. *Is there an opportunity to transfer any non-mandated expenditures to another funding source (i.e., restricted fund or grant)?*

The Public Defender Commission subscribes to the E-Civis Grants Networking Program and reviews potential grant opportunities ongoing that may exist.

15. *Does your department have any fees that could be raised to offset the cost of a mandated service?*

The Public Defender has recommended to BSI to pursue alternative revenue sources such as the work provided by the general fund staff at Pre-Trial Services. The office anticipates a modest increase to the Indigent Application Fee revenue due to improvements to the Computer Information System. We are pursuing the possibility of entering into a contract with the City of Cincinnati regarding the services we provide for City Ordinances cases.

Other Considerations and Comments:

In summary, there are key management, operational, budgetary, fiscal and personnel oversight duties that are executed by the Deputy Public Defender and Fiscal Officer in support of the Public Defender Commission as defined under section 120.15 of the ORC – County Public Defender – Powers and Duties and sections 120-1-06 and 120-1-15 of the Ohio Administrative Code. It is important that these positions be maintained to enable the office to continue to carry out necessary duties and assure compliance with the state regulations as well as provide a liaison with the State Auditor as annual reviews occur.

2009 Non-Mandated Expenditures Department Response

We believe the office has turned the corner and is on its way; however, continued support and funding by the county is necessary. NLADA made a number of recommendations that require additional funding. We understand the current financial limitations; however, salary parity with the prosecutor for our staff and increased fees for assigned counsel are imperative. We have come a long way but we must continue to move forward.