

Audit Report

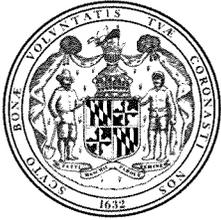
Office of the Public Defender

August 2014



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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Karl S. Aro
Executive Director

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

August 21, 2014

Thomas J. Barnickel III, CPA
Legislative Auditor

Senator James C. Rosapepe, Co-Chair, Joint Audit Committee
Delegate Guy J. Guzzone, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

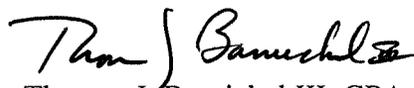
We have conducted a fiscal compliance audit of the Office of the Public Defender (OPD) for the period beginning July 1, 2010 and ending June 30, 2013. OPD is primarily responsible for providing legal services to eligible indigent individuals charged with violating State, county, or municipal laws involving possible incarceration or a fine greater than \$500. We also conducted a follow-up review of the actions taken by OPD to address certain findings from our performance audit report issued in November 2009.

Our audit disclosed that OPD did not ensure that applications for legal representation were supported with income and expense documentation, as required by State regulations. Consequently, there was a lack of assurance that certain clients were actually eligible to receive services. OPD also did not ensure that administrative fees were assessed to all applicable clients and that vendor invoices were submitted for payment to the Comptroller of Maryland in a timely manner, as stipulated by State regulations.

Our follow-up review disclosed that OPD still needs to improve its financial budgeting and its efforts to meet attorney caseload standards. For example, OPD continued to require deficiency appropriations; in fiscal years 2011 through 2013, the deficiencies totaled approximately \$5 million. Additionally, at the end of each of these years, OPD did not have sufficient funds for certain expenses and, therefore, it delayed their payment until the subsequent year's appropriation was available.

OPD's response to this audit is included as an appendix to this report. We wish to acknowledge the cooperation extended to us during the course of this audit by OPD.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tom J. Barnickel III". The signature is written in a cursive style with a large initial "T" and "B".

Thomas J. Barnickel III, CPA
Legislative Auditor

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* Denotes item repeated in full or part from preceding fiscal compliance audit report

Background Information

Agency Responsibilities

The Office of the Public Defender (OPD) is primarily responsible for providing legal services to eligible indigent individuals charged with violating State, county, or municipal laws involving possible incarceration or a fine greater than \$500. Legal representation is 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. OPD provides these services through a central headquarters and 32 offices located in 12 districts throughout the State. According to the State's records, during fiscal year 2013, OPD had 925 authorized positions; operating expenditures totaled approximately \$93 million, primarily for salaries, wages, and fringe benefits.

OPD has a 13-member Board of Trustees with 11 members appointed by the Governor with Senate advice and consent, one selected by the Senate President, and one selected by the Speaker of the House. The Board reviews the administration of the OPD, advises the Public Defender on its operations, coordinates the activities of district advisory boards, and consults on certain matters such as fees.

Court Decision

On September 25, 2013, the Maryland Court of Appeals issued a decision in the *DeWolfe v. Richmond* case which stated that, based on constitutional grounds, an indigent defendant is entitled to State-furnished counsel at the defendant's initial appearance before a District Court Commissioner.

In consideration of this court decision, Chapter 462, Laws of Maryland 2014 restricted \$10 million in the Judiciary's fiscal year 2015 budget to be used exclusively for providing counsel for defendants at their initial appearance before a District Court Commissioner. The Budget Reconciliation and Financing Act of 2014 further stated that if the implementation costs exceed the authorized amount, then the county in which the counsel is provided is responsible for the costs. We were advised by OPD and Judiciary management that OPD will not have any official role in the implementation of the Court's decision, since the Judiciary is responsible for providing the required counsel.

Status of Findings From Preceding Audit Reports

Our audit included a review to determine the status of the seven findings contained in our preceding fiscal compliance audit report dated February 10, 2011. We determined that OPD satisfactorily addressed four of those findings. The remaining three findings are repeated in this report and appear as two findings.

We also determined the status of certain findings in our performance audit report, dated November 19, 2009, addressing certain aspects of OPD's operations. The report included 12 findings and resulted in 8 recommendations, and we reviewed the status of 6 findings with related recommendations that addressed OPD's budget and caseloads. We determined that OPD had not satisfactorily addressed these findings, and they are repeated in this report. These 6 findings appear as 2 findings in this report.

Findings and Recommendations

Fiscal Compliance Audit

Client Eligibility

Finding 1

The Office of the Public Defender (OPD) did not ensure that applications for legal representation were supported and subject to supervisory review. Furthermore, its related policies and procedures were not sufficiently comprehensive.

Analysis

OPD did not ensure that applications for legal representation were supported and subject to supervisory review. Furthermore, its related policies and procedures for determining client eligibility were not sufficiently comprehensive.

Consequently, there was a lack of assurance that certain clients were actually eligible to receive services. Our test of 40 cases opened by two large district offices during fiscal years 2012 and 2013 disclosed the following conditions:

- For 4 cases tested, OPD could not locate the related applications. For 32 cases tested, OPD did not have any documentation to support the income (such as, pay stubs) and expenses reported by the clients on the applications. Furthermore, OPD's *Intake Manual*, which was established in part to provide direction to OPD intake workers in completing the application process, encouraged workers to obtain supporting documentation, but did not require it. Documentation of financial information is required by State regulations and should be used to help determine whether the client has the ability to pay for legal representation.

We were advised by OPD management that the majority of these cases did not have documentation because the clients reported no income or expenses.

However, in these instances, as required by OPD's *Intake Manual*, a verification form documenting that the client's financial support was provided by another person should have been obtained. This form would include this other person's contact information for verification purposes.

- For all 40 cases tested, there was no evidence that the eligibility determinations completed by intake workers were subject to independent supervisory review. OPD management advised us that supervisors reviewed the eligibility determinations on a test basis but these reviews were not documented. In addition, supervisory reviews are not required by OPD's

Intake Manual. An independent supervisory review of client eligibility determinations would help ensure that eligibility decisions made by intake workers considered all relevant information and were proper.

Similar conditions were commented upon in our preceding audit report. In its response to our preceding audit report, OPD indicated agreement with our prior findings and stated that OPD continued to work for compliance with intake policies governing documentation and support for eligibility determinations. The response also stated that OPD would revise the *Intake Manual* to include procedures for independent supervisory review and assessment of eligibility determinations including documentation of the outcomes.

OPD is responsible for providing legal services to any indigent individual who is eligible for services under the provisions of State law. The law generally provides that the eligibility for services shall be determined by the need of the applicant and specifies certain factors to be considered in determining the applicant's need (for example, the disposable net income of the applicant). OPD district offices are responsible for determining the financial eligibility of individuals requesting legal services. Individuals requesting OPD services are required to meet with an intake worker and provide certain documentation to support their eligibility. According to its annual report for fiscal year 2013, OPD opened approximately 241,000 new cases during calendar year 2012.

Recommendation 1

We recommend that OPD ensure that

- a. eligibility determinations are properly supported (repeat) by appropriate financial documentation in accordance with State regulations and that applications are completed and maintained on file;**
- b. the *Intake Manual* is modified to require supporting documentation from an applicant for reported financial information (repeat);**
- c. eligibility determinations are reviewed and approved by supervisory personnel, at least on a test basis, and that such reviews are documented (repeat); and**
- d. the *Intake Manual* is revised to include procedures requiring a documented supervisory review (repeat).**

Client Billings

Finding 2

OPD did not ensure that administrative fees were assessed to all applicable clients.

Analysis

OPD did not ensure that administrative fees were properly assessed to all applicable clients. Specifically, State regulations require applicants seeking representation, except for unaccompanied juveniles and clients confined to a mental institution, to enter into an agreement committing them to pay an administrative fee of \$50 for adults and \$25 for juveniles.

Our comparison of new cases recorded in OPD's case management system in calendar year 2012 adjusted for cases exempt from administrative fees by regulation (174,100), with the related accounts receivable records of cases charged administrative fees (161,900), 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 totaling \$400. OPD acknowledged the fees should have been charged in 3 of these cases but advised that, for the other 5 cases, OPD had not charged the administrative fee because the client had a previous, unrelated case. In these 5 cases, the previous cases occurred from three months to one year earlier. However, there is no provision in State law or regulation exempting clients from the fee in this situation. For the remaining 12 cases tested, administrative fees were appropriately not assessed for various reasons; for example, the case was a continuation of an existing case.

According to OPD records for fiscal year 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. A similar condition was commented upon in our preceding audit report. In its response to our preceding audit report, OPD indicated agreement with our prior finding and stated it would assess administrative fees to its applicants as required by State regulation.

Recommendation 2

We recommend that OPD assess administrative fees to applicants, as required by State regulations (repeat).

Invoice Processing

Finding 3

OPD did not submit certain vendor invoices to the Comptroller of Maryland in a timely manner.

Analysis

OPD did not submit certain vendor invoices timely to the Comptroller of Maryland and, therefore, the invoices were not paid within 30 days of receipt, as required by State law. State law also specifies that invoices that are not paid timely are subject to interest charges.

Our review of the Comptroller of Maryland's reports of State agencies that did not submit invoices for payment within 25 days of receipt disclosed that 31 percent of OPD's invoices, totaling \$7.8 million, were submitted late during the period from April 2011 to June 2013. State regulations require agencies to submit the invoices to the Comptroller of Maryland within 25 days of receipt so that they can be paid within 30 days of receipt, as required by State law. We were advised by OPD management personnel that the delay in invoice submission was because it had a thorough review process.

Recommendation 3

We recommend that OPD take appropriate action to ensure vendor invoices are submitted to the Comptroller of Maryland within 25 days of receipt, as required by State regulations.

Performance Audit Follow-Up

Background

In response to a request in the *Report on the State Operating Budget and the State Capital Budget and Related Recommendations*, issued during the 2008 Session of the Maryland General Assembly by the Chairmen of the State Budget and Taxation and House Appropriations Committees (that is, the *Joint Chairmen's Report*), the Office of Legislative Audits conducted a performance audit addressing certain aspects of OPD's operations. This performance audit included the following objectives:

1. Assess the effectiveness of OPD's budgetary practices and related procedures regarding funding decisions, including budgeting and financial operations.

2. Review procedures and controls over case management and assess the impact of changes implemented since our November 2001 performance audit.

The resulting performance audit report, dated November 19, 2009, included 12 findings which resulted in 8 recommendations. During our current fiscal compliance audit, we conducted a follow-up review of the actions taken by OPD to address the recommendations for 6 of those findings (Findings 1, 2, and 3, which related to Objective 1, and Findings 7, 9, and 10, which related to Objective 2). Our selection of those findings was based on our current assessment of significance and risk.

Since fiscal year 2008, OPD's authorized positions have decreased approximately eight percent from 1,007 employees to 925 employees as of fiscal year 2013; the majority of the reductions related to administrative and support positions.

Status of Prior Objective 1

OPD's budgeting was not sufficient to reduce the need for deficiency appropriations, did not identify areas to reduce costs, and did not accurately project its expenditures. Additionally, OPD's monitoring of expenditures needs improvement.

Prior Performance Audit Recommendations

We recommended that OPD continue to work with the Department of Budget and Management (DBM) to resolve budgeting issues so that future OPD budgets were sufficient to fund OPD's expected routine operations. We also recommended that OPD continue to work with DBM to identify methods and areas to reduce operating costs to assist in meeting its budgeted appropriation (Findings 1 and 2). In its response to our preceding audit, OPD agreed with the recommendation but further stated that, given the state of the economy at that time, and continuing shortfalls in OPD's operational funding requirements, it was uncertain when the funding dilemma would be resolved.

We further recommended that OPD develop processes to improve financial reporting and monitoring of expenditures made by OPD district offices (Finding 3). In its response, OPD agreed with this recommendation and indicated that it had begun to create purchase orders for expert, transcript, and supply requests. The response also stated that purchase orders for other cost areas would follow but numerous problems needed to be resolved for panel cases and that a timetable to implement purchase orders for panel cases was not anticipated for pilot implementation program until, at least, fiscal year 2011.

Follow-Up Analysis

OPD has held discussions with DBM to attempt to resolve budgeting issues and has prepared its annual budgets consistent with DBM guidelines; however, significant budgeting issues remain. For example, DBM fully funded OPD's 2013 budget request of \$4.7 million for panel attorney costs, which was based on OPD's calculation of average annual panel attorney expenditures during a five-year period. However, OPD still required additional funding for panel attorneys, as it exceeded its appropriation by \$1.1 million. OPD retains private attorneys, referred to as panel attorneys, to handle cases when a conflict of interest may exist (for example, a codefendant is being represented by an assistant public defender).

OPD continued to require deficiency appropriations in fiscal years 2011, 2012, and 2013. Table 1 shows OPD's budget and expenditures for these years.

Fiscal Year	Appropriation	Actual Expenditures	Amount Over Budget	Deficiency Appropriation
2011	\$84,920,000	(\$85,817,000)	(\$897,000)	\$731,000
2012	\$85,177,000*	(\$87,758,000)	(\$2,581,000)	\$2,698,000
2013	\$92,058,000*	(\$93,211,000)	(\$1,153,000)	\$1,536,000
Totals			(\$4,631,000)	\$4,965,000

Source: Department of Budget and Management's State Budget Books, Fiscal Digests, and the Joint Chairmen's Reports

**The fiscal years 2012 and 2013 appropriations include supplemental appropriations of \$706,383 and \$5,430,917, respectively.*

In addition, since OPD did not have sufficient appropriations to fund all expenses at the end of each of these years, it delayed payment of certain expenses and paid them from the subsequent year's appropriation. For example, OPD delayed paying fiscal year 2013 expenses totaling \$2.9 million until fiscal year 2014. Consequently, OPD needs to take actions to help ensure expenditures do not exceed its appropriations.

Lastly, OPD's financial reporting and monitoring of panel attorney expenditures at the district offices was not effective. Specifically, OPD did not generate purchase orders and encumbrances for these costs as they were incurred for monitoring purposes. Rather, the costs were reported when the related invoices were received which could be months after the services were provided. As a

result, the finance office and other headquarters administrative personnel were not aware of the costs that had been committed.

Follow-Up Recommendation 1

We recommend that OPD

- a. continue to work with DBM to resolve budgeting issues so that future budgets are sufficient to fund routine operations, and to identify ways to reduce operating costs to assist in meeting its budgeted appropriation (repeat); and**
- b. develop processes to improve financial reporting and monitoring of expenditures made by OPD district offices (repeat).**

Status of Prior Objective 2

Attorney caseloads continue to exceed standards, and OPD has not implemented a process to determine whether these standards should be updated. Additionally, the case management system was not used to help ensure efficient operations.

Prior Performance Audit Recommendations

We recommended that OPD determine the most appropriate strategy for meeting its caseload standards and take steps to better allocate attorney positions among, and within, districts to help address caseload disparities (Finding 7). In its response to this recommendation, OPD indicated agreement and stated that OPD management would closely review and evaluate existing caseloads and agency practices in order to develop a strategy for meeting caseload standards in an atmosphere of severe budget restrictions. OPD responded that it had already taken steps to address caseload disparities by reallocating attorney positions.

We also recommended that OPD periodically determine if existing caseload standards need to be modified, or new standards created, based on changes to OPD operations and other relevant factors (Finding 9). In its response to this recommendation, OPD indicated agreement and stated that it would periodically review and examine the caseload standards to determine whether standards need to be modified or new standards developed based on changes to OPD operations of criminal and juvenile system mandates.

Finally, we recommended that OPD develop case management tools for use by its district offices, as well as by central office staff, to assist in more efficiently managing OPD's caseload (Finding 10). In response to this recommendation, OPD indicated that it was creating a web-based reporting system for the case management system to assist headquarters management staff in more efficient monitoring of OPD's caseload.

Follow-Up Analysis

We were advised by OPD management that it cannot meet the current caseload standards with its current staffing levels. However, given its staffing levels, its strategy for partially addressing caseload standards is to allocate attorney positions to jurisdictions with higher caseloads, and to reallocate within the jurisdictions to provide attorneys to the different courts. In order to determine caseload trends, we compared average attorney caseloads in the different courts (as reported in the State Budget Books – we did not independently verify the information) in calendar year 2007 with average attorney caseloads in 2012. We noted that, while average caseloads have decreased in the juvenile court, they have increased in both the circuit and district courts. See Table 2.

Table 2				
Comparison of Caseloads Per Attorney by Type of Court				
Calendar Years (CY) 2007 and 2012				
Type of Court	Average Attorney Caseload Per OPD Standards	CY 07 Average Attorney Caseload as a Percentage of Standard	CY 12 Average Attorney Caseload as a Percentage of Standard	Percentage Change Increase (Decrease) in Average Attorney Caseload From 2007 to 2012
Circuit Court	171	117%	126%	9%
District Court	663	130%	149%	19%
Juvenile Court	253	124%	95%	(29%)

Source: State Budget Books

Furthermore, OPD has not implemented a process to determine whether caseload standards need to be updated as a result of changes to its operations and other relevant factors. We were advised that OPD lacks the funding necessary to do so; however, OPD is seeking grant funding to update its standards.

Lastly, OPD has not developed case management tools to assist in more efficiently managing its caseload. We were advised that the current case management system is not capable of producing the necessary reports to facilitate this monitoring, and OPD has been unable to obtain funding for a case management system that could more efficiently manage the caseload.

Follow-Up Recommendation 2

We recommend that OPD

- a. determine and implement the most appropriate strategy for meeting its caseload standard and take steps to better reallocate attorney positions among, and within, districts to help address caseload disparities (repeat);**
- b. periodically determine if existing caseload standards need to be modified, or new standards created, based on changes to OPD operations and other relevant factors (repeat); and**
- c. as practicable, either develop case management tools to assist in more efficiently managing OPD's caseload or work with DBM to obtain funding for a system that could accomplish this (repeat).**

Audit Scope, Objectives, and Methodology

We have conducted a fiscal compliance audit of the Office of the Public Defender (OPD) for the period beginning July 1, 2010 and ending June 30, 2013. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine OPD's financial transactions, records and internal controls, and to evaluate its compliance with applicable State laws, rules, and regulations. In accordance with Section 2-1220(a)(4) of the State Government Article, we also conducted a follow-up review of the actions taken by OPD to address certain findings from our performance audit report dated November 19, 2009.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance and risk. The areas addressed by the audit included client eligibility, procurements and disbursements, accounts receivable, and payroll. We also determined the status of the findings contained in our preceding fiscal/compliance audit report.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, observations of OPD's operations, and tests of transactions. We also performed various data extracts of pertinent information from the State's Financial Management Information System (such as revenue and expenditure data) and the State's Central Payroll Bureau (payroll data), as well as from the contractor administering the State's Corporate Purchasing Card Program (credit card activity). The extracts are performed as part of ongoing internal processes established by the Office of Legislative Audits and were subject to various tests to determine data reliability. We determined that the data extracted from these various sources were sufficiently reliable for the purposes the data were used during this audit. Finally, we performed other auditing procedures that we considered necessary to achieve our audit objectives. The reliability of data used in this report for background or informational purposes was not assessed.

With respect to our follow-up of the preceding performance audit report, our procedures primarily consisted of inquiries of appropriate personnel and reviews of documents and records.

OPD's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including the safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings related to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect OPD's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to OPD that did not warrant inclusion in this report.

OPD's response to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise OPD regarding the results of our review of its response.

STATE OF MARYLAND



MARTIN O'MALLEY
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ANTHONY G. BROWN
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APPENDIX

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PUBLIC DEFENDER

CHARLES H. DORSEY, III
DEPUTY PUBLIC DEFENDER

August 18, 2014

Thomas J. Barnickel, III, CPA
Legislative Auditor
Maryland General Assembly
Office of Legislative Audits
301 W. Preston Street, Room 1202
Baltimore MD 21201

Dear Mr. Barnickel:

The Office of the Public Defender (OPD) has reviewed the Draft Audit Report dated August 2014 covering the examination of operations, accounts and records for the period beginning July 1, 2010 and ending June 30, 2013. OPD appreciates the cooperation and professionalism of the Office of Legislative Audits staff in performing this audit and the preparation of their recommendations to address the audit findings.

Attached please find our response to the findings, analysis and recommendations. OPD is committed to addressing all of the findings, especially with respect to repeat findings.

Thank you for your support and please accept our appreciation for your contribution to OPD.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul B. DeWolfe".

Paul B. DeWolfe
Public Defender

PBD/KIM/jps

Enclosure

Response to Findings and Recommendations

Fiscal Compliance Audit

Recommendation 1

We recommend that OPD ensure that

- a. eligibility determinations are properly supported (repeat) by appropriate financial documentation in accordance with State regulations and that applications are completed and maintained on file;**
- b. the *Intake Manual* is modified to require supporting documentation from an applicant for reported financial information (repeat);**
- c. eligibility determinations are reviewed and approved by supervisory personnel, at least on a test basis, and that such reviews are documented (repeat); and**
- d. the *Intake Manual* is revised to include procedures requiring a documented supervisory review (repeat).**

OPD is committed to meeting the requirements of the Public Defender Statute that provides for a written oath or affirmation regarding the indigent status of an applicant and investigations into their financial status “when circumstances warrant it”. To that end, OPD requires that applicants sign an Affidavit of Indigency, which also meets the standard set by the Federal Government, and that District Management conduct further reviews of eligibility determinations, on a regular basis and as warranted.

- a. Management agrees that applications be completed and maintained for all active clients. Of the instances cited by the audit, one application was properly destroyed according to record retention policy prior to the audit and one application was not retained because the individual engaged private counsel.
- b. The Public Defender Statute does not require any assessment of an applicant’s need if the individual reports net income and assets below 100% of the Federal Poverty Guidelines; however OPD standards require a full assessment of all applicants. There is no standard in the Public Defender Statute requiring supporting documentation; however the 2014 OPD Intake Manual requires intake employees to request supporting documentation.¹
- c. During the audit period and prior to the audit, OPD management conducted internal audits of over 400 files in all twelve districts. The results indicated that supervisory reviews were performed and documented on as many as 100% of case files in some districts to all files meeting specific criteria in others and random reviews in others. In one of the large districts cited in this finding, 39 requests were made during the audit period to Department of Labor, Licensing and Regulation for information regarding

¹ **Auditor’s Comment:** For clarification purposes, although the Public Defender Statute does not contain a standard requiring supporting documentation of an applicant’s assessment of need, Code of Maryland Regulations requires the applicant to complete an application for services and provide OPD with “documentary evidence of all financial information as given on the application form.”

applicants' income and employment status, as recommended by the Public Defender Statute, constituting significant supervisory review and follow-up.

- d. Policies regarding supervisory reviews are not included in the Intake Manual, as previously indicated, because they do not relate to intake personnel. Supervisor review policies are developed and implemented by District and OPD management.

It is important to note that no eligibility determinations were found to be incorrect as a result of the audits and reviews conducted.

The OPD Intake Manual is a training tool and reference that also includes detailed instructions for entering data into the case management system for the more than 125 intake personnel at OPD. OPD management will review the Intake Manual and State regulations and make appropriate revisions consistent with the Public Defender Statute.

Recommendation 2

We recommend that OPD assess administrative fees to applicants, as required by State regulations (repeat).

The administrative fee is assessed at the time of application for the act of applying for representation, regardless of the outcome of the eligibility determination, and is not related to the number of cases or matters for which OPD represents the client. It is common for applicants who become clients to apply with several cases at one time and for more cases to be charged over time. Likewise, certain cases may be assigned multiple matter ID numbers as they progress through the court system. In these instances, only one application fee would be assessable and is assessed. OPD will review and amend State regulations, as necessary, to reflect Agency policy for assessing administrative fees and assess fees, accordingly.

Recommendation 3

We recommend that OPD take appropriate action to ensure vendor invoices are submitted to the Comptroller of Maryland within 25 days of receipt, as required by State regulations.

OPD continually innovates and reengineers its procedures to decrease the processing time for invoices, including the centralization of review and approval of case-related expenses, the implementation of electronic fee petitions and paperless expense report submissions. During the audit period, over 68,000 invoices were processed, an increase of 27% for the period, while the Fiscal group operated with 25% vacancies.

Transactions for case-related expenses that include panel attorney, medical, expert and other professional fees, require approval of the quality of service provided in addition to the cost parameters, adding significant time to the processing cycle. Over 74% of the invoices for the audit period were attributable to panel attorney fees alone.

Accounts payable operations continue to improve. For FY2014, approximately 28,000 invoices were processed, a 14% increase over FY2013, of which 18% were submitted to the Comptroller of Maryland after 25 days. That percentage drops to nearly 8% when the effects of the carryover from FY2013 are excluded.

OPD management is committed to submitting invoices to the Comptroller of Maryland according to State regulations and agrees with the recommendation.

Follow-Up Recommendation 1

We recommend that OPD

- a. continue to work with DBM to resolve budgeting issues so that future budgets are sufficient to fund routine operations, and to identify ways to reduce operating costs to assist in meeting its budgeted appropriation (repeat); and**
 - b. develop processes to improve financial reporting and monitoring of expenditures made by OPD district offices (repeat).**
- a. OPD is in regular contact with DBM regarding budget issues and continues to reengineer processes, practices and systems to reduce operating costs.

It should be noted that approximately 26% of the Amount over Budget and Deficiency Appropriation for FY2012 was due to a mandate from the Court of Appeals effective mid-year that was fully funded the following year.

- b. Expenditures not reported and controlled by the districts are reported and controlled by Statewide Divisions. While it is true that purchase orders and encumbrances are not generated for panel attorney fees in the financial system as they are for other case-related expenses, it should be noted that this is of limited value in planning, tracking, controlling and reporting case-related expenses because the financial data is not connected to the case data from the case management system. OPD staff has manually input the amount of panel attorney fees for each case in the case-management system. OPD management will continue to evaluate the feasibility of systems for reporting and monitoring panel attorney fees.

Follow-Up Recommendation 2

We recommend that OPD

- a. determine and implement the most appropriate strategy for meeting its caseload standard and take steps to better reallocate attorney positions among, and within, districts to help address caseload disparities (repeat);**
- b. periodically determine if existing caseload standards need to be modified, or new standards created, based on changes to OPD operations and other relevant factors (repeat); and**
- c. as practicable, either develop case management tools to assist in more efficiently managing OPD's caseload or work with DBM to obtain funding for a system that could accomplish this (repeat).**

Public defender caseloads are the subject of many papers on effective assistance of counsel published by the American Bar Association (2011), American Constitution Society (2011) and other organizations that specifically cite Maryland OPD. OPD has expended significant resources to establish caseload standards, evaluate and measure attorney caseloads, and identify

and implement best practices for case management, both for the workload assessment performed for the Agency by the National Center for State Courts in 2005 and the Agency's Strategic Plan initiative started in 2012.

- a. OPD regularly and consistently takes workload standards into account when determining where attorney positions should be filled and allocated, resulting in frequent redeployment of attorney resources. Attorneys were reallocated to address caseload performance in 11 of 12 districts over the five-year period FY2009 through FY2013, resulting in a 14% decrease in the attorney count in District 1- Baltimore City and redeployment of those attorneys throughout the state.
- b. OPD routinely tracks, evaluates and reports actual caseloads to standards that also include comparative statistics for similar operations in the U.S. and other published criteria to identify changes in operations and determine if standards require modification. New studies to assess and identify such modifications may be requisitioned, if and when required funding is available.
- c. In August 2013, as part of the FY2015 budget submission, OPD requested and was denied funding for the evaluation and selection of a new case management system.

Management will continue to prioritize lowering caseloads in the management of its operations. However, the only solution to persistently excessive attorney caseloads above standard is the addition of attorney staff. OPD routinely calculates the number of additional attorneys it would take to bring caseloads within standard, the funding for which has been heretofore unavailable.

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