City of Seattle
Office of City Auditor
Susan Cohen, City Auditor

August 6, 2007

The Honorable Greg Nickels
Seattle City Councilmembers
City of Seattle
Seattle, Washington 98104

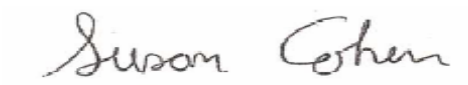
Dear Mayor Nickels and City Councilmembers

Attached is our review of the City of Seattle's indigent public defense services program. We conducted this work at the request of City Councilmembers Nick Licata and Richard McIver.

The report includes a comparison of the pre-2005 and 2005 contracting models and an assessment of the current program based on the American Bar Association's Ten Principles of a Public Defense Delivery System. This report also contains recommendations for improving the City's public defense program.

We would like to acknowledge the assistance of the two public defender agencies, the Associated Counsel for the Accused and The Defender Association. We would also like to acknowledge the assistance of City officials and personnel who participated in this review from the Seattle Municipal Court, the City Attorney's Office, and the Office of Policy and Management.

If you have any questions about this report, please call me at (206) 233-1093.
Sincerely,



Susan Cohen
City Auditor

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Attachment

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City of Seattle

Office of City Auditor

Highlights of the Office of City Auditor's Public Defense Services Audit

Why We Did This Study

The City is required to provide indigent public defenses services for qualifying individuals charged with misdemeanors in the Seattle Municipal Court.

To ensure that 2005 changes in Seattle's public defense system did not compromise the quality of Seattle's public defense, City Councilmembers Nick Licata and Richard McIver requested an audit.

Background

Currently, the City contracts directly with two non-profit public defense agencies. The current three year contracts expire on December 31, 2007. The City's 2007 budget for the Indigent Defense Program is approximately $5 million.

Seattle's public defense system has been highly regarded as a model at the State and national level. 2005 changes to the program prompted concerns from the legal community and City Councilmembers.

How We Did This Study

We analyzed 19 key elements of the City's public defense program. Field work included: a review of the City's public defense agencies' compliance with City ordinances, contract terms, and professional standards, a review of previous audits of the agencies, case file reviews of each agency, a survey of pre-trial in-custody defendants, and interviews with public defense officials.

http://seattle.gov/audit

To view the full report, click on the link above. For more information or suggestions for future audits to Susan Cohen, Seattle City Auditor, at (206) 233-3801 or susan.cohen@seattle.gov.

August 2007

CITY OF SEATTLE PUBLIC DEFENSE SERVICES AUDIT

Improving the Quality of Public Defense

What We Found

The audit revealed several significant findings:

- One-third of the primary defender's attorneys exceeded the City's attorney caseload standard
- Instances of non-compliance with the City's attorney-client contact terms
- The defendant complaint process needs improvement
- Full compliance with four of the American Bar Association's (ABA) 10 Principles of a Public Defense Delivery System
- City oversight of public defense agencies could be improved
- City could improve data collection for assessing quality of public defense
- Benefits of having a larger secondary public defense agency

Recommendations

We made recommendations in 17 of 19 areas we analyzed to improve the quality of public defense including:

- Process improvements
- Oversight improvements
- Improvements in data collection to assess the quality of public defense
- Revisions to contract provisions

Table of Issues Analyzed and Whether Office of City Auditor (OCA) Made Recommendations

Issues Analyzed	Fully Met City Standards or Contract Requirements?	OCA Recommendation?
1. Attorney Caseloads	No	Yes
2. Attorney-Client Contacts	No	Yes
3. Client Complaint Process	No	Yes
4. Attorney Experience	Yes	No
5. Supervision	No	Yes
6. Training	Yes	Yes
7. Performance Evaluations	Yes	Yes
8. Investigator Use	No	Yes
9. Interpreter Use	Not Applicable (NA)	Yes
10. Continuances	NA	Yes
11. Case Processing Time	NA	Yes
12. Dispositions	NA	Yes
13. Jail Population/Length of Stay	NA	No
14. Appeals	NA	Yes
15. Motions	NA	Yes
16. Probation Revocation Hearings	NA	Yes
17. Trial Data	NA	Yes
18. ABA's 10 Principles	Fully Meets 4 of 10	Yes
19. Contracts Comparison	NA	Yes

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City of Seattle
Office of City Auditor
Susan Cohen, City Auditor

Seattle Indigent Public Defense Services

August 6, 2007

City of Seattle

Office of City Auditor

Susan Cohen, City Auditor

Mission:

To make City government as efficient, effective, equitable, and accountable as possible.

Background:

Seattle voters established our office by a 1991 amendment to the City Charter. The Office is an independent department within the Legislative branch of City government. The City Auditor reports to the City Council and has a four-year term to ensure his/her independence in selecting and reporting on audit projects.

Internal auditing, as defined by The Institute of Internal Auditing, is:

> an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to the evaluation and improvement of the effectiveness of risk management, control, and governance processes.

How We Ensure Quality

The Office's work is performed in accordance with auditing standards issued by the Comptroller General of the United States and the Institute of Internal Auditors. These standards provide guidelines for staff training, audit planning, fieldwork, quality control systems, and reporting of results. In addition, the standards require that external auditors review our Office to ensure that we adhere to these professional standards.

An equal opportunity-affirmative action employer
Street Address: 700 5th Avenue, Suite 2410, Seattle, WA
Mailing address: PO Box 94729, Seattle, Washington 98124-4729
Phone Numbers -- Office: (206) 233-3801 Fax: (206) 684-0900
email: susan.cohen@seattle.gov
website: seattle.gov/audit

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PURPOSE

City ordinances, professional public defense standards, and City contract provisions establish that all persons eligible for public defense services should be afforded quality legal representation. To ensure that 2005 changes in Seattle's public defense system did not compromise the quality of Seattle's public defense, City Councilmembers Nick Licata and Richard McIver requested that the Office of City Auditor examine the quality of the City's public defense services.

SUMMARY OF RESULTS

Immediate Improvements Needed in Three Areas: Based on our interviews with officials involved in the City's public defense process and review of public defense standards, we identified 19 key issue areas to analyze. In our assessment of these issues, we found the City could improve service quality or program oversight in 17 of the 19 areas. The City should implement improvements in the following three areas immediately because of their influence on the quality of public defense services:

- **Attorney Caseloads**: Ensure public defense attorneys adhere to the City caseload standard based on assigned (not closed credits) cases. Our sample of 2005 and 2006 attorney caseload data indicated that about one third of the current Primary Defender's attorneys, the Associated Counsel for the Accused (ACA), exceeded the City's caseload standard.

- **Attorney-Client Contacts**: Increase the size of the City's case file audit sample from 10 to a minimum of 30 to determine compliance with attorney-client contacts contract requirements. We reviewed 30 case files from each public defense agency and found instances in which each could not adhere to the contract requirements (ACA eight instances and the current Secondary Defender, The Defender Association [TDA], three instances).

- **Client Complaint Process**: Improve the client complaint process by notifying defendants whom they can call if they have concerns about their attorneys, and require the public defense agencies to report all defendant complaints to OPM. We found that the City was not adequately informing defendants about how to file a complaint about their attorney, and that the public defense agencies were not required to notify OPM about all defendant complaints.

Performance has been mixed in certain issue areas since 2005: The City's public defense program improved in two areas: a reduction in jail length of stay occurred and stronger public defender agency contract language was developed. In 2005, performance decreased in two areas, continuances and dispositions, but improved in 2006. The program complied with standards and/or requirements in four areas (performance evaluations, training, number of investigators, and attorney experience).

City oversight should be strengthened: The City needs to develop tools and strengthen procedures to better assess issues such as attorney caseloads, attorney-client contact, continuous representation, continuing legal education, client satisfaction, attorney performance evaluations and supervision. To strengthen oversight, OPM should share the results of its annual audits of the public defense agencies with the City Council.

Better data collection is needed: Four indicators (appeals, motions, case processing time, and use of investigators) could not be used to assess past or current performance for various reasons; therefore, we made recommendations to OPM or the Seattle Municipal Court (SMC) to start collecting data or make changes in how they collect data to enable them to better assess the quality of public defense agency performance.

City should increase the size of the Secondary Public Defense Agency: It would be worthwhile for the City to increase the size of the secondary agency for several reasons:

- Key stakeholders, including SMC, ACA and TDA, believe that there would be benefits to having a secondary public defense agency with a larger caseload, such as more efficient court operations.
- Documentation compiled by TDA that showed the difficulty of staffing multiple courtrooms with their current allocation of two attorneys.
- SMC's recent switch from a master court calendar to individual court calendars complicates the secondary agency's court coverage responsibilities.
- Key stakeholders including SMC, ACA, and TDA believe that a larger secondary defense agency would enhance the program by increasing competition among the agencies.

Jail population is not a useful indicator of public defense services: Several factors, such as police enforcement practices, have a greater effect on jail population than the quality of public defense. The length of stay of SMC defendants in jail, which defense attorneys have a greater impact on than on the size of the jail population, decreased by 2 percent in 2005 and by another 2 percent in 2006.

City fully complies with four of ten ABA public defense principles: The City complies fully with four and partially complies with six of the American Bar Association's (ABA) Ten Principles of a Public Defense Delivery System. We found partial compliance regarding judicial independence of assigned counsel (SMC assigns private defense attorneys to SMC cases, when conflicts of interests prevent the City's primary or secondary agencies from handling cases), caseloads, timely contacts with clients, continuous representation, supervision, and parity of defense with prosecutors.

Contract language needs further improvement: Comparing the City's 2005-2007 public defense services contracts with the previous ones, we found that the 2005-2007 City contracts with the primary and secondary public defense agencies had stronger requirements than the previous contracts. However, we recommend contract language changes in six areas: caseloads, attorney-client contacts, client complaint process, continuances, investigations, and interpreters.

A summary of major findings by issue area and a summary table of our analyses are provided below. The complete analysis of each issue is provided in the appendices of this report.

BACKGROUND

Under the United States Constitution, Washington State law, and the City's ordinances, the City of Seattle is required to provide indigent public defenses services for qualifying individuals who are charged with misdemeanors in the Seattle Municipal Court (SMC).

In 2004, City Ordinance 121501 reaffirmed that the caseload standards previously established in a 1989 Budget Intent Statement and the American Bar Association's Ten Principles of a Public Defense Delivery System were the City's standards for public defense services "…until such time as the City Council may by ordinance adjust those standards". The ordinance also specified that the contracts with the agencies should not exceed three years. The current contracts expire on December 31, 2007. The City's budget for the Indigent Defense Program in 2007 is approximately $5 million.

Seattle's public defense system has been highly regarded as a model in the State of Washington and at the national level. Changes to the program made in 2005 prompted concerns from the legal community and City Councilmembers. What follows is a summary of those changes and OPM's rationale for the changes.

On January 1, 2005, the City of Seattle (City) began directly contracting with two non-profit public defender agencies to defend indigent defendants charged with misdemeanors in SMC. Before 2005, the City indirectly contracted with three non-profit public defender agencies through a contract with King County's Office of Public Defense (OPD), which administered the contracts on behalf of the City. Under OPD's administration, the workload was divided fairly evenly among the three public defense agencies. Under the current system, the City's Office of Policy and Management (OPM) administers the contracts with two of the three public defender agencies that served under the previous King County contract. The current "Primary Defender" is the Associated Counsel for the Accused (ACA), which receives most of SMC's public defense caseload. The current "Secondary Defender," The Defender Association, (TDA) initially had a caseload limited to defendants that have conflicts of interests with the Primary Defender, but in 2006 the City assigned TDA the duty of handling SMC appeals for public defendants. Other contract changes made in 2005 included how and when the City pays the public defense agencies, and adding more requirements than were found in the previous contract. OPM cited several reasons for making these changes:

- To have a Public Defender who would be roughly equal in stature to the City Prosecutor and the SMC Presiding Judge, which is a model used in other cities;

- To facilitate contracting arrangements. The City decided to contract directly with two public defense agencies because it was difficult to implement changes and reach agreements while working with King County, three public defenders, the City Attorney, and SMC; and

- To improve contract administration and oversight. In 2004, OPM found that the three public defense agencies, ACA, TDA and Northwest Defenders Association, were billing Seattle at a higher overhead rate than they billed King County for public defense services. The City estimates that it paid about $1 million more than King County in 2003 for overhead costs such as accounting and clerical support. This occurred because County budget cuts

prompted King County to request that the public defense agencies lower their overhead costs for the work they performed in King County's courts. Subsequently, the agencies lowered their overheard rates, but no one requested that the agencies do the same for the City of Seattle. Seattle assumed King County was scrutinizing overhead rates for Seattle and thought such scrutiny was part of King County's obligations in its contract with the City. (Note: In 2005, the King County Council approved an increased payment amount to each of the four public defense agencies, including ACA and TDA. According to an OPD official, the purpose of the payment was "to make the agencies whole" in 2005 after the County changed its payment methodology for the public defense agencies.)

SCOPE AND METHODOLOGY

To identify the key elements of the City's public defense program, we (1) reviewed the program's previous and current public defense service contracts, (2) researched public defense standards and literature, and (3) interviewed major stakeholders and observers of the City's public defense process. We interviewed officials from the:

- Seattle Municipal Court,
- Office of Policy and Management,
- City Attorney's Office,
- King County Public Defenders Office,
- Washington State Bar Association,
- Federal Public Defender,
- National Association for the Advancement of Colored People (NAACP),
- Washington State Office of Public Defense, and the
- City's current public defense agencies - Associated Counsel for the Accused (ACA) and The Defender Association (TDA).

Based on the above work, we identified 19 key issue areas to analyze. Our analyses generated 36 recommendations concerning the City's oversight of the program, and the program's contracts, administrative processes, and structure.

To assess the quality of public defense service provided by the current primary (ACA) and secondary (TDA) public defense agencies, we:

- Obtained and reviewed data covering 2004 through 2006 related to the indicators identified in the City Councilmembers' audit request letter dated December 19, 2005, as well as other indicators suggested by individuals we interviewed;
- Reviewed ACA's and TDA's compliance with the intent of City ordinances and contract terms;
- Reviewed King County OPD and City of Seattle audits of ACA and TDA from before and after the 2005 contract changes;
- Conducted a case file review of 30 cases from each public defender agency;
- Reviewed client complaints and how they were resolved; and
- Conducted a survey of pre-trial in-custody defendants during the week of September 25, 2006 at the King County Jail to assess their satisfaction with their public defense attorney.

To assess whether the contract structure could be improved, we:

- Reviewed the rationale for the 2005 changes in the contract structure;
- Reviewed budget and expenditure information and other documents;
- Compared the previous and current contracts with the City's public defense agencies; and
- Assessed the City's current public defense system against the American Bar Association's Ten Principles of a Public Defense Delivery System, which the City adopted as a guide in the June 2004 Ordinance 121501 related to indigent public defense services.

To determine whether contract changes affected jail population and the average length of stay in jail for defendants we:

- Reviewed jail population data for SMC defendants from 1998-2006; and
- Reviewed the factors criminal justice professionals identified as affecting jail population size and defendants' length of time spent in jail.

While performing this audit, our office followed the Generally Accepted Government Auditing Standards, as prescribed by the Comptroller General of the United States**.**

CITY AUDITOR'S EVALUATION OF AGENCY COMMENTS

In accordance with Government Auditing Standards (sections 8.31-8.34)1, the City Auditor obtained formal comments on a draft of this report from the four agencies involved in the audit: the Office of Policy and Management (OPM,) the Seattle Municipal Court (SMC), the Associated Counsel for the Accused (ACA) and The Defender Association (TDA). The agencies' formal comments can be found in appendix O. What follows is a summary evaluation of those comments:

OPM indicated that it is committed to or has already begun implementing most of the audit's recommendations and has agreed to further review some recommendations. We incorporated OPM's suggested changes in the final report related to expanding distribution of defendant satisfaction survey results to SMC and the City's public defense agencies (recommendation R9) and noted that the current City contract (i.e., 2005-2007) requires ACA to report investigator hours spent on closed cases (recommendation R18).

OPM stated that our analysis of pled guilty statistics did not account for the impact of Community Court. We note that Community Court defendants represented a small percentage of defendants who pled guilty in 2005 and 2006, and accounted for only a small percentage of the increase in the plead guilty category for those years.

SMC agreed with most of the City Auditor's recommendations and stated that the audit

[1] Government Auditing Standards, Section 8.31: "…to ensure that a report is fair, complete, and objective…obtain advance review and comments by responsible officials of the audited entity and others as may be appropriate…". Section 8.33: "Comments should be fairly and objectively evaluated and recognized, as appropriate, in the final report."

addressed most of the “technical, data-driven issues” noted in the City Council’s audit request letter. In addition, SMC provided useful comments or suggested alternative ways in which some of the recommendations could be implemented.

SMC and ACA questioned why the audit did not focus on ACA’s entire body of work in SMC and the various venues in which it works in SMC (e.g., providing attorneys for defendants appearing at the in-custody and out-of-custody calendars, the Mental Health Court and the Community Court). The criteria we used to evaluate the program included those established by City ordinance, state law, City contracts with public defense agencies, and areas of concern raised by officials involved with public defense issues that we interviewed. The audit addresses the fundamental issues that experts agree are crucial to providing quality public defense regardless of the venue in which the service is being provided. These issues include attorney caseloads, the timing and frequency of public defense agency contacts with defendants, public defense agency supervision of its attorneys, and case dispositions. Adherence to the City’s adopted standards and contract requirements are expected from the defense at all stages of the criminal justice process, from the agency’s first contact with the defendant through case disposition, whether case disposition occurs at arraignment or at trial. We conducted observations of the in-custody arraignment process and Mental Health Court, and our data analysis covers activities that occurred in the arraignment process. For example, our examination of case files and attorney contacts with defendants included cases resolved in the arraignment process, and our disposition analysis includes results that occurred in arraignment.

Most of ACA’s comments provide additional context to the report. Some of ACA’s comments attribute statements to the City Auditor, which were actually made by officials we interviewed. These officials’ comments are listed under the Interviewee Comments section in each issue’s appendix and may not reflect the City Auditor’s opinion or findings related to the topic. We appreciate that ACA recognizes that the audit ""addresses important factors in the quality of the services being provided in the Seattle Municipal Court".

Based on TDA’s concerns, we modified the report to distinguish TDA’s performance from ACA’s in certain areas. We also agreed with TDA’s comment about the American Bar Association’s public defense principle (number one) concerning independence, and modified our recommendation (R34) accordingly. Some of TDA’s other suggestions were already covered in the final draft report, such as those concerning attorney caseloads and case processing time.

SUMMARY OF MAJOR FINDINGS BY ISSUE AREA

Based on our interviews of public defense officials and review of public defense standards, we identified 19 key issue areas to analyze. We divided the issues into three areas: input measures, output measures, and other measures. Input measures include areas that public defenders and public defense agencies can influence or control to improve the quality of services provided such as limiting caseloads, being prepared for a case, investigating a case, meeting with clients, and having experienced and competent attorneys. Output measures assess the outcomes or results of cases or what the attorney accomplishes such as the number of favorable dispositions. Other measures include areas that stakeholders suggested that we evaluate to assess the degree of the defense's zealousness in representing clients or willingness to challenge the prosecution or court, such as taking cases to trial, appealing cases, or raising motions.

INPUTS

We used the input measures in this section to evaluate the quality of services provided by the City's public defense agencies. This section includes our findings concerning caseloads, attorney-client contacts, client complaints process, human resources issues such as attorney experience and training, some supports services (investigations and interpreters), continuances, and case processing time.

Issue 1: Attorney Caseloads

The City's current method of determining attorney caseload by using closed case credits is not an accurate measure of workload. It does not account for the total amount of time attorneys worked on cases in a given year, and can conflict with the City caseload standard of 380 annual cases per attorney specified in Ordinance 121501.

We reviewed 2005 and 2006 caseload data and found that the current Primary Public Defense Agency's (ACA) caseload exceeded the City's caseload standard of 380 cases per attorney per year established in Ordinance 121501. In 2005, one third of ACA's attorneys with significant SMC caseloads exceeded the City's 380 caseload standard by an average of over 10 percent.

However, because OPM determines caseload based on closed credit cases rather than the number of cases attorneys handle, while the ACA attorneys' caseloads exceeded the City's caseload standard, they were, according to OPM, in compliance with the City's caseload contract requirements. The Primary Defender's contract does not clearly state whether a case credit means an assigned case or a closed case. In order for an attorney to achieve 380 closed case credits during a year, they would have to be assigned more than 380 cases.

According to SMC, the City should lower the 380 caseload standard to 300 because of its impact on the quality of public defense. The 300 caseload ceiling is the standard recommended by the Washington Association of Public Defenders and endorsed by the Washington Bar Association. SMC officials noted that while simple cases are resolved in SMC at arraignment, the 380 caseload standard, which was developed two decades ago, assumed attorneys would be handling a post-arraignment mix of simple as well as complicated cases. In other words, the 380 caseload standard is antiquated and does not adequately account for the increased complexity of cases handled by SMC. The caseload standards we identified varied from 300 to 450.

We also found that SMC and the current Primary (ACA) and Secondary Public Defense Agencies (TDA) agree that there are benefits to having a second larger public defense program, such as more efficient court operations. Several SMC officials commented that the assignment of only two Secondary Public Defender attorneys to SMC often causes court delays because they have to cover between five and eight courts. SMC and TDA officials indicated that SMC's recent switch from a master court calendar to individual court calendars has exacerbated this problem. We also collected information from TDA for a two-week period that indicated that one of their attorneys was required to cover multiple courts on several occasions. TDA believes that it should have at least two attorneys more than the number of courts simultaneously in session.

Recommendations

R1. Based on our review of industry standards, legal literature, interview comments, and attorney caseloads, we recommend that OPM, in its role as administrator of the City's public defense contracts, conduct compliance reviews of attorney caseloads in its annual audits of the public defense agencies. In reviewing caseloads, OPM should consider the number of cases attorneys are handling by determining the number of cases assigned relative to the number of cases closed, and/or assess the amount of time attorneys spend on cases. Furthermore, OPM should consider requiring agencies to adhere to monthly or quarterly caseload standards, and review cases on that basis in addition to reviewing annual attorney caseloads. OPM should provide the audits' results to the City Council and SMC.

R2. The City should clarify the definition of attorney caseload in City Ordinance 121501 to indicate that caseload refers to cases assigned. The definition of caseload in the City's contracts with public defense agencies should be changed to be consistent with the definitions contained in the ordinance.

R3. The City should have a larger secondary public defense agency. To determine the secondary agency's attorney Full-Time Equivalents (FTEs), OPM's analysis should include tracking the number of times the secondary agency's attorneys are required to appear simultaneously in multiple courtrooms for hearings. OPM should provide the results of these analyses to the City Council and SMC.

For our complete analysis of this issue area, see Appendix A.

Issue 2: Attorney-Client Contacts

Early and substantive contact between client and attorney is important to achieving quality public defense because it increases attorney-client cooperation and understanding. This was supported in the public defense standards and legal literature we reviewed and by the comments we received from our stakeholder interviews.

We reviewed a sample of 30 of the current Primary Public Defender Agency's (ACA) case files and found that they did not always document the date of the agency's initial contact with in-custody clients and the client's first contact with a defense attorney. We also found that OPM's 2005 audit review of 10 case files indicated that ACA and TDA were in compliance with

contract requirements related to contacts, but a larger sample may have produced different results. Our larger sample of 30 cases identified several instances of non-compliance.

We found that the City's contracts stated that the initial attorney contacts with defendants (which should occur within five days of case assignment or 24 hours before the first hearing) could take the form of a letter or phone call. We also found that the current primary and secondary agencies were sometimes meeting this contract requirement by sending letters to defendants rather than through in-person contacts.

Most of the in-custody defendants we surveyed indicated that they had concerns about the quality and frequency of client-attorney contracts.

Recommendations

R4. OPM should expand the number of case files it reviews during its annual public defense agency audits to determine whether attorneys are meeting with clients according to contract terms, and require corrective measures by an agency if it does not adhere to the contract. At a minimum, 30 cases should be reviewed, which is a common "rule of thumb" for audits, regardless of the size of the population being sampled. The OPM audits should also include an examination of agency files to determine whether agency attorneys are complying with the requirement to meet with their clients no later than one day before the pre-trial hearing.

R5. Public defense agency forms should be revised to indicate whether the agencies are meeting the 24 hour in-custody client contact requirement, and when the first attorney contact with the client is made.

R6. To help determine whether contract requirements related to defendant contacts are being met, OPM should clarify what constitutes assignment of a case.

R7. Agencies are allowed to use phone calls and letters to meet attorney-client contact contract requirements. However, only in situations in which locating a client or a client's unwillingness to meet prevents attorneys from meeting with clients should a phone call or letter fulfill the contract requirements related to attorney-client contact.

R8. The public defense agencies should document evidence of attorney contacts with clients by including agency letters documenting the date of the contact in their client files.

R9. OPM should work with SMC to conduct an annual or biannual client satisfaction survey to provide feedback to agencies, and use the results of our audit's defendant survey as a baseline. OPM should provide the survey's results to the City Council, SMC and the public defense agencies.

For our complete analysis of this issue area, see Appendix B.

Issue 3: Client Complaints Process

We found several issues with the City's client complaints process including:

- The City's current contracts with the Primary and Secondary Defense agencies require that they report only written complaints to OPM. Most 2005 complaints received by ACA were made by phone. The public defense agencies are not contractually obligated to report these calls to OPM.

- Defendants, SMC's Chief Marshall, and the King County Jail Captain were not informed about the phone line to the City's Citizens Service Bureau (CSB) that SMC defendants could use if they had a complaint with their public defense attorney. In 2005, when the City designated CSB as the place defendants could register complaints about their public defense attorney, CSB received one complaint. In 2006, CSB received four calls about public defense, but none concerning client complaints about their attorneys. The small number of calls prompted OPM, CSB and SMC in 2006 to designate SMC as the entity that would receive the complaints and then refer them to OPM.

- There are no materials or information provided by the City to defendants that explain how defendants should register a complaint.

- Unlike Seattle, the King County Office of Public Defense for many years has had an official assigned to record and follow-up on defendant complaints about their legal representation. In 2006, SMC assigned the SMC public defense eligibility screener the responsibility for forwarding client complaints to OPM.

ACA and TDA have established systems to resolve and respond to complaints:

- ACA and TDA supervisors track and follow up on complaints. One ACA supervisor keeps track of complaints using a form, which contains space for describing how the complaint was addressed.

- ACA provides a letter to its clients at the beginning of a case indicating that they can call their attorney's supervisor if they have concerns with the attorney's performance. TDA provides a letter to clients at the end of a case, which invites them to submit comments about the legal services they received from TDA.

Recommendations

R10. OPM should work with SMC to provide clear information to defendants regarding who they can call if they have concerns about their public defense attorney. The information should first direct defendants to their attorney's agency or their attorney's supervisor, and then, if they believe their concern has not been addressed, to a phone number at SMC. This information should be given to defendants eligible for public defender assistance when they are given information about who has been assigned to be their public defender. This information should be provided to both in-custody and out of custody defendants.

R11. The City's contracts should require the public defense agencies to document all defendant complaints about attorneys (i.e., written, phone, and email complaints), address or follow-up on meritorious complaints, and respond to defendant complaints within one week of the complaint.

Client complaints should be documented in the case files. The agencies should provide OPM copies of complaints and how they were addressed so that OPM can determine if the complaints are persistent problems, and ensure that responses are being provided to defendants who have meritorious complaints. The agencies should also provide OPM with explanations about why cases were transferred from the Primary Defender to the Secondary Defender or from the Secondary to assigned counsel due to a breakdown in attorney-client communications.

R12. OPM and SMC should provide information about the City's public defense agencies on the City's InWeb and PAN web sites. The City's web site could include information about the primary and secondary defender, the court process, who to call if a defendant has an issue with a Seattle public defense attorney, and other valuable topics.

R13. The City's Primary and Secondary Public Defenders should have web sites for their organizations that are linked to the City's web site and include information about what to do if a defendant has an issue with a Seattle public defense attorney. ACA, which is the City's current Primary Public Defender, launched its web site during the course of our audit in July 2007. TDA has had a web site for several years.

For our complete analysis of this issue area, see Appendix C.

Issue 4: Attorney Experience

The City's current contracts with the two public defense agencies do not require a minimum number of years of related work experience to serve as an SMC defense attorney. TDA's attorneys assigned to SMC in 2004 averaged approximately eight years as members of the Washington Bar, while ACA's attorneys in 2005 averaged approximately five years of bar membership. However, the median number of years of bar membership for both agencies attorneys' in these years was approximately four years (half had more than four years experience and half had fewer than four years).

We do not have any recommendations for this issue area.

Issue 5: Supervision

OPM's 2005 audit did not examine whether the public defense agencies were meeting the contract requirement related to one supervisor for every 10 attorneys.

ACA did not consistently comply with the City contract requirement of one supervisor for every 10 attorneys assigned to SMC. In 14 of 16 periods we reviewed from 2005 through the first quarter of 2007 ACA exceeded the supervisor to attorney ratio contract requirement by an average of 2.5 attorneys. OPM recently gave ACA authorization to hire an additional supervisor which would bring ACA in compliance with the requirement.

Based on interviews with stakeholders, our own court observations of supervisors assisting attorneys and case files reviews, we found that ACA's supervisors conduct performance evaluations, shadow new attorneys in court, and conduct follow-up when concerns are raised

about the attorneys they supervise. TDA supervisors also conduct performance evaluations of their attorneys, and shadow new attorneys.

Recommendations

R14. OPM should assess the supervisor to attorney ratio on a quarterly basis and take corrective actions if the City's guideline of one supervisor for 10 attorneys is not being adhered to. Corrective action could include assigning cases to the City's other public defense agency until additional supervision is in put in place by the offending agency.

For our complete analysis of this issue area, see Appendix D.

Issue 6: Training

OPM's 2005 audits of the primary and secondary defense agencies found that ACA and TDA were in full compliance with the contracts' seven hour continuing legal education requirements. However, the attorneys listed in the TDA audit were ACA not TDA employees. We also found that the attorneys used in this audit had closed only one SMC case in 2005, and that two had not closed any cases in 2005. Our review of ACA and TDA's training records indicated that they complied with contract training requirements.

Recommendations

R15. To determine if attorneys are meeting contract continuing legal education requirements, OPM's annual audits should include a review of a larger sample of attorneys, attorneys with significant SMC caseloads, and attorneys from both agencies.

For our complete analysis of this issue area, see Appendix D.

Issue 7: Performance Evaluations

OPM's audits of the primary and secondary public defense agencies did not assess whether the agencies' attorney performance evaluations were consistent with contract requirements.

In 2005, OPM excused ACA from conducting attorney performance evaluations because ACA was working with a consultant to improve its performance evaluation process.

The City's current contracts with the primary and secondary public defense agencies require that they provide a "summary report" of the performance evaluations conducted on their attorneys. However, the contracts do not indicate what information the summary should include. For example, the contract did not require that the summaries include anything about the overall performance of the agency's attorneys. The TDA summary's sole purpose appeared to be to inform OPM that performance evaluations had been conducted.

Recommendations

R16. OPM audits of the public defense agencies should determine whether the agencies conducted performance evaluations that were consistent with contract requirements.

R17. OPM should assess the purpose of the contract's requirement that the public defense agencies submit a "summary report of the annual attorney performance evaluations", and determine what information should be reported to make this summary report more useful in communicating how well SMC defense attorneys are performing.

For our complete analysis of this issue area, see Appendix D.

Issue 8: Investigators

The contract requires that agencies employ one investigator for every five attorneys. ACA met this requirement in 11 out of 15 months we reviewed between 2005 through the first quarter of 2007.

Our review of a sample of thirty 2006 case files from each agency revealed that ACA used an investigator four times and TDA used an investigator six times.

ACA data showed an increase in its use of investigators between 2005 and 2006.

Recommendations

R18. OPM should review the number of hours used by investigators from both public defender agencies to evaluate agency performance.

R19. OPM should compare the agencies' use of investigators to their costs to determine if the City is paying the agencies an appropriate amount for investigators given how often they are used by the agencies. This analysis could help OPM determine whether it should consider paying agencies on a per usage basis versus the current practice of having one investigator for every five attorneys.

For our complete analysis of this issue area, see Appendix E.

Issue 9: Interpreters

King County OPD did not track the agencies' use of interpreters in 2004; therefore, we could not compare interpreter usage between 2004 and 2005. According to OPD data for January through August 2003, even though ACA and TDA had roughly equal workloads, TDA used interpreters on 110 occasions outside of the courtroom, which was much more than ACA (2 occasions) and Northwest Defenders Association (18 occasions). However, since that time, according to SMC data, ACA's use of interpreters outside of the courtroom has increased significantly. From April 2006 through April 2007, ACA, which had about 90 percent of the SMC workload, used

interpreters 334 times outside of the courtroom.

We found that in 2005 about three percent of court hearings required interpreters, and about four percent in 2006.

Our review of a sample of thirty 2006 case files from each agency found only one file from each agency that cited the use of an interpreter. However, SMC data showed that both ACA and TDA used interpreters outside of court hearings. According to SMC data, between April 2006 and April 2007, ACA used an interpreter outside of court 334 times while TDA did this 33 times. In percentage terms, the agencies' use of interpreters outside the court was approximately proportionate to their annual caseloads - ACA (90 percent) and TDA (10 percent). This data also showed the frequency of ACA's use of interpreters for these purposes had increased over time.

Recommendations

R20. SMC should continue tracking public defense agency use of interpreters outside of court hearings. The collected information should also include the meeting's location, purpose, and duration.

R21. To help avoid court delays, OPM should include language in the public defense agency contracts requiring agency attorneys to arrange for interpreters for meetings and hearings at least an hour before the meeting or hearing.

R22. As part of its annual public defense agency audits, OPM should use SMC interpreter usage reports to evaluate public defense agency performance.

For our complete analysis of this issue area, see Appendix F.

Issue 10: Continuances

Seattle's prosecuting attorneys and most judges we interviewed expressed concerns with the number of continuances in 2005 requested by public defense attorneys. They indicated that some of the consequences of continuances included defendants having to wait, sometimes in jail, longer to have their case resolved which makes working with them more difficult, and court delays because a hearing must be held to request a continuance. However, ACA and TDA believe that continuances are often in the best interest of the client because additional time may be needed to investigate cases and evaluate options for the client.

In 2004 through 2006, the defense requested over 90 percent of the continuances requested in SMC. Other requests for continuances were made by prosecutors or by both prosecutors and defense attorneys. Although there is no data on how many continuances were requested by public versus private defenders, according to SMC officials, public defenders represent the vast majority of defendants appearing in SMC.

The number of 2005 defense requested continuances increased by 17 percent over 2004 as a

percentage of Law Department case filings. However, in 2006 compared to 2005, the number of continuances declined by 17 percent as a percentage of Law Department case filings.

Recommendation

R23. SMC should track which public defense agency requests a continuance, the reason for the continuance, whether the continuance is requested at the pre-trial or for a trial. OPM should work with SMC to develop a performance goal related to continuances to include in the contracts with the public defense agencies.

For our complete analysis of this issue area, see Appendix G.

Issue 11: Case Processing Time

Long case processing times could mean one or more of the following: 1) attorneys are carrying too heavy of a caseload; 2) inexperienced attorneys are working on cases, thus requiring additional time; or 3) attorneys are thoroughly reviewing cases. Conversely, short processing times could mean that attorneys are not spending enough time on cases, or that the attorneys are experienced enough to move quickly through their assigned cases.

The City does not have a system to assess the duration of a case from assignment to resolution or adjudication in court. SMC is currently working on improving its systems to track open/closed case information and ACA currently tracks cases from assignment to the administrative closure of a case.

Although the case processing time goals are for courts and are not meant to apply to defense attorneys, several officials suggested that we assess the time it takes public defenders to complete their cases. In 2005 and 2006 ACA's cases did not appear to meet the recommended filing to resolution standards established for courts by the Washington State Board for Judicial Administration's Court Management Council. It is not clear what caused these long case processing times. SMC and the public defense agencies do not track when cases are opened to the time they are adjudicated; therefore, we were unable to determine whether attorneys were exceeding the state standards (ACA keeps data on the time from opening to closing cases, which includes the time it takes administratively to close a case). Furthermore, an SMC official cautioned that state case processing guidelines were old and do not take into account the increasing complexity of cases handled by SMC since the standard was established in 1992 and revised in 1997.

We did not find evidence that the City's payment methodology of paying by closed cases was providing an incentive to either ACA or TDA to close cases prematurely. However, State and City officials stated that paying public defense agencies on a closed case basis provides an incentive or the appearance of an incentive to close cases faster. An ACA official noted that if the City's current payment method is giving an appearance that it has a detrimental impact on clients, it would be worth eliminating that appearance by having the City pay the public defense agencies upfront. This official also stated that ACA provides monthly closed case reports to King County, which does not pay on a closed case basis. The official said ACA provides closed case reports to the City and could continue to do so regardless of the payment method.

Recommendations:

R24. We endorse SMC's work in improving its automated systems so they can track open/closed case information. Agencies should also track cases from case assignment to court resolution or adjudication.

R25. SMC and OPM should evaluate case processing time information for adherence to state standards and significant changes between years.

R26. OPM should reconsider paying public defense agencies on a closed case basis in order to eliminate the appearance that it is providing an incentive to agencies to rapidly close cases. The City could pay public defense agencies on an assigned case basis and still hold agencies accountable by continuing to require closed case reports.

For our complete analysis of this issue area, see Appendix H.

OUTPUTS

We used various output measures to assess the outcomes or dispositions of cases, such as the number of guilty versus not guilty verdicts, charge reductions and length of stay in jail. This section includes findings and recommendations related to case dispositions and jail population and length of stay in jail.

Issue 12: Dispositions

Based on case disposition information we obtained from the City's Law Department, defendants as a whole appear to have been better off in 2004 than 2005. However, we cannot say if the decline in favorable outcomes was the result of private or public defenders as the Law Department does not record this data, although the majority of cases are public defender cases. In 2006, the favorable outcomes for defendants improved compared to 2005, but overall were not as favorable as 2004.

Recommendations

R27. OPM should review annual disposition data by agency for large quantitative changes from the previous year. Large changes between years could indicate systematic issues in public defense services, and such data should be shared with SMC and the City Council.

For our complete analysis of this issue area, see Appendix I.

Issue 13: Jail Population/Length of Sentence

Several factors, such as police enforcement practices, have a greater effect on jail population than the quality of public defense. Although there are several factors such as City Attorney's sentencing recommendations and judges' sentencing practices that affect the length of stay of

SMC defendants in jail, length of stay in jail is an area in which defense attorneys have a greater impact on than the size of the jail population. In 2005, the length of stay of SMC defendants in jail decreased by 2 percent and by another 2 percent in 2006.

We do not have any recommendations for this issue area.

For our complete analysis of this issue area, see Appendix J.

OTHER ANALYSIS

Several stakeholders suggested that we assess measures that may indicate the defense's willingness to challenge the prosecution and the court, such as taking cases to trial and appealing cases. This section looks at appeals and motions, probation revocation hearings, and trial data.

Issue 14: Appeals

As a percentage of Law Department case filings, very few cases get appealed: approximately half of one percent from 2004 through 2006. This data also showed that there was a small percentage decrease in appeals between 2004 and 2005 followed by a slight increase in 2006.

OPM did not know why appeals decreased from 2004 to 2005, but noted that most of the 2005 City appeals originated in 2004 and concluded that the reduction in appeals was not due to the 2005 contract changes.

The appeals docket, which is SMC's official record of court proceedings, does not always provide information on the attorney initiating the appeal or which agency or attorney was assigned to the case.

In 2006, OPM assigned all SMC appeals to TDA to give it enough work to maintain two Full-Time Equivalent Employees (FTEs) at SMC. There were divergent views among the officials we interviewed regarding whether a defendant should have an attorney from a different agency. One official agreed with the change because it prevents ACA from giving itself more work, while another official thought it was preferable to have the agency or attorney where the case was originally assigned handle the appeal.

Recommendations

R28. If OPM and SMC agree that appeals are a relevant measure of public defense quality, they should work together to improve the tracking of appeal information, including who initiated the appeal, the assigned agency and attorney on the appeal, and the appeal's outcome. Furthermore, each month OPM should reconcile agency appeal information against Law Department information.

For our complete analysis of this issue area, see Appendix K.

Issue 15: Motions

Although we did not identify any published public defense standards that indicate that defense attorneys should file a certain number of motions, some standards suggested that a reduction of motions over a period may be the result of overburdened attorneys. SMC could not provide a count of motions because it does not have a system to track motions that occur in trials, and City contracts with public defense agencies do not require them to report motions.

Recommendations

R29. If OPM and SMC agree that motions are an indicator of quality public defense, OPM should work with the public defense agencies and SMC to start tracking information on motions, including who made the motion, the purpose of the motion, the type of motion, and the motion's outcome.

For our complete analysis of this issue area, see Appendix K.

Issue 16: Probation Revocation Hearings

From 2004 to 2005 we found a 46 percent decrease in probation revocation hearings set (i.e., scheduled). A further 63 percent reduction in probation revocation hearings set occurred from 2005 to 2006. While contesting allegations of probation violations may speak to the willingness of an attorney to vigorously defend a client and challenge the prosecution, the reductions in 2005 and 2006 compared to 2004 could also be the result of SMC's efforts to achieve greater defendant compliance with probation conditions.

Recommendations

R30. SMC and OPM should consider whether the annual number of hearings in which defense attorneys contest probation violation allegations is an appropriate measure of quality public defense. If they determine it is, SMC should track such hearings and OPM should monitor this information for significant changes in the annual number of such hearings by public defense agency.

For our complete analysis of this issue area, see Appendix L.

Issue 17: Trial Data

We did not identify any published standards or guidelines that dictate how many cases attorneys should be taking to trial as a percentage of caseload.

We could not verify the accuracy of SMC bench trial (trials that are scheduled to be heard before a judge rather than a jury) data; therefore, we were unable to determine the total number of cases resolved through trials in SMC. However, SMC provided us with trial setting information and a hand count of actual jury trials held from 2004-2006. In addition, the Law Department provided

trial setting data and the number of dispositions or charges resolved through trial. Most of the trial data between 2004 and 2006 showed decreases:

- SMC data showed decreases in jury trials and trial settings from 2004 through 2006.

- Law Department data showed decreases in readiness settings (hearings that are scheduled to determine a case's preparedness for trial, which occur the week before the trial) bench trial settings, and jury trial settings (trials that are scheduled before a jury) between 2004 and 2005. However, in 2006 the readiness setting rate increased.

- Law Department data on how dispositions or charges were resolved showed an increase in dispositions resolved through trial in 2005 and a decrease in 2006, although 2006 was higher than 2004.

In 2005 and 2006 the City' current primary public defense agency, ACA, tried one percent of its closed cases, whereas the current secondary agency, TDA, tried two percent in 2005 and three percent in 2006.

Although some officials we interviewed stated that trial rates are an appropriate measure of quality public defense because attorneys should be taking some cases to trial, several individuals cited many reasons why trials were not a good measure of quality public defense. According to SMC officials, the Court's purpose is to resolve cases and resolving them through trial is just one of many methods to achieve this objective.

In evaluating the City's Request for Proposal (RFP) for 2005 public defense services, one factor used to evaluate the respondents was an agency's willingness to address client's overall needs in problem solving courts. In order to participate in the City's problem solving courts, such as Community Court and Mental Health Court, defendants plead guilty and forgo their right to a trial, which may decrease the number of cases that get resolved through trial.

According to the RFP, the Executive believes in the importance of problem solving courts. The Executive expects the Primary Defender and the defense attorneys assigned to Mental Health Court to embrace its goals, provided that such a collaborative approach is not in conflict with counsel's duties under the Rules of Professional Conduct of zealous representation, confidentiality and undivided loyalty, and the constitutions of the United States and Washington State.

Recommendations

R31. While data on the number of trials cannot by itself adequately measure the quality of public defense, it reasonable for the City to expect public defense attorneys assigned to SMC to assess the merits of each case to determine whether they should go to trial. Further, it is reasonable for the City of Seattle and defendants to expect that City of Seattle public defense attorneys are willing to take cases to trial. Therefore, OPM should track of the annual number of cases its public defense attorneys are taking to trial, question those agencies who have attorneys that have the option to but never or rarely take cases to trial, and annually monitor trial rates for significant decreases. If there are significant decreases in the annual number of trials, OPM should report this to the City Council.

R32. The City should consider paying the public defense agencies on an assigned case basis. This could address issues raised by officials about the unintended incentives the current payment system may be providing to negotiate or plea bargain cases that may merit trials. (Note: see Case Processing Time Analysis above).

R33. SMC should consider modifying its information systems to facilitate and enhance the accuracy of reporting on all trials to include bench trials (not just jury trials). This will allow OPM to review trial data based on various factors (e.g., race) and type of case to evaluate possible trends.

For our complete analysis of this issue area, see Appendix M.

Issue 18: Assessment of Seattle's Adherence to ABA's Ten Principles of a Public Defense System

The City fully complies with four of the ABA's Ten Principles of a Public Defense Delivery System and partially complies with six of the principles. We found partial compliance regarding:

- Judicial independence of assigned counsel (SMC assigns private defense attorneys to SMC cases, when conflicts of interests prevent the City's primary or secondary defense agencies from handling cases)
- Timely contacts with clients
- Attorney Caseloads
- Continuous representation
- Parity of defense with prosecutors, and
- Supervision.

For each principle, we provided OPM's response on how the City addresses the principle and our analysis of how the City complies with the principle.

Principle 1: The public defense function, including the selection, funding, and payment of defense counsel, is independent.

OPM: Seattle's public defense function is independent because the primary and secondary defenders were selected through a Request for Proposal (RFP) process by an independent review board. OPM funds and pays the defenders.

Office of City Auditor Analysis - Partially Complies: This standard indicates that the selection of the defense counsel should be performed independently of political influence and that a non-partisan board should oversee the public defense system. In 2004, the Mayor appointed all the members of the previous (i.e., 2005-2007 contract period) Request for Proposal (RFP) selection committee. According to OPM, three of the selection committee members were City employees who worked for the Mayor while the three other members were from external organizations (i.e., the Federal Public Defender, an official from Columbia Legal Services, and a retired District

Court Judge). OPM oversees the selection, funding, and payment of defense counsel. The City Council provides oversight of the City's public defense system through its annual budget review process in which it approves funding for indigent public defense services, and by requesting information from the Executive about the City's RFP process for awarding contracts to public defense agencies.

SMC is managing assigned counsel, which could be viewed as jeopardizing its judicial independence.

Recommendation

R34. The Executive and City Council should decide whether their roles in the RFP selection process and oversight of the public defense system provide sufficient independence, or whether these functions should be performed by an independent review board selected by the Mayor and City Council. Also, we recommend that the management of assigned counsel be made by an entity independent of SMC.

Principle 2: Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

OPM: The City of Seattle contracts with two non-profit agencies and also uses the private bar to handle cases where there are conflicts or co-defendants.

Office of City Auditor Analysis - Complies: There is no public defender office located within City government serving as the public defender. The Primary Defender, ACA, a non-profit organization, is considered the City's current public defender. The City also contracts with a secondary public defense agency (TDA) that deals with conflict of interest cases and appeals. Furthermore, the City uses assigned counsel when necessary.

Principle 3: Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after a client's arrest, detention, or request for counsel.

OPM: Clients are screened for eligibility at their first court hearing. Defense counsel is provided to all defendants at their first court hearing and is then appointed for financially eligible defendants directly after the first court hearing.

Office of City Auditor Analysis – Complies.

Principle 4: Defense counsel is provided sufficient time and a confidential space with which to meet with the client.

OPM: Defense counsel are provided private meeting spaces in the jail with which to meet with their clients and are given sufficient time to do so before the pre-trial hearing.

Office of City Auditor Analysis – Partially Complies: Confidential meeting space is provided at

ACA, TDA, the King County Jail, and the City of Seattle Justice Center for private meetings with clients. However, the City is not in full compliance with this principle if the caseloads assigned to some public defense attorneys leave them with insufficient time to meet with their clients before pre-trial hearings.

We found that not all attorneys could adhere to the contract requirement related to contacting clients within five days of assignment of the case or no later than the day before the pretrial hearing, which ever comes first. In reviewing agency 2006 case files, we found ACA did not meet this requirement in four instances and TDA once.

Our survey of 23 in-custody clients revealed some dissatisfaction with public defenders, especially among those who had little or brief contact with their attorneys. The respondents who believed they did not understand their attorney and did not spend enough time with their attorney were not satisfied with their attorney. Most respondents who met with their attorneys reported meeting in jail, and about a third reported meeting in the holding area right before the pre-trial. Slightly half of the respondents believed that they didn't spend enough time with their attorney. Four respondents reported few or no visits from the attorney.

Several officials we interviewed witnessed attorneys meeting with clients for the first time at pre-trial hearings, and suggested that these meetings occur at least one to two hours before the pre-trial hearing. (See Attorney-Client Contacts analysis above for details).

Recommendations: Recommendations related to attorney-client contacts are found above under Attorney-Client Contract recommendations 4 and 7.

Principle 5: Defense counsel's workload is controlled to permit the rendering of quality representation.

OPM: Defense attorney caseloads are capped at 380 case credits per attorney per year (this is below the national standard of 400 misdemeanor cases per attorney per year and King County's standard of 450 cases per year).

Office of City Auditor Analysis - Partially Complies: Although the City has workload standards in place, this principle is not being fully adhered to as intended in City Ordinance 121501. The City's method of determining caseload by using case closed credits does not consider the amount of time attorneys work on all the cases they are handling in a given year. We identified instances in which public defense attorneys' workloads exceeded the City's 380 caseload standard.

Recommendations: Recommendations related to caseload are found above under Caseload recommendations 1 and 2.

Principle 6: Defense counsel's ability, training, and experience match the complexity of the case.

OPM: Defense attorneys are required to complete 7 hours of continuing legal education related to criminal law. Every attorney must be a licensed member of the Washington Bar in good

standing.

Office of City Auditor Analysis - Complies: The City's public defense attorneys are required annually to complete seven hours of continuing legal education related to criminal law. Every attorney must be a licensed member of the Washington Bar in good standing. There is no prior work experience necessary to work on misdemeanor cases, and often misdemeanor cases are assigned to younger and newer attorneys.

Principle 7: The same attorney continually represents the client until completion of the case.

OPM: The practice is for the same attorney to represent the client until completion of the case.

Office of City Auditor Analysis - Partially Complies: The City's contract with the two public defense agencies does not require them to provide continuous representation. In the contracts, both public defense agencies have agreed that, within available resources, they will make reasonable efforts to continue the initial attorney assigned to a client throughout any case in which representation is undertaken. However, OPM's audits of service agencies have not assessed whether reasonable efforts are being made by public defense agencies to have continuous representation. Furthermore, the public defense agencies are not prohibited from rotating attorneys through various agency divisions or from assigning a single attorney to handle various aspects of legal proceedings for all indigent persons where such method of assignment is the most reasonable method of obtaining effective legal representation for indigent persons.

Recommendation

R35. In its annual audits of public defense agencies, OPM should assess whether reasonable efforts are being made to have continuous representation.

Principle 8: There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

OPM: Public defense attorney salaries are tied to King County prosecutor salaries to ensure parity. Standards have been established for investigator and social worker support. The Public Defender is an equal member of the Criminal Justice Committee and is included as an equal partner in the justice system.

Office of City Auditor Analysis - Partially Complies: In the current contracts, public defense agency attorney salaries are tied to King County prosecutor salaries rather than to City of Seattle prosecutor salaries. The City's 2007 prosecutor salary range up to the Senior Attorney level ($60,097-$122,659) is higher than the King County prosecutor 2007 salary range ($48,865-$111,624) up to the Senior Attorney level listed in the contract. The reason OPM uses King County prosecutor salaries in the contracts is so that the public defense agencies can avoid using two different salary schedules to pay their attorneys (one for attorneys working at SMC and one for all their other attorneys working on King County cases).

The City's current primary public defender is a member of the City's Criminal Justice Committee. Resources are provided and standards have been established for investigator and social worker support. In addition, the budgets of the Prosecutor and the City's public defense budget are comparable. However, the City's current Primary Public Defender (ACA) does not have a web site, and it is very difficult to find information about the City's Primary Public Defender in the City's web sites. (See Analysis of Client Complaints Process)

Recommendation

R36. The City should consider City of Seattle prosecutor salaries and benefits when determining parity.

Principle 9: Defense counsel is provided with and required to attend continuing legal education.

OPM: Defense attorneys are required to complete 7 hours of continuing legal education (CLE) related to criminal law.

Office of City Auditor Analysis - Complies: The City is adhering to this principle, but OPM could make improvements in its audits of public defense agencies to verify this information. See recommendation R14 above.

Principle 10: Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

OPM: The Primary and Secondary Defenders provide one supervising attorney for every ten attorneys. The Primary and Secondary Defenders supervise and maintain the quality of staff and services performed.

Office of City Auditor Analysis – Partially Complies: ACA did not consistently comply with the City contract requirement of one supervisor for every 10 attorneys assigned to SMC.

The City's oversight of the public defense agencies could be improved. We make recommendations to improve the oversight process in the following areas: caseloads, attorney-client contacts, client complaints process, training, performance evaluations, supervision, investigations, interpreter use, continuances, case processing time, dispositions, appeals, motions, trials and continuous representation.

Issue 19: Comparison of the Prior and Current City Public Defense Agency Contracts

The requirements for public defense agencies in Seattle's 2005-2007 public defense contracts are either the same or stricter than the previous ones under King County. The only area in which King County's contract offered a superior incentive for quality public defense was in its payment structure. King County pays its public defense agencies on a projected assigned caseload and pays the contractors on a monthly basis, roughly the same each month, based on those

projections. Every four months King County reconciles its accounts with their public defense agencies. Since pay is not based on closed cases, King County does not track them and there is no incentive to close cases fast or without thorough review. Unlike King County, Seattle pays its public defense agencies on a closed case credit basis. The public defense agencies get paid only for the cases they close, which could provide an incentive or the appearance of an incentive to close cases quickly without sufficient review. We found no evidence of ACA or TDA closing cases quickly to get paid faster.

Recommendations

Recommended changes to the contract are listed under the various findings and recommendations sections of this report.

For our complete analysis of this issue area, see Appendix N.

SUMMARY OF ANALYSES

Issue Analyzed	Contract Term and/or City Standard	Other Professional Standard	Results of Issue Analysis: Comparison of 2004 to 2005 and/or 2006 Performance	Office of City Auditor Recommendation
1. Attorney Caseloads	Yes	Yes	Old system measured caseload differently - Found issues with new method to count caseload.	Yes
2. Attorney-Client Contacts	Yes	Yes	Issues under both systems - OPM only looked at 10 cases.	Yes
3. Client Complaints Process	Yes	Yes	Better system in 2004-found issues.	Yes
4. Attorney Experience	No	No	Greater average years of attorney experience in 2004, median years comparable; agencies are complying with contract terms in 2005 and 2006.	No
5. Supervision	Yes	Yes	ACA did not consistently comply with City requirements related to the supervisor to attorney ratio.	Yes
6. Training	Yes	Yes	Complied in 2005-2006.	Yes
7. Performance Evaluation	Yes	Yes	ACA did not evaluate attorneys in 2005; worked with consultant to improve evaluation process for 2006.	Yes
8. Investigator Use	Yes	Yes	ACA met the standard in 11 of 15 months reviewed. ACA started tracking usage in 2005, and use increased.	Yes
9. Interpreters Use	No	Yes	ACA increased use since 2005.	Yes
10. Continuances	No	No	Better in 2004 than 2005/ Improved in 2006.	Yes
11. Case Processing Time	No	Yes-for Courts	Not applicable.	Yes
12. Dispositions	No	No	Better in 2004 than 2005/ Improved 2006.	Yes
13. Jail Population/ Length of stay	No/No	No/No	Not a good measure/Better in 2005 than 2004.	No
14. Appeals	No	No	Negligible decrease in 2005.	Yes
15. Motions	No	No	No data.	Yes
16. Probation Revocation Hearings Set	No	No	More hearings scheduled in 2004 than 2005/Fewer scheduled in 2006 than 2005.	Yes
17. Trial Data	No	No	Decreases in four of five areas analyzed.	Yes
18. ABA's 10 Principles	Not applicable		Meets four; partially meets six.	Yes
19. Contracts Comp.	Not applicable		Some terms strengthened in City's 2005 contracts	Yes

TABLE OF RECOMMENDATIONS

Red = Urgent, address immediately	Yellow = Important, but not urgent	Green = Issue requires decision or further assessment before implementation.

Issue	Recommendations	Urgency of Rec.
1. Attorney Caseload	R1. Based on our review of industry standards, legal literature, interview comments, and attorney caseloads, we recommend that OPM, in its role as administrator of the City's public defense contracts, conduct compliance reviews of attorney caseloads in its annual audits of the public defense agencies. In reviewing caseloads, OPM should consider the number of cases attorneys are handling by determining the number of cases assigned relative to the number of cases closed, and/or assess the amount of time attorneys spend on cases. Furthermore, OPM should consider requiring agencies to adhere to monthly or quarterly caseload standards, and review cases on that basis in addition to reviewing annual attorney caseloads. OPM should provide the audits' results to the City Council and SMC. R2. The City should clarify the definition of attorney caseload in City Ordinance 121501 to indicate that caseload refers to cases assigned. The definition of caseload in the City's contracts with public defense agencies should be changed to be consistent with the definitions contained in the ordinance. R3. The City should have a larger secondary public defense agency. To determine the secondary agency's attorney Full-Time Equivalents (FTEs), OPM's analysis should include tracking the number of times the secondary agency's attorneys are required to appear simultaneously in multiple courtrooms for hearings. OPM should provide the results of these analyses to the City Council and SMC.	**Red**
2. Attorney-Client Contacts	R4. OPM should expand the number of case files it reviews during its annual public defense agency audits to determine whether attorneys are meeting with clients according to contract terms, and require corrective measures by an agency if it does not adhere to the contract. At a minimum, 30 cases should be reviewed, which is a common "rule of thumb" for audits, regardless of the size of the population being sampled. The OPM audits should also include an examination of agency files to determine whether agency attorneys are complying with the requirement to meet with their clients no later than one day before the pre-trial hearing. R5. Public defense agency forms should be revised to indicate whether the agencies are meeting the 24 hour in-custody client	**Red**

	contact requirement, and when the first attorney contact with the client is made. R6. To help determine whether contract requirements related to defendant contacts are being met, OPM should clarify what constitutes assignment of a case. R7. Agencies are allowed to use phone calls and letters to meet attorney-client contact contract requirements. However, only in situations in which locating a client or a client's unwillingness to meet prevents attorneys from meeting with clients should a phone call or letter fulfill the contract requirements related to attorney-client contact. R8. The public defense agencies should document evidence of attorney contacts with clients by including agency letters documenting the date of the contact in their client files. R9. OPM should work with SMC to conduct an annual or biannual client satisfaction survey to provide feedback to agencies, and use the results of our audit's defendant survey as a baseline. OPM should provide the survey's results to the City Council, SMC and the public defense agencies. .	
3. Client Complaints Process	R10. OPM should work with SMC to provide clear information to defendants regarding who they can call if they have concerns about their public defense attorney. The information should first direct defendants to their attorney's agency or their attorney's supervisor, and then, if they believe their concern has not been addressed, to a phone number at SMC. This information should be given to defendants eligible for public defender assistance when they are given information about who has been assigned to be their public defender. This information should be provided to both in-custody and out of custody defendants. R11. The City's contracts should require the public defense agencies to document all defendant complaints about attorneys (i.e., written, phone, and email complaints), address or follow-up on meritorious complaints, and respond to defendant complaints within one week of the complaint. Client complaints should be documented in the case files. The agencies should provide OPM copies of complaints and how they were addressed so that OPM can determine if the complaints are persistent problems, and ensure that responses are being provided to defendants who have meritorious complaints. The agencies should also provide OPM with explanations about why cases were transferred from the Primary Defender to the Secondary Defender or from the Secondary to assigned counsel due to a breakdown in attorney-client communications. R12. OPM and SMC should provide information about the City's	**Red**

	public defense agencies on the City's InWeb and PAN web sites. The City's web site could include information about the primary and secondary defender, the court process, who to call if a defendant has an issue with a Seattle public defense attorney, and other valuable topics. R13. The City's Primary and Secondary Public Defenders should have web sites for their organizations that are linked to the City's web site and include information about what to do if a defendant has an issue with a Seattle public defense attorney. ACA, which is the City's current Primary Public Defender, launched its web site during the course of our audit in July 2007. TDA has had a web site for several years.	
4. Attorney Experience	None.	
5. Supervision	R14. OPM should assess the supervisor to attorney ratio on a quarterly basis and take corrective actions if the City's guideline of one supervisor for 10 attorneys is not being adhered to. Corrective action could include assigning cases to the City's other public defense agency until additional supervision is in put in place by the offending agency.	**Red**
6. Training	R15. To determine if attorneys are meeting contract continuing legal education requirements, OPM's annual audits should include a review of a larger sample of attorneys, attorneys with significant SMC caseloads, and attorneys from both agencies.	**Green**
7. Performance Evaluations	R16. OPM audits of the public defense agencies should determine whether the agencies conducted performance evaluations that were consistent with contract requirements. R17. OPM should assess the purpose of the contract's requirement that the public defense agencies submit a "summary report of the annual attorney performance evaluations", and determine what information should be reported to make this summary report more useful in communicating how well SMC defense attorneys are performing.	**Yellow**
8. Investigator Use	R18. OPM should review the number of hours used by investigators from both public defender agencies to evaluate agency performance. R19. OPM should compare the agencies' use of investigators to their costs to determine if the City is paying the agencies an appropriate amount for investigators given how often they are used by the agencies. This analysis could help OPM determine whether it should consider paying agencies on a per usage basis versus the current practice of having one investigator for every five attorneys.	**Yellow**
9. Interpreter Use	R20. SMC should continue tracking public defense agency use of interpreters outside of court hearings. The collected information should also include the meeting's location, and purpose.	**Yellow**

	R21. To help avoid court delays, OPM should include language in the public defense agency contracts requiring agency attorneys to arrange for interpreters for meetings and hearings at least an hour before the meeting or hearing. R22. As part of its annual public defense agency audits, OPM should use SMC interpreter usage reports to evaluate public defense agency performance.	
10. Continuances	R23. SMC should track which public defense agency requests a continuance, the reason for the continuance, whether the continuance is requested at the pre-trial or for a trial. OPM should work with SMC to develop a performance goal related to continuances to include in the contracts with the public defense agencies.	**Yellow**
11. Case Processing Time	R24. We endorse SMC's work in improving its automated systems so they can track open/closed case information. Agencies should also track cases from case assignment to court resolution or adjudication. R25. SMC and OPM should evaluate case processing time information for adherence to state standards and significant changes between years. R26. OPM should reconsider paying public defense agencies on a closed case basis in order to eliminate the appearance that it is providing an incentive to agencies to rapidly close cases. The City could pay public defense agencies on an assigned case basis and still hold agencies accountable by continuing to require closed case reports.	**Yellow**
12. Dispositions	R27. OPM should review annual disposition data by agency for large quantitative changes from the previous year. Large changes between years could indicate systematic issues in public defense services, and such data should be shared with SMC and the City Council.	**Yellow**
13. Jail Population/Length of Sentence	None.	
14. Appeals	R28. If OPM and SMC agree that appeals are a relevant measure of public defense quality, they should work together to improve the tracking of appeal information, including who initiated the appeal, the assigned agency and attorney on the appeal, and the appeal's outcome. Furthermore, each month OPM should reconcile agency appeal information against Law Department information.	**Green**
15. Motions	R29. If OPM and SMC agree that motions are an indicator of quality public defense, OPM should work with the public defense agencies and SMC to start tracking information on motions, including who made the motion, the purpose of the motion, the type of motion, and the motion's outcome.	**Green**

16. Probation Revocation Hearings	R30. SMC and OPM should consider whether the annual number of hearings in which defense attorneys contest probation violation allegations is an appropriate measure of quality public defense. If they determine it is, SMC should track such hearings and OPM should monitor this information for significant changes in the annual number of such hearings by public defense agency	**Green**
17. Trial Data	R31. While data on the number of trials cannot by itself adequately measure the quality of public defense, it reasonable for the City to expect public defense attorneys assigned to SMC to assess the merits of each case to determine whether they should go to trial. Further, it is reasonable for the City of Seattle and defendants to expect that City of Seattle public defense attorneys are willing to take cases to trial. Therefore, OPM should track of the annual number of cases its public defense attorneys are taking to trial, question those agencies who have attorneys that have the option to but never or rarely take cases to trial, and annually monitor trial rates for significant decreases. If there are significant decreases in the annual number of trials, OPM should report this to the City Council. R32. The City should consider paying the public defense agencies on an assigned case basis. This could address issues raised by officials about the unintended incentives the current payment system may be providing to negotiate or plea bargain cases that may merit trials. (Note: see Case Processing Time Analysis recommendation above). R33. SMC should consider modifying its information systems to facilitate and enhance the accuracy of reporting on all trials to include bench trials (not just jury trials). This will allow OPM to review trial data based on various factors (e.g., race) and type of case to evaluate possible trends.	**Yellow**
18. Assessment of Seattle's Adherence with ABA's Ten Principles of a Public Defense System	**Principle 1: The public defense function, including the selection, funding, and payment of defense counsel, is independent.** R34. The Executive and City Council should decide whether their roles in the RFP selection process and oversight of the public defense system provide sufficient independence, or whether these functions should be performed by an independent review board selected by the Mayor and City Council. Also, we recommend that the management of assigned counsel be made by an entity independent of SMC. **Principle 2: Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.** None.	**Red**

	Principle 3: Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after a client's arrest, detention, or request for counsel. None	
	Principle 4: Defense counsel is provided sufficient time and a confidential space with which to meet with the client. See Attorney-Client Contacts recommendations R4 and R7 above.	**Red**
	Principle 5: Defense counsel's workload is controlled to permit the rendering of quality representation. See Attorney Caseload recommendations R1 and R2 above.	**Red**
	Principle 6: Defense counsel's ability, training, and experience match the complexity of the case. None	
	Principle 7: The same attorney continually represents the client until completion of the case. R35. In its annual audits of public defense agencies, OPM should assess whether reasonable efforts are being made to have continuous representation.	**Yellow**
	Principle 8: There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. R36. The City should consider City of Seattle prosecutor salaries and benefits when determining parity.	**Yellow**
	Principle 9: Defense counsel is provided with and required to attend continuing legal education. See Training recommendation R15 above.	**Green**
	Principle 10: Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. We make recommendations to improve the oversight process in the following areas: caseloads, attorney-client contacts, client complaints process, training, performance evaluations, supervision, investigator use, interpreter use, continuances, case processing time, dispositions, appeals, motions, trials and continuous representation.	**Red**
19. Comparison of the Prior and Current City Public Defense Agency Contracts	Recommended changes to the contract are listed under the following issues: Caseload, Attorney-Client Contacts, Client Compliant Process, Investigator Use, Interpreter Use, Continuances, Case Processing Time, and Trials.	**Yellow**

APPENDICES

Appendix A: Issue 1: Analysis of Attorney Caseloads

Issue: Given the importance of attorney caseload standards on the quality of public defense, is the City's current Primary Defense Agency (ACA) complying with the City's annual caseload standard of 380 cases per attorney?

Background: Our review of attorney caseload standards and literature support what most of the persons we interviewed said: attorney caseload limits are an important element of quality public defense. Some of the potential consequences of exceeding defense attorney caseload standards include:

- Defense attorneys are unprepared.
- Defense attorneys fail to meet with their clients or do not spend sufficient time with them.
- Defense attorney requests for continuances increase, which creates delays and inefficiencies for the courts.
- Reductions in defense attorney requested motions and appeals.
- Reductions in trials.
- High turnover among public defenders.

Some of the individuals we interviewed expressed concerns over the City's current primary public defense agency, ACA, exceeding the City's attorney caseload standard because it could result in the consequences discussed above.

Below is a summary of interview comments that prompted our detailed review of attorney caseload standards and caseload data:

Interview Comments:

Caseloads affect the quality of public defense

Most of the officials we interviewed stated that attorney caseloads are an important factor that affects the quality of public defense services. Several had suggestions for how the City could improve its tracking of attorney caseloads, including ensuring that they are spread out throughout the year. For example, one suggestion was to have monthly attorney caseload limits as well as annual caseload limits. In addition to monitoring its attorneys' annual caseloads, TDA also monitors their monthly and quarterly caseloads. Another suggestion was to compare how many new cases attorneys are getting with the number of cases they are closing each month or year.

SMC officials stated that the City should lower the 380 caseload standard to 300 because

of its impact on the quality of public defense. The 300 caseload ceiling is the standard recommended by the Washington Association of Public Defenders and endorsed by the Washington Bar Association. SMC officials noted that while simple cases are resolved in SMC at arraignment, the 380 caseload standard, which was developed two decades ago, assumed attorneys would be handling a post-arraignment mix of simple as well as complicated cases. In other words, the 380 caseload standard is antiquated and does not adequately account for the increased complexity of cases handled by SMC.

One official said that high caseloads could result in lower trial rates because it is difficult to maintain a caseload of 380 and still have the time to take cases to trial, because trials require a lot of attorney preparation time and have high investigation expenses.

Concerns with ACA attorney caseloads

Several persons we interviewed had concerns about the level of ACA attorney caseloads since the 2005 contract changes in which the City went from three equal public defense agencies to one primary public defense agency. They believed that ACA attorneys have been over worked and ACA does not have an adequate number of attorneys serving SMC, in light of the increases in cases, particularly Driving with a Suspended License (DWLS) 3 filings. Comments officials made about the consequences of ACA's heavy caseload included:

- Some ACA attorneys appear overwhelmed and unprepared,
- ACA attorneys appear to not be meeting with clients before they appear in court,
- Increases in continuances and longer court waiting times, and
- Defendants more difficult to work with because they have limited contact with their attorneys.

According to an ACA official, ACA voiced concern over the City's contractual requirement that attorney caseload be based on closed case credits because the official believed that assigned cases was a better reflection of caseload than closed cases.

SMC, ACA and TDA believe the City's secondary public defense agency should have a larger caseload

SMC, ACA and TDA officials that we interviewed expressed concerns about the current secondary public defense agency's (TDA) limited caseload and suggested assigning more attorneys to TDA. Specifically, SMC, ACA and TDA believe TDA should have a larger caseload, primarily because of the inefficiency resulting from trying to have two attorneys cover five or more SMC court rooms. TDA provided data covering a two-week period that indicated that one of its attorneys had to cover multiple court rooms on several occasions. SMC and TDA officials indicated that SMC's recent switch from a master court calendar to individual court calendars has exacerbated this problem.

According to SMC officials, the Court expressed its concerns on several occasions to the Mayor's office about the small number of TDA attorneys assigned to SMC, including

sending a July 5, 2005 letter from the Presiding Judge to the Mayor. Specifically, SMC believed that one TDA attorney assigned to conflict cases in eight courtrooms impeded effective case flow management and resulted in continuances because one court often had to wait for the attorney to complete hearings in another court room. The letter noted that TDA could have three or four court hearings occurring at the same time where a TDA attorney needed to be present, which sometimes required scheduling an extra hearing because the TDA attorney was not available. In the letter, SMC asked the Mayor's office not to "limit" TDA's work in the Court and to consider giving TDA more cases as it was very difficult for TDA to efficiently provide services with its current number of assigned attorneys. On November 1, 2005 the City increased the number of TDA attorneys to two attorneys.

In a comment to the City regarding the City's 2005 draft Request for Proposal for public defense agency services, an ACA official stated that five attorneys were too few for the secondary public defender. The official indicated that The Defender Association's (TDA) budget from the City of Seattle is so small and SMC's caseload is so large that TDA does not have enough attorneys staffing SMC to assign one TDA attorney per SMC judge. Furthermore, ACA indicated that while having a primary public defense agency and a secondary agency to handle conflict of interest cases is a good model, there are also advantages in having two comparable sized agencies. One advantage of the two comparable agencies model is that each agency has its own unique defense systems and specialties. For example, ACA believes that it tends to address defendants' needs more comprehensively than Seattle's other public defense agencies. ACA has specialized in working collaboratively with courts for many years. In 1994 it was the first public defense agency to work in the Drug Court located within King County Superior Court. ACA also worked to help start SMC's Mental Health Court. Other agencies specialize in such issues as racial disparity, emphasizing taking cases to trial, and raising constitutional issues.

A TDA official expressed several concerns with the agency's SMC caseload and said that TDA should have five or six lawyers assigned to SMC. The official believed that the reduction from seven to two TDA lawyers assigned to SMC has made them less efficient. If one of the two TDA lawyers is ill or on vacation, it makes it difficult for TDA to cover SMC. TDA believes that it should have at least two attorneys more than the number of courts simultaneously in session.

To document the difficulty in covering multiple court rooms with two attorneys, one of the two TDA attorneys assigned to SMC tracked, during a two week period in 2006 (the weeks of July 31 and August 7), the number of court rooms requiring the attorney's attendance during each morning and afternoon. The attorney reported having to appear in multiple court rooms 15 out of 20 times, and had as many as 5 court rooms to appear in on two occasions (one Monday morning and one Friday morning). The following table summarizes the data collected by the TDA attorney:

Figure 1: TDA Attorney's SMC Court Room Assignments
July 31-August 7, 2006

Time of Day	Three or more Court Rooms	Two Court Rooms	Zero to one Court Rooms
Morning	9	0	1
Afternoon	3	3	4
Total	12	3	5

Attorney Caseload Analysis:

Using closed case credits only to measure caseload is problematic

We reviewed 2005 and 2006 ACA attorney caseload information and found that the City's current method of determining attorney caseload by using closed case credits does not account for the total amount of time attorneys worked on cases in a given year, and can conflict with the City's caseload standard of 380 annual cases per attorney specified in Ordinance 121501. The City's contract with the public defense agencies calls for the agency attorneys' adherence to an annual caseload of 380 closed case credits per attorney, which is not an accurate representation of workload. It does not include cases attorneys are working on, instances in which the client got a private attorney after several hours worth of work by the public defense attorney or, until recently, cases in which the client absconded (i.e., the defendant failed to appear at a court hearing). An attorney earns a case credit and the City pays agencies when they close a case. A closed case usually involves all necessary legal action from arraignment through disposition or the withdrawal of counsel after the substantial delivery of legal services. However, City ordinance 121501 treats caseload as the number of cases attorneys handled in a given year rather than those that they close during a year. This means that an agency attorney could comply with the contract's caseload requirement while exceeding the City ordinance's 380 caseload standard. We found that in 2005 of the 23 ACA attorneys, who handled over 95 percent of ACA's SMC caseload, eight exceeded the City's caseload standard. The eight, according to OPM, complied with the City's caseload contract requirements. We also found instances in which ACA attorneys exceeded the caseload standard in 2006.

While OPM and ACA use closed case credits to determine caseload, TDA determines caseload by the number of assigned or accepted cases, which is the definition of attorney caseload referred to in national and state defense standards. While the City's ordinance 121501 does not define caseload per se, it refers to caseloads in terms of the number of cases attorneys "handle" and "carry." It also refers to the American Bar Association defense standards, which define caseload as assigned cases not closed cases. The ordinance does not define caseload as the number of case credits closed.

Washington State Defenders Association Standard Three, which is endorsed by the Washington State Bar Association and recommended in the RCW, states that attorney caseload should be determined by the number of cases accepted, and also states that

attorneys should not accept more cases than they can close. Furthermore, defense caseload standards indicate that caseloads should represent the amount of time spent on cases as caseloads should allow attorneys to give every client the time and effort necessary to provide effective representation.

ACA provided us with a list indicating the number of cases that were open and closed in 2005 and 2006 by each ACA attorney. This information showed that five attorneys barely exceeded the 380 standard. However, by reviewing all cases closed in 2005 by ACA attorneys (i.e., adding those that were opened before 2005 and closed in 2005), we found that eight ACA attorneys exceeded the 380 caseload standard. Next, by adding the cases that were opened in 2005 but closed by July 2006, we found that the number of attorneys that exceeded the 380 caseload standard grew to 15. However, after we adjusted this figure to account for probation cases (which count as .6 credits), duplicate cases, errors, cases that were resolved during arraignment, and withdrawals (due to private counsel being retained instead of a public defender or conflict of interest cases) we found that eight ACA attorneys exceeded the caseload limit. The table below demonstrates how we arrived at our findings by using data for three ACA attorneys, and also indicates the total number of attorneys that exceeded the caseload.

Figure 2: Caseload Calculations for Three ACA Attorneys and Results of Analysis of ACA Attorneys Exceeding City Caseload Standards

Attorney	**Cases open before 2005 closed in 2005 (2)**	**Open in 2005 closed in 2005 (3)**	**Open in 2005 closed by 7/31/06** (4)**	**Cases closed in 2005 (2+3)**	**Cases opened and/or closed in 2005 (2+4+5)**	**Cases opened and/or closed in 2005 (2+4+5) Adjusted ****	**Caseload standard**	**% Over Standard**
A*	0	242	77	242	319	**265**	**237**	**12%**
B	44	363	117	407	524	**435**	**380**	**14%**
C	79	357	100	436	536	**445**	**380**	**17%**
Number of ACA Attorneys over 380 cases					15	**8**		**16% average over standard**

*Attorney A's caseload standard was reduced because the attorney worked on SMC cases part of the year on a part-time basis.

** The majority of the cases opened in 2005 were closed by July 2006.

***The adjusted column reflects the average percentage reduction applied to eight attorneys' cases to account for probation cases (which count as .6 credits), duplicate cases, errors, withdrawals and conflict of interest cases and cases handled during arraignment)

We also found that in 2005 ACA assigned more than 380 cases to 15 attorneys, and of those attorneys, all but one closed fewer cases than the number assigned. According to an ACA official, in order for a public defense agency to remain financially viable some

attorneys have to close an annual average of about 380 case credits, which means that the attorneys have to be assigned more than 380 cases during a year. Furthermore, at the time of the official's comment, the caseload counts did not include absconds (i.e., the failure of a defendant to appear at a court hearing). In 2005 ACA reported over 800 absconds, some of which did not get counted in a closed case credit count, unless the attorney worked more than six hours on the case or until after a year from the date of the abscond. During the course of our audit, OPM agreed to close abscond cases and provide a case credit after two hours of public defense attorney time rather than the previously required year wait. This OPM decision helped ensure a more accurate attorney caseload count.

In 2005, when several attorneys exceeded the 380 caseload standard, within SMC there were increases in continuances and decreases in actual jury trials, jury set rates, appeals, and decreased performance in some dispositional outcomes that would tend to favor defendants.

Public defense standards and legal literature cite maximum attorney caseload standards as an element of an effective public defense system

Public defense standards and literature state that attorney caseload standards are a key element of an effective public defense system. Furthermore, they define caseload as the number of cases assigned and urge that attorneys not be assigned more cases than they can close during a given year.

- City of Seattle Caseload Standard: Ordinance 121501 reaffirms the caseload standards established in the City Council's 1989 Budget Intent Statement. Specifically, the ordinance states that City agreements with indigent public defense agencies shall require caseloads no higher than 380 cases per-attorney per-year.

- In a 2000 report on contracting for indigent defense services, prepared for the U.S. Department of Justice by the Spangenberg Group, a consulting firm specializing in improving justice programs, the consultant noted that work load and caseload caps were two characteristics of effective contract systems that allow administrators to monitor and evaluate costs while providing quality representation.

- The Institute for Law and Justice's *Compendium of Standards for Indigent Defense Systems* states that "the contract should specify a maximum allowable caseload for each full-time attorney, or equivalent, who handles cases through the contract. Caseloads should allow each lawyer to give every client the time and effort necessary to provide effective representation. Attorneys employed less than full-time on handling a mix of cases should handle a proportional caseload."

- Washington Defenders Association's Standard Three states: "Attorney Caseload: The contract or other employment agreement shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle. The caseload of public defense attorneys should

allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. The caseload of a full-time public defense attorney or assigned counsel shall not exceed the following: 300 Misdemeanors per attorney per year or 25 Appeals to appellate court hearing a case on the record and briefs per attorney per year.

A case is defined by the Office of the Administrator for the Courts as: A filing of a document with the court naming a person as defendant or respondent.

Caseload limits should be determined by the number and type of cases being accepted and on the local prosecutor's charging and plea bargaining practices. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the contracting agency should ensure that attorneys not accept more cases than they can reasonably discharge. In these situations, the caseload ceiling should be based on the percentage of time the lawyer devotes to public defense."

- Washington Defenders Association's Standard Three Commentary: "Caseload levels are the single biggest predictor of the quality of public defense representation. Not even the most able and industrious lawyers can provide effective representation when their workloads are unmanageable. A warm body with a law degree, able to affix his or her name to a plea agreement, is not an acceptable substitute for the effective advocate envisioned when the Supreme Court extended the right to counsel to all persons facing incarceration.

- The American Bar Association's **Standards for Criminal Justice** call heavy caseloads 'one of the most significant impediments to the furnishing of quality defense services for the poor' and note that lawyers with too many clients may not be able to carry out the basic responsibilities outlined in the Code of Professional Responsibility. The Code admonishes an attorney not to accept 'employment...when he is unable to render competent service' or to handle cases 'without preparation adequate in the circumstances.' The 'Defense Function' section of the American Bar Association's **Standards** also urges attorneys not to accept more cases than they can reasonably discharge.

  In addition to the risks of an innocent person being unjustly convicted and of accused persons receiving unequal treatment because they are too poor to retain private counsel, these high caseloads have serious consequences to the integrity and efficiency of the judicial system. High caseloads result in correspondingly high turnover among public defenders; inexperienced defenders are less efficient, less able to move cases quickly through the system; and the number of cases which must be retried because of improper defense may increase. Finally, lawyers become vulnerable to malpractice lawsuits when they are unable to meet basic professional responsibilities. Legal research, investigation and the timely presentation of motions become luxuries to the attorney burdened with too many cases.

Other factors, often beyond defense counsel's control, affect the number of cases he or she may effectively dispatch. A prosecutor's refusal to accept plea negotiations, the seriousness and complexity of the types of cases being handled, and, for assigned counsel and some contract attorneys, the number of privately retained cases being accepted, will reduce the total number of cases counsel can discharge.

If the caseload levels being contracted for approach these recommended levels, the attorney undertaking the work should not have a significant number of privately retained cases. The American Bar Association **Standards for Providing Defense Services** state that full-time defense attorneys 'should be prohibited from engaging in the private practice of law.' The commentary on this standard notes that when part-time defenders are used, clear standards for performance of duties, particularly as to limits on private practice, should be adopted.

The caseload levels recommended here follow closely those caseload guidelines specified by two national studies, the National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, and the National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts** (1984). They are also drawn from the standards approved in 1982 by the King County Bar Association following a Task Force study which found that in the absence of guidelines, public defender offices were being made to accept so many cases that clients' constitutional rights were seriously threatened.

The National Advisory Commission standard recommends 150 felonies per attorney per year and 400 misdemeanors, figures set in 1973, before the full impact of the U.S. Supreme Court's Argersinger decision was felt. Recent changes in Washington Law have resulted in substantially more misdemeanor jury trials with a corresponding increase in attorney time per case. For these reasons, we recommend 300 misdemeanors per attorney per year.

One measure of the reasonableness of these figures is to assess the amount of time an attorney would spend on a case under these standards. An accepted national standard for attorneys is to work 1650 billable hours per year. Even under the caseload standards recommended here, an attorney could only spend an average of 11 hours per case if he or she were to complete 150 felonies during a year. One serious case, requiring 40 to 50 hours to bring to trial, limits the time an attorney can devote to his or her remaining cases.

The situation is similar for misdemeanor attorneys. If the recommended standard of 300 cases per year were adopted, an attorney would be able to give roughly 5 hours to each case. The expanded right to jury trial for misdemeanor charges requires a substantial increase in preparation and litigation time. Currently in Washington State, most full-time public defense attorneys are handling significantly more than these recommended levels and work upwards of 2000 hours each year.

In setting these recommended caseload levels, we assume the attorneys will have

adequate investigative and clerical support. Clearly, where these essential services are not available, maximum caseload levels should be set at lower levels. The limits may also have to be adjusted downward in rural areas where attorneys must travel great distances between courts."

- American Bar Association Defense Standards

  Standard 4-1.3 Delays; Punctuality; Workload: (e) "Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations. Defense counsel should not accept employment for the purpose of delaying trial."

  Standard 5-5.3 Workload
  "(a) Neither defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Special consideration should be given to the workload created by representation in capital cases.

  (b) Whenever defender organizations, individual defenders, assigned counsel or contractors for services determine, in the exercise of their best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will lead to the furnishing of representation lacking in quality or to the breach of professional obligations, the defender organization, individual defender, assigned counsel or contractor for services must take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations."

- National Legal Aid & Defender Association (NLADA) Standard 13.12 Workload of Public Defenders:

  "The caseload of a public defender office should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25. For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for post judgment review is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such assertions, the court should direct the public defender

to refuse to accept or retain additional cases for representation by his office."

OPM's 2005 audits of public defense agencies did not include a review of caseloads

OPM's 2005 audits of ACA and TDA did not include a review of attorney caseloads. OPM may have found issues had it reviewed caseloads. During its 2005 audit of its public defense agencies, King County found that TDA was not compliant with caseload standards (three attorneys were above the caseload standard) and found that two ACA felony supervisors did not adhere to required caseload levels.

Findings:

The City's current method of determining attorney caseload by using closed case credits is not an accurate measure of workload because it does not account for the total amount of time attorneys worked on cases in a given year, and can conflict with the City caseload standard of 380 annual cases per attorney specified in Ordinance 121501.

We reviewed 2005 and 2006 caseload data and found that the current Primary Public Defense Agency's (ACA) caseload exceeded the City's caseload standard of 380 cases per attorney per year, if caseload is defined as the numbers of cases attorneys are carrying or handling. In 2005, one third of ACA's attorneys with significant SMC caseloads exceeded the City's 380 caseload standard by an average of over 10 percent.

However, because OPM determines caseload based on closed credit cases rather than the number of cases attorneys handle, while the ACA attorneys' caseloads exceeded the City's caseload standard established in Ordinance 121501, they were, according to OPM, in compliance with the City's caseload contract requirements. The primary defender's contract did not clearly state whether a case credit meant an assigned case or a closed case. In order for an attorney to achieve 380 closed case credits during a year, they would have to be assigned more than 380 cases.

We also found that SMC and the current primary (ACA) and secondary public defense agencies (TDA) agree that there are benefits to having a second larger public defense program, such as more efficient court operations. Several SMC officials commented that the assignment of only two Secondary Public Defender attorneys to SMC often causes court delays because they have to cover between five and eight courts. We also collected information from TDA for a two-week period that indicated that one of their attorneys was required to cover multiple courts on several occasions (see Figure 1 above).

Recommendations:

R1. Based on our review of industry standards, legal literature, interview comments, and caseloads, we recommend that OPM, in its role as administrator of the contracts, conduct compliance reviews of attorney caseloads in its annual audits of the public defense agencies. In reviewing caseloads, OPM should consider the number of cases attorneys are handling by determining the number of cases assigned relative to the number of cases

closed, and/or assess the amount of time attorneys spend on cases. Furthermore, OPM should consider requiring agencies to adhere to monthly or quarterly caseload standards, and review cases on that basis in addition to reviewing annual attorney caseloads. OPM should provide the audits' results to the City Council and SMC.

R2. The City should clarify the definition of caseload in City Ordinance 121501 to indicate that caseload refers to cases assigned. The definition of caseload in the City's contracts with public defense agencies should be changed to be consistent with the definitions contained in the ordinance.

R3. The City should have a larger secondary public defense agency. To determine the secondary agency's attorney Full-Time Equivalents (FTEs), OPM's analysis should include tracking the number of times the secondary agency's attorneys are required to appear simultaneously in multiple courtrooms for hearings. OPM should provide the results of these analyses to the City Council and SMC.

Appendix B: Issue 2: Analysis of Attorney-Client Contacts

Issue: Are the current primary defender, ACA, and the current secondary defender, TDA, meeting contract requirements related to attorney–client contacts?

Background: Our review of published public defense standards confirmed what we heard in most of the interviews we conducted: attorney-client contact is important to quality public defense. Frequent contact, quality contact, and contact before the court hearing were the factors officials cited as important to ensuring quality public defense. To determine whether ACA and TDA were meeting with clients in accordance with their contract terms, and whether those meetings were of sufficient quality, we performed the following tasks:

- Sought opinions from observers and stakeholders associated with public defense,
- Reviewed 30 ACA and 30 TDA case files,
- Reviewed King County and OPM audits of ACA and TDA, and the two agencies' responses to the audits' findings, and
- Conducted a survey of pre-trial Seattle Municipal Court defendants during the week of September 25, 2006.

Interview Comments:

Many officials expressed concerns about public defense attorneys not meeting with clients

Many of the officials we interviewed were concerned that the Seattle Municipal Court's (SMC) public defense attorneys were not meeting with clients in a timely manner. These officials expressed concerns that SMC's public defense attorneys were not meeting with clients until the day of the pre-trial and/or just before pre-trial. Several officials stated that it did not appear that agencies were meeting contract requirements that agency staff meet with in-custody clients within 24 hours of case assignment, and that attorneys meet with all clients within five days of case assignment and one day before the pre-trial. Some officials stated that one of the consequences of not meeting clients is an increase in continuances. Officials stated that sometimes defense attorneys request multiple continuances because they are not prepared. Several people expressed concern over the increase in continuances in 2005 and noted that they made the court operate inefficiently. Officials noted that another potential consequence of continuances is that they could upset the client, making them difficult to work with, particularly if they are in custody.

Some officials noted that TDA's practice of dedicating each Friday afternoon to meeting with clients was a good approach to ensure that attorneys were meeting with clients at least on a weekly basis.

Contract requirements relating to client contact

The City's contracts with both public defense agencies have two requirements related to client contacts. The first specifies that staff from the agencies need to meet with in-custody clients to obtain basic contact information for a bond hearing, which occurs during arraignment, within 24 hours of being assigned to a case. The second requirement specifies that all clients must be contacted by an attorney within five days of assignment or no later than the day before the pretrial hearing, whichever comes first.

Case File Review

We reviewed 30 case files from both ACA and TDA to assess whether agencies were meeting attorney-client contact contract requirements.

Based on our review of ACA's files, we found that in some cases it was difficult to determine if ACA staff members were adhering to the first contract requirement of meeting with in-custody clients within 24 hours of case assignment. For ACA, the form in the client's files often reflected the first time the attorney met with the client, but did not indicate the first time there was agency staff member contact with the client. Also, the City's public defense contracts are unclear about when case assignment occurs (i.e., is it when the client is booked in jail, is it at arraignment, or is it after the conflict check). In four out of 20 in-custody case files we reviewed, it was unclear when the agency made contact to meet the 24-hour requirement.

In most instances, ACA appeared to have adhered to the requirement of meeting with in-custody clients within 24 hours of case assignment by having ACA staff assigned to jails everyday except weekends. It sometimes met this requirement by handling all arraignments (or initial hearings) for both public and private defendants, which occur for in-custody clients the following day after the arrest or the following Monday if it is a weekend or holiday. According to OPM, when defendants are incarcerated they are interviewed by ACA interviewers, who are present at the jail and fill out a form, which is provided to the assigned ACA attorney. Attorneys are supposed to file these forms in the client's file, but ACA's Managing Director said that ACA attorneys had not consistently been doing this. However, ACA's Managing Director now requires that he receive a copy of the interview form that the attorneys are supposed to file to document that ACA is meeting this requirement.

According to OPM, they review the court docket to ensure that activities in the agency files are consistent with information docket. However, the docket, which is a record of court activities, does not show the agencies' first contact.

A more important contract requirement according to the officials we interviewed is the requirement that attorneys have contact with clients within five days of case assignment or no later than the day before the pre-trial hearing, whichever comes first. In our review of 30 cases from each agency, we found that TDA did not meet this requirement in one case while ACA did not meet this requirement in four cases.

According to OPM, contacts with clients allowable under the public defense contracts include in-person visits, letters and phone calls. Sometimes it is difficult for the agencies to locate out of custody clients and in these cases the only way to do so is through a phone call or a letter. However, if a client is willing to meet but an attorney is too busy, a phone call or letter would fulfill the contract requirement the agency has for an attorney to contact a client.

In our review of ACA case files we found instances in which there were no letters in the files that documented attorney contact with clients. After our file review, ACA changed its procedures for sending letters to its SMC clients. It now generates letters for all SMC assignments and mails them to the address they are given for both in and out of custody assigned clients. A copy of the letter is then placed in the appropriate case file.

During our review of ACA files, in which we sought to assess when the clock starts for meeting contract requirements, it was not clear what constituted assignment of a case. According to ACA, the clock starts when they receive case materials; however, it could also mean the date when SMC assigned the case to ACA. In our review of ACA cases there were a few instances in which ACA may have been assigned a case by the court on one day but ACA did not receive case materials until the next day. OPM should clarify what constitutes assignment of a case.

Some officials we interviewed misunderstood the contract requirement related to contacting in-custody clients. They did understand that the contracts permit agency staff (i.e., not necessarily an attorney) to contact the client within 24 hours of case assignment.

Results of OPM Audits:

In 2005 and 2006, OPM reviewed public defense agencies case files to determine if the agencies were meeting contract requirements related to contact with in-custody clients within 24 hours and contact by attorneys to all clients within five days. In reviewing those audits we found that OPM examined 10 files, and that they concluded that both agencies were in compliance with the two contact requirements. OPM may have found instances of non-compliance if it had reviewed at least 30 files as we did in our case file reviews. Our review of 30 files took our office less than half a day to complete.

Survey Results:

To assess further the frequency, quality and satisfaction of client/attorney contacts in SMC, we conducted a survey of in-custody pretrial public defendants the week of September 29, 2006. Although we distributed more than 30 surveys to in-custody defendants, we received only 23 valid responses. A summary of the survey responses follows:

- With regard to client satisfaction, the number of unsatisfied respondents outnumbered the satisfied respondents by three (13 to10). Defendants who believed that they spent enough time with their attorney also indicated that they understood what their

attorney told them and were generally satisfied with their attorney's services. All the respondents who were not satisfied with their attorney indicated that they did not understand what their attorney told them and did not spend enough time with their attorney.

- About two-thirds of the respondents made calls to their attorneys, and of those, half indicated that their attorneys either did not contact them or did not adequately address their concerns.

- Only two respondents reported having met with their attorney more than once before the pre-trial. Most respondents who met with their attorneys reported meeting in jail, and about a third reported meeting in the holding area immediately before the pre-trial. Slightly over half of the respondents believed that they did not spend enough time with their attorney.

- Seven respondents provided written comments regarding whether they felt their attorney spent enough time with them. Three indicated that their attorney did not care or did not appear interested in their case. Four indicated that they had few or no visits from their attorney.

- The majority of the respondents reported having the same attorney throughout their case. Five defendants reported having two or more attorneys.

- About half the respondents listed their attorney's name and most were able to identify the agency. Only three respondents did not recall which agency was representing them.

Related Standards and Literature:

- American Bar Association (ABA) Ten Principals of a Public Defense Delivery System - Principle 4: "Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date."
- Washington Defender Association: Standard 15: Disposition of Client Complaints: Commentary: "Under the ABA Standards for Criminal Justice, defense attorneys have the professional obligation to keep clients advised at all stages of the legal proceeding. Unfortunately, the high level of caseloads handled by public defense attorneys often limits the frequency of attorney-client contacts. Studies on client satisfaction have shown that indigent clients can have a significant lack of trust in their attorneys, in large part because they were not kept fully informed about developments in their case. Local jurisdictions investigating client complaints need to be sensitive to the special nature of the attorney-client relationship and to be aware of the workload demands faced by public defense attorneys. Funding levels which permit adequate communication with clients will help reduce the number of complaints."

- Contracting for Indigent Defense Services, A Special Report, by the Spangenberg Group, April 2000 (page 16), lists guidelines on client contact and notification of appointment as characteristics of an effective contract system.

Findings:

The public defense standards and legal literature we reviewed supported the comments officials gave us that early and quality contact between client and attorney is important to achieving quality public defense because it increases attorney-client cooperation and understanding.

We reviewed a sample of 30 ACA case files and found that they did not always document the date of the agency's initial contact with in-custody clients and the client's first contact with a defense attorney. We also found that OPM's 2005 audit review of 10 case files indicated that ACA and TDA complied with contract requirements related to contacts, but a larger sample may have produced different results; our larger sample of 30 cases identified several instances of non-compliance.

We found that the City's contracts stated that the initial attorney contacts with defendants (which should occur within five days of case assignment or 24 hours before the first hearing) could take the form of a letter or phone call, and that the primary and secondary agencies were sometimes meeting this contract requirement by sending letters to defendants rather than through in-person contacts.

Recommendations:

R4. OPM should expand the number of case files it reviews during its annual public defense agency audits to determine whether attorneys are meeting with clients according to contract terms, and require corrective measures by an agency if it does not adhere to the contract. At a minimum, 30 cases should be reviewed, which is a common "rule of thumb" for audits, regardless of the size of the population being sampled. The OPM audits should also include an examination of agency files to determine whether agency attorneys are complying with the requirement to meet with their clients no later than one day before the pre-trial hearing.

R5. The public defense agency forms should be revised to indicate whether agencies are meeting the 24 hour in-custody client contact requirement, and when the first attorney contact with the client is made.

R6. To determine whether contract requirements related to defendant contacts are being met, OPM should clarify what constitutes assignment of a case.

R7. Agencies are allowed to use phone calls and letters to meet attorney-client contact contract requirements. However, only in situations in which locating a client or a client's unwillingness to meet prevents attorneys from meeting with clients should a phone call or

letter fulfill the contract requirements related to attorney-client contact.

R8. The public defense agencies should document evidence of attorney contacts with clients by including agency letters documenting the date of the contact in their client files.

R9. OPM should work with SMC to conduct an annual or biannual client satisfaction survey to provide feedback to agencies, and use the results of our audit's defendant survey as a baseline. OPM should provide the survey's results to the City Council, SMC and the public defense agencies.

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Appendix C: Issue 3: Analysis of Client Complaints Process

Issue: Is the City's client complaint process adequate to address issues defendants may have with their appointed Seattle public defense attorney?

Background: The King County Office of Public Defense (OPD) provides public defendants information about who they can call in OPD if they have a complaint about their public defense attorney. OPD provides this information to all public defendants - it is provided to in-custody defendants when they are incarcerated and is posted throughout the jail. At the time of our audit, the City of Seattle provided minimal information on its web site about public defender services, no information on its web site about ACA being the City's current primary public defense service provider, and nothing about who to register complaints with regarding public defense attorney services. (As of January 23, 2007, the Seattle Municipal Court's web site still said that people should call the King County OPD if they were unable to afford an attorney.) However, the City's web site contains a link to the secondary defender's (TDA) web site, which provides contact information. In July 2007, near the end of our audit, ACA launched its web site. If a defendant wanted to make a complaint about their Seattle public defense attorney to the City of Seattle directly, it is not clear to whom they would make that complaint. As of late 2006, OPM and SMC started addressing this issue and agreed that clients could register complaints with SMC.

Interview Comments:

City officials acknowledge that the client complaint process needs to be improved

Two judges expressed concerns about the City's client complaint process. One judge thought that having a clearer complaint process would be helpful. Another commented that in court judges hear many complaints from defendants about their attorneys. If a defendant complains in court about their attorney, the attorney doesn't want to contradict the defendant in front of the judge; therefore it would be better if the defendants had a place other than court to file a complaint.

In 2005, the Citizen's Service Bureau (CSB) was the City entity responsible for taking complaint calls from defendants about their public defense attorneys. However, in 2005, CSB received only one complaint about a public defense attorney and four calls related to public defense in 2006, none of which were complaints about attorneys. In an October 2006 meeting between OPM, SMC and CSB, the three agencies decided that SMC should receive attorney complaint calls because they were getting them anyway. Most defendants call SMC because their screening for a public defense attorney was conducted by an SMC official. If the call involves a defendant's complaint about their attorney, the caller will be referred to OPM. Before SMC took over this function, although in-custody defendants had access to a telephone at the jail with a direct line to CSB, they were not

informed that they could call CSB if they had complaints about their public defense attorney.

OPM has acknowledged that the complaint process could be improved and is working with SMC to do this. According to an OPM official, the CSB phone number that was supposed to receive defendant complaints about their public defense attorney was not widely publicized to defendants. The phone number was on the speed dial at the King County Jail, but defendants were not regularly told how to use it.

OPM has reviewed the information provided on public defense on the City's Law Department and SMC web sites. OPM is scheduling a meeting with SMC to edit and improve the information available about public defense services on the City's web sites. OPM staff also indicated they would speak with the City's Law Department about establishing a link to SMC on their web site regarding public defense.

Another official indicated that a good way to handle complaints is ACA's approach of giving clients a letter that includes the name of the supervisor they may call if they have an issue with attorney. This person said more serious complaints should be raised with the Washington State Bar Association, but that most can be handled by the agency.

ACA's Complaint Process:

At the beginning of an assigned case, ACA provides every client a letter with the name and phone number of the assigned attorney's supervisor. If the client has an issue with the assigned attorney or with the progress of the case, the letter indicates that they should contact the supervisor. According to an ACA official, defendants will complain for many reasons, many of which have nothing to do with the performance of the attorney. One person complained about a court date that was set by the court because he was going to be out of town. A family member complained about their son having to miss an inpatient treatment appointment because he was in jail. Most complaints are addressed through call backs by either the supervisor or ACA's Director.

ACA is only required to report to OPM motions for ineffective assistance, which are filed by a defendant and determined by a judge. Such motions may be filed at SMC, an appellate court or with the Washington State Bar Association. None have been filed with the Bar since ACA was awarded the contract to be the primary public defense agency for the City of Seattle. There have been no sustained findings of ACA providing ineffective assistance in the last seven years.

The process for complaints in the King County's Office of Public Defense is well established. The same staff has been taking complaints about public defenders for 25 years. According to an ACA official, if ACA got a call from OPD's Complaint staff, ACA addressed it immediately.

One of ACA's supervisors assigned to SMC uses a form to track and respond to client complaints about their attorneys; the other ACA supervisor also tracks and follows up

with complaints, but does not use this form. ACA sends a letter to clients informing them to contact their assigned attorney's supervisor if they have an issue or concern with an attorney or a case. One supervisor keeps track of such complaints by filling out an incident form. The form provides space for the supervisor to note the attorney's response. These forms are used to identify trends in attorney's performance and to follow-up with the client and the attorney.

We reviewed 31 complaint forms that were in the ACA supervisor's files from 2005 and 2006. Most of the complaints were due to an attorney's failure to return a client's call and several were associated with one attorney. Several calls were misunderstandings or were concerns about issues not within the defense attorney's control such as jury instructions. The following table provides the types and frequency of complaints the supervisor received:

Figure 3: Types of Complaints Reported By ACA Supervisor

Type of Complaint	Number
Attorney did not call back	15
Client wanted update/feedback from attorney	2
Inexperienced attorney	1
No confidence in attorney	1
Attorney missed date	1
Other contact issue	1
Attorney did not follow procedure	1
Not applicable	9
Total	31

TDA's Complaint Process:

TDA provides a letter to all clients at the conclusion of the case (except when the case ends and the client is not present, e.g., when it is dismissed at readiness) inviting their comments on the representation they received. According to TDA officials, during 2005-2006, TDA received one client complaint concerning its work in SMC. The TDA officials indicated that TDA reviewed and responded to all of the client's complaints.

City Contracts with Public Defense Agencies:

Both of the City's current contracts with public defense agencies (ACA and TDA) require that the agencies follow-up and report to OPM only about written complaints made by defendants, including email complaints. Specifically, the contracts state:

"The Primary and Secondary Public Defender shall ensure that a preliminary written response to any written complaints concerning services provided by the employees of the Defender or the Defender itself shall be submitted to the Contract Administrator within three (3) working days of the date the complaint is received by the Primary Defender Director or the Director's designee. Written complaints include e-mail communications from the Contract Administrator. The Contract Administrator shall copy the two supervising attorneys on any complaints sent to the Primary Defender."

One official we interviewed suggested that this may not be the best way to track complaints because most complaints would not be in writing.

Related Standards:

- Washington Defender Association Standards for Public Defense Services: Standard Fifteen: Disposition of Client Complaints: "The legal representation plan shall include a method to respond promptly to client complaints. Complaints should first be directed to the attorney, firm or agency which provided representation. If the client feels that he or she has not received an adequate response, the contracting authority or public defense administrator should designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones. The complaining client should be informed as to the disposition of his or her complaint within one week."

- Washington Defender Association Standard Fifteen Commentary: "The nature of public defense work may give rise to client complaints about the attorney's handling of the case. Defendants are often in extreme circumstances, sometimes awaiting trial in jail; their employment and family lives have been severely disrupted, and their expectations of what legal counsel can accomplish may not be realistic.

  It is essential that local governments develop a means to respond to client complaints promptly and to investigate and act on meritorious complaints. Many complaints may be unfounded or minor, but clients deserve a respectful hearing and a prompt response. The follow up on client complaints may also alert contracting authorities to persistent problems with a particular attorney or firm or a problem in the system of delivering services.

  Under the ABA Standards for Criminal Justice, defense attorneys have the professional obligation to keep clients advised at all stages of the legal proceeding. Unfortunately, the high level of caseloads handled by public defense attorneys often limits the frequency of attorney-client contacts. Studies on client satisfaction have shown that indigent clients can have a significant lack of trust in their attorneys, in large part because they were not kept fully informed about developments in their case. Local jurisdictions investigating client complaints need to be sensitive to the special nature of the attorney-client relationship and to be aware of the workload

demands faced by public defense attorneys. Funding levels which permit adequate communication with clients will help reduce the number of complaints."

- The American Bar Association, Standards for Criminal Justice, Standard 4-5.2 (c) Control and Direction of the Case:

  (c) "If a disagreement on significant matters of tactics or strategy arises between defense counsel and the client, defense counsel should make a record of the circumstances, counsel's advice and reasons, and the conclusion reached. The record should be made in a manner which protects the confidentiality of the lawyer-client relationship."

Findings:

We found several issues with the City's client complaints process including:

- The City's contracts with the Primary and Secondary Defense agencies require that they report only written complaints to OPM. Most 2005 complaints received by the current primary defender, ACA, were made by phone. The public defense agencies are not contractually obligated to report these calls to OPM.

- Defendants, SMC's Chief Marshall, and the King County Jail Captain were not informed about the phone line to the CSB that SMC defendants could use if they had a complaint with their public defense attorney. In 2005, when the City designated CSB as the agency with which defendants could register complaints about their public defense attorney, CSB received one complaint. In 2006, CSB received four calls about public defense, but no complaints about attorneys. The small number of calls prompted OPM, CSB and SMC in 2006 to designate SMC as the entity that would receive the complaints and then refer them to OPM.

- There are no materials or information provided by the City to defendants that explain how defendants should register a complaint. According to OPD officials, King County provides information to defendants on who to call if they have a complaint and the complaint phone number is posted throughout King County jail.

- Unlike Seattle, the King County Office of Public Defense for many years has had an official assigned to record and follow-up on defendant complaints about their legal representation. In 2006, SMC assigned the public defense eligibility screener the responsibility for forwarding client complaints to OPM.

ACA and TDA have established systems to resolve and respond to complaints:

- ACA and TDA supervisors track and follow up on complaints. One ACA supervisor keeps track of complaints using a form, which contains space for describing how the complaint was addressed.

- At the beginning of a case, ACA provides a letter to its clients indicating that they can call their attorney's supervisor if they have concerns with the attorney's performance. TDA provides a letter to clients at the end of a case, which invites them to submit comments about the legal services they received from TDA.

Recommendations

R10. OPM should work with SMC to provide clear information to defendants regarding who they can call if they have concerns about their public defense attorney. The information should first direct defendants to their attorney's agency or their attorney's supervisor, and then, if they believe their concern has not been addressed, to a phone number at SMC. This information should be given to defendants eligible for public defender assistance when they are given information about who has been assigned to be their public defender. This information should be provided to in-custody and out of custody defendants.

R11. The City's contracts should require the public defense agencies to document all defendant complaints about attorneys (i.e., written, phone, and email complaints), address or follow-up on meritorious complaints, and respond to defendant complaints within one week of the complaint. Client complaints should be documented in the case files. The agencies should provide OPM copies of complaints and how they were addressed so that OPM can determine if the complaints are persistent problems, and ensure that responses are being provided to defendants who have meritorious complaints. The agencies should also provide OPM with explanations about why cases were transferred from the Primary Defender to the Secondary Defender or from the Secondary to assigned counsel due to a breakdown in attorney-client communications.

R12. OPM and SMC should provide information about the City's public defense agencies on the City's InWeb and PAN web sites. The City's web site could include information about the primary and secondary defender, the court process, who to call if a defendant has an issue with a Seattle public defense attorney, and other valuable topics.

R13. The City's Primary and Secondary Public Defenders should have web sites for their organizations that are linked to the City's web site and include information about what to do if a defendant has an issue with a Seattle public defense attorney. ACA, which is the City's current Primary Public Defender, launched its web site during the course of our audit in July 2007. TDA has had a web site for several years.

Appendix D: Issues 4-7: Human Resource Issues Analyses: Attorney Experience, Supervision, Training, and Performance Evaluations

Issue: Are the City's public defense agencies meeting contract requirements related to attorney experience, supervision, training, and performance evaluations?

Background: In addition to the interviews we conducted in which several officials noted the importance of attorney experience, supervision, training and attorney performance evaluations, City contracts with public defense agencies and public defense standards require:

- Public defense attorneys to be members of the Washington State Bar, but require no prior work experience,
- Supervisors to have three years prior work experience and not carry a caseload,
- One supervisor for every 10 attorneys,
- Attorneys to earn annually a minimum of seven continuing legal education credits, and
- Agencies to conduct attorney performance evaluations.

Interview Comments:

Officials suggested assessing the training, performance evaluations, supervision, and attorney experience of the Primary and Secondary Public Defenders

Some officials expressed concern with the loss of experienced attorneys in 2005 when the changes were made to Seattle's public defense system (i.e., the shift from three agencies with equal workloads to having a primary and a secondary agency). Others believed that ACA, the City's current Primary Public Defender, has responded well to the increased workload demands, has been responsive to judges' concerns, and over time has developed an effective group of lawyers who work at SMC.

Related Standards:

- Washington Defender Association Standards for attorneys assigned to misdemeanor cases:
    - Must be a licensed member of the bar. There are no prior work experience requirements.
    - One supervisor for every 10 employees.
    - Calls for a minimum of seven hours of continuing legal education annually and participation in regular training programs on criminal defense law.
    - Performance evaluations should consist of review of caseload records, review and inspection of transcripts, in court observations and periodic conferences and should include comments from judges, prosecutors, other defense lawyers and clients.

City Contracts' Requirements with Public Defense Agencies:

The City's current contracts with its public defense agencies (ACA and TDA) require the following:

- Every attorney must be a licensed member of the Washington State Bar in good standing. There are no prior work experience requirements.
- Supervisors: no caseload, three years experience, one supervisor for every 10 attorneys.
- A minimum of seven hours of continuing legal education per year.
- A summary report of annual attorney performance evaluations submitted to OPM.

OPM Audit Findings:

2005 OPM audits of the Primary and Secondary Public Defense agencies sought to determine whether attorneys were complying with the seven hour continuing legal education requirements. The sample size was five attorneys for each agency. The audits found ACA and TDA to be in full compliance. However, we found that in the TDA audit the attorneys listed were the same as those listed in the ACA audit, and that the attorneys were ACA not TDA employees.

Only three of the five names listed in the ACA audit appeared in the 2005 ACA closed case reports for SMC. The other two attorneys did not appear on the ACA 2005 closed case report for SMC, but are ACA attorneys. One of the three attorneys had only closed one case for SMC in 2005. The other two attorneys did not close any cases.

OPM's 2005 audits of ACA and TDA did not examine whether the agencies were meeting the contract requirements that one supervisor be provided for every ten attorneys.

Data Analysis:

Attorney Experience

TDA attorneys assigned to SMC in 2004 had been members of the Washington State Bar about three years longer on average than the ACA attorneys assigned to SMC in 2005. ACA's attorneys had an average of almost five years of experience. This is consistent with officials' impressions that in 2005 attorneys were less experienced than previous years as ACA had to hire several new attorneys to meet its increased workload under the City's new public defense contract. (Note: We did not compare the experience of 2005 ACA attorneys to TDA 2005 attorneys because for most of the year only one to three TDA attorneys were assigned to SMC). However, the median number of years of bar membership for both agencies was approximately four years.

Supervision

ACA did not consistently comply with the City contract requirement of one supervisor

for every 10 attorneys assigned to SMC. In 14 of 16 periods we reviewed from 2005 through the first quarter of 2007 ACA exceeded the supervisor to attorney ratio contract requirement by an average of 2.5 attorneys. TDA complied with the supervisor to attorney ratio contractual requirement.

Based on interviews with stakeholders, and our observations and case files reviews, we found that ACA's supervisors conduct performance evaluations, shadow new attorneys in court, and follow-up when concerns are raised about attorneys assigned to them. TDA attorneys also conduct performance evaluations and shadow new attorneys.

Training

ACA and TDA have training programs for new and experienced attorneys and staff. Both organizations conduct weekly staff (includes attorneys) meetings, provide office wide presentations on legal issues, offer specialized training, have new attorneys "shadow" other more experienced attorneys within their organization and have supervisors or senior staff members attend the new attorney's first trial.

TDA also offers training to its investigators, social workers and interns. Its attorneys and investigators attend training with an expert witness. TDA supervisors have attended or taught a course on defender training for managers, and attorneys attend annual national conferences.

ACA provides a four hour orientation to new attorneys, uses a training manual specific to SMC, and trains its attorneys on SMC issues.

Both agencies ensure that attorneys meet the seven hour continuing legal education (CLE) annual requirement. We reviewed ACA and TDA CLE reports and verified their compliance with the contracts' CLE training requirements.

Performance Evaluations

The City's public defense agencies are required to submit a summary of the performance evaluations they conducted of their attorneys who worked in SMC. TDA submitted a summary of the evaluations to OPM for 2005. Based on our review of TDA's performance evaluation summary and TDA's performance evaluation form, it appears that performance evaluation documentation TDA submitted adheres to the contract requirements with one exception: it is not clear from the form that in-court observations were a part of TDA's performance evaluation.

ACA did not conduct performance evaluations in 2005 as OPM granted ACA permission to work with a consultant to develop performance evaluation and performance based advancement programs. In 2006, ACA used new performance evaluation forms, which contain the evaluation elements required in the contract.

Findings:

Attorney Experience

The City's contracts with the public defense agencies for work in SMC do not require their attorneys to have a minimum number of years of related work experience. TDA's attorneys assigned to SMC in 2004 averaged approximately eight years as members of the Washington Bar, while ACA's attorneys in 2005 averaged approximately five years as bar members. However, the median number of years of bar membership for both agencies was approximately four years.

We do not have any recommendations for this issue area.

Supervision

OPM's 2005 audit did not examine whether the public defense agencies were meeting the contract requirement related to one supervisor for every 10 attorneys.

ACA did not consistently comply with the City contract requirement of one supervisor for every 10 attorneys assigned to SMC. In 14 of 16 periods we reviewed from 2005 through the first quarter of 2007 ACA exceeded the supervisor to attorney ratio contract requirement by an average of 2.5 attorneys. OPM recently gave ACA authorization to hire an additional supervisor which would bring ACA in compliance with the requirement.

Based on interviews with stakeholders, our own court observations of supervisors assisting attorneys and case files reviews, we found that ACA's supervisors conduct performance evaluations, shadow new attorneys in court, and conduct follow-up when concerns are raised about the attorneys they supervise. TDA supervisors also conduct performance evaluations of their attorneys, and shadow new attorneys.

Recommendations

R14. OPM should assess the supervisor to attorney ratio on a quarterly basis and take corrective actions if the City's guideline of one supervisor for 10 attorneys is not being adhered to. Corrective action could include assigning cases to the City's other public defense agency until additional supervision is in put in place by the offending agency.

Training

OPM's 2005 audits of the primary and secondary defense agencies found that ACA and TDA were in full compliance with the contract's seven-hour continuing legal education requirements. However, the attorneys listed in the TDA audit were ACA not TDA employees. We also found that the attorneys used in this audit had closed only one SMC case in 2005, and that two had not closed any cases in 2005. We reviewed TDA CLE 2005 reports and verified their compliance with the contracts' CLE training requirements.

Recommendation:

R15. To determine if attorneys are meeting contract continuing legal education requirements, OPM's annual audits should include a review of a larger sample of attorneys, attorneys with significant SMC caseloads, and attorneys from both agencies.

Performance Evaluations

OPM's audits of the primary and secondary public defense agencies did not assess whether the agencies' attorney performance evaluations were consistent with contract requirements.

In 2005, OPM excused ACA from conducting attorney performance evaluations because ACA was working with a consultant to improve its performance evaluation process. ACA did not evaluate all of its employees during 2005 and 2006.

The City's current contracts with the primary and secondary public defense agencies require that they provide a "summary report" of the performance evaluations conducted on their attorneys. However, the contracts do not indicate what information the summary should include. For example, the contract did not require that the summaries include anything about the overall performance of the agency's attorneys. The TDA summary's sole purpose appeared to be to inform OPM that performance evaluations had been conducted.

Recommendations:

R16. OPM audits of the public defense agencies should review whether the agencies conducted performance evaluations that were consistent with contract requirements.

R17. OPM should assess the purpose of the contract's requirement that the public defense agencies submit a "summary report of the annual attorney performance evaluations", and determine what information should be reported to make this summary report more useful in communicating how well SMC defense attorneys are performing.

Appendix E: Issue 8: Analysis of Investigator Use

Issue: Did the use of investigators for Seattle Municipal Court (SMC) cases change in 2005 and 2006 from 2004 levels?

Background: The comments of officials we interviewed were consistent with the public defense standards and literature we reviewed that the availability and use of investigations are essential to ensuring quality public defense services. If defense attorneys are not investigating cases or interviewing witnesses when necessary, the quality of the defense could be hampered.

Interview Comments:

Officials believe investigations are important to ensuring quality public defense

Several officials that we interviewed noted that investigations and the use of investigators are important in helping to ensure quality public defense. One official noted that investigators are important and should be used because police often arrive after the incident in question and don't have first-hand knowledge of what actually happened. Another indicated that the number of investigations can be used to evaluate whether attorneys are reviewing cases thoroughly and effectively by requesting the services of an investigator to examine police reports.

Related Standards:

- Washington Defender Association Standards for Public Defense Services: Standard Six: Investigators

  The Washington Defender Association calls for a minimum of one investigator for every four attorneys. The standard states that public defender offices, assigned counsel, and private law firms holding contracts to provide representation for poor people accused of crimes should employ investigators with criminal investigation training and experience.

  Washington Defender Association Standards for Public Defense Services: Standard Six: Investigators, Commentary:

  "Criminal investigation is an essential element of criminal defense; indeed, the failure to provide adequate pre-trial investigation may be grounds for a finding of ineffective assistance of counsel. All too often it is neglected because attorneys lack the time to conduct their own investigation of the facts of a case or because their office does not employ an investigator."

- American Bar Association (ABA) Defense Standards:

Standard 4-4.1 Duty to Investigate: (a) "Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accuser's admissions or statements to defense counsel of facts constituting guilt or the accuser's stated desire to plead guilty."

Standard 5-1.4: "Supporting services: The legal representation plan should provide for investigatory, expert, and other services necessary to quality legal representation. These should include not only those services and facilities needed for an effective defense at trial but also those that are required for effective defense participation in every phase of the process. In addition, supporting services necessary for providing quality legal representation should be available to the clients of retained counsel who are financially unable to afford necessary supporting services."

City Contracts with Public Defense Agencies for Investigators:

- The 2004 King County/City of Seattle contract: There was no language related to investigations in the City's 2004 contract with the King County Office of Public Defense.
- The 2004 King County contract with SMC public defense agencies: The County's contracts with the public defense agencies that worked in SMC stated: "The Agency shall provide sufficient paraprofessional support staff, including investigators, social workers and paralegals to provide for effective assistance of counsel."
- The City of Seattle's 2005 contract with ACA requires that ACA employ one investigator for every five attorneys, and that it report on the number of hours spent by its investigators on closed cases.
- The 2005 City of Seattle's contract with TDA does not have an investigator per attorney requirement, but it requires that TDA report the hours worked by investigators on its closed SMC cases.

Data Analysis:

The King County Office of Public Defense did not maintain data on investigator usage by agency for 2004, which made it difficult for us to compare the use and costs of investigators between 2004 and 2005 and 2006. However, to determine how often investigators were used, we performed the following analysis:

- Reviewed thirty 2006 case files each at ACA and TDA,
- Reviewed ACA's organizational charts to see if ACA was meeting contract requirements related to the number of investigators per staff,
- Reviewed ACA closed case reports to assess ACA's use of investigators between 2005 and May of 2006.

The dollar amount that the City spent on investigators is not an accurate indicator of

investigator usage because the City pays for the agencies to have investigators on staff.

Results of Case Review

During our review of 30 ACA and TDA 2006 case files each, we inquired about the use of investigators. The following table displays the results of our case file review.

Figure 4: 2006 Investigator Usage Documented in Case Files Based on 30 Files from Each Agency

Agency	Number of cases in which an investigator was used from 30 files sampled	Number of 2006 Closed Case Credits
ACA	4	5909
TDA	6	442

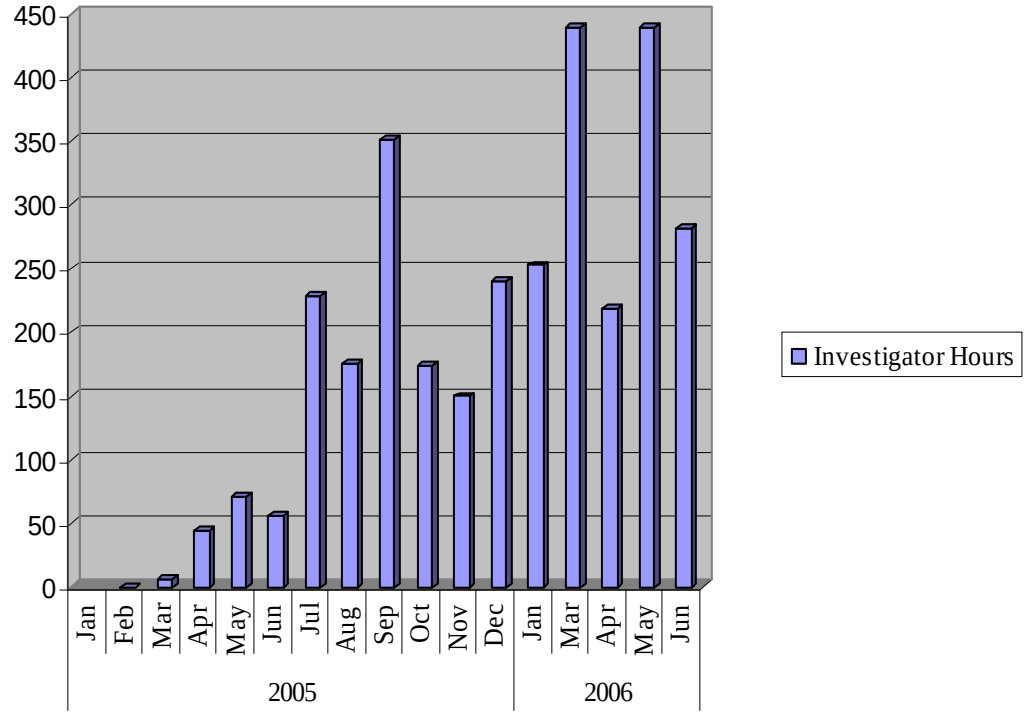
Other Findings related to Investigators:

Based on our review of ACA organizational charts, we concluded that ACA met the City's standard of providing one investigator for every five attorneys in 11 out of 15 months between 2005 through the first quarter of 2007.

Use of Investigators based on Closed Cases 2005-2006

As Figure 5 below indicates, since the start of the City's 2005 public defense contract with ACA, ACA has made increasing use of investigators.

Figure 5: Investigator Hours 05-June 06



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2005	0	0	6.25	44.45	70	56.05	228	176	350.6	174.3	149.5	239.4
2006	252.4	144.5	438.6	217.8	438.4	281.5						

An ACA official stated that ACA's use of investigators in 2005 appears low because it did not start tracking investigator use until the second quarter of 2005; therefore, hours reported before 2006 do not necessarily reflect the full extent of ACA's use of investigators. The official said that ACA did not keep track of investigator use in 2004 because it had a small number of trial attorneys assigned to SMC.

Findings:

The King County Office of Public Defense did not track investigator usage in 2004; therefore we could not compare public defense agency investigator usage between 2004 and 2005. However, ACA's and TDA's internal case files documented their use of investigator services in 2006 and 2007. Our review of a sample of thirty 2006 case files from each agency revealed that ACA used an investigator four times and TDA used an investigator six times.

In our review of ACA organizational charts, we found that they met the contract requirement to employ one investigator for every five attorneys in 11 out of 15 months between 2005 through the first quarter of 2007.

ACA data showed that it increased its use of investigators between 2005 and 2006.

TDA's closed case reports did not include information on the number of investigator hours spent on closed cases.

Recommendations:

R18. OPM should review the number of hours used by investigators from both public defender agencies to evaluate agency performance.

R19. OPM should compare the agencies' use of investigators to their costs to determine if the City is paying the agencies an appropriate amount for investigators given how often they are used by the agencies. It should consider paying agencies on a per usage basis versus the current practice of having one investigator for every five attorneys.

Appendix F: Issue 9: Analysis of Interpreter Use

Issue: Did the use of interpreters in Seattle Municipal Court (SMC) change in 2005 and 2006 from 2004 levels?

Background: Officials that we interviewed and the public defense standards and literature we reviewed stated that the use of support services such as interpreters are vital to ensuring quality public defense services. If defense attorneys are not using interpreters when necessary, the quality of the defense could be hampered.

Interview Comments:

Interpreter Usage Outside Court Proceedings is Important to Quality Public Defense

Because SMC arranges for and provides interpreters in court, many officials believed that interpreter use was not an appropriate measure of quality public defense. However, some officials noted that non-English speaking defendants who need interpreters in court also need access to interpreters outside the court room when meeting with their attorney for interviews and consultations.

Some officials believed that TDA used interpreters more than ACA and indicated that TDA's practice of regularly scheduled Friday meetings with clients was helpful. One SMC official expressed the concern that public defense attorneys generally do not request the presence of an interpreter until the pre-trial is about to begin. The official suggested that attorneys meet with their clients an hour before the pre-trial hearing so that if interpreters are needed they can be accessed before the hearing.

Related Standards:

Although we identified no specific requirements with regard to interpreter use, some standards refer to the need to provide support services such as interpreters.

City Contracts with Public Defense Agencies for Interpreters

- The 2004 King County contracts with the public defense agencies working in SMC did not mention interpreters.
- The 2004 King County/City of Seattle contract requires that King County provide Spanish interpreter services to SMC clients.
- The 2005 City of Seattle contracts with the primary and secondary public defense agencies do not mention interpreters.

Data Analysis:

The King County Office of Public Defense did not maintain data on SMC interpreter

usage for 2004, and changes to the City's contract governing provision of interpreter services in 2005 made comparing costs between 2004 and 2005 problematic. Before 2005 King County provided Spanish interpreters for SMC defendants, the costs of which were included in a lump sum payment the City made to the County for various support services. Starting in 2005, King County no longer provided that service as SMC hired a Spanish language interpreter. Therefore, we could not compare interpreter usage between 2004 and 2005. However, to determine how often interpreters and investigators were used we performed the following analysis:

- Reviewed 30 case files each at ACA and TDA,
- Reviewed SMC data on the public defense agencies' use of interpreters between April 2006 and April 2007,
- Analyzed SMC's 2005 through May 2006 interpreter court calendar.
- Reviewed SMC interpreter cost data for 2001-2006.

Results of Case File Review

During our review of 30 ACA and TDA 2006 case files each, we inquired about the use of interpreters. The table below shows that for both agencies, documentation of interpreter use in the case files appeared once.

Figure 6: Summary of File Review of 2006 Agency Interpreter Use

Agency	Number of cases in which interpreters were used from 30 files sampled	Number of 2006 Closed Case Credits
ACA	1	5909
TDA	1	442

Need for Interpreters Increasing

SMC data in the table below shows how many hearings from 2003 through 2006 were scheduled, and of those scheduled how many required an interpreter. The numbers before 2005 do not include Spanish interpreters as most of those were scheduled through the King County Office of Public Defense (except weekends). After 2005, SMC automated the interpreter scheduling process to include all languages. In 2005, it appears that SMC required an interpreter at three percent of all hearings. In 2006, the need for interpreters increased to approximately four percent. These figures do not include any out of court appointments as those are not scheduled through SMC's interpreter scheduling system.

Figure 7: 2003-2006 Percentage of Interpreters Required at SMC Hearings

Hearing Year	2003	2004	2005*	2006**	2003-2004 % Change	2004-2005 % Change
Hearings	121,711	123,202	108,795	59,559	1.23%	-11.69%
Interpreters at Hearings	1,364	1,120	3,297	2,355	-17.89%	194.38%
% of Hearings with Interpreters	1.12%	0.91%	3.03%	3.95%		

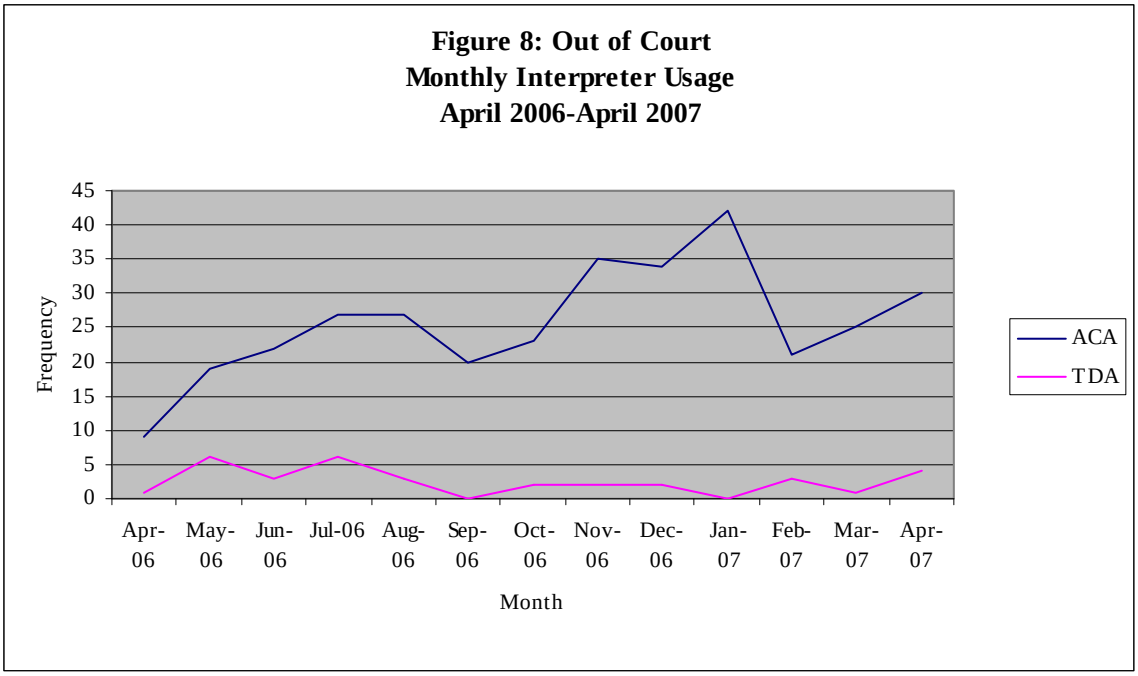
Source: SMC
*In 2005, SMC assumed responsibility for Spanish interpreter services from King County.
**2006 data is for January through May.

Agency Interpreter Use Outside of Court Is Consistent with the Size of Attorney Caseloads

Because SMC provides interpreters in court upon request, we assessed whether interpreters were being used in meetings with clients for purposes outside of court hearings, such as in interviews and conferences between the attorney and client. These meetings could occur in jail, Justice Center meeting rooms, or the attorney's office.

According to SMC data, between April 2006 and April 2007, ACA used an interpreter outside of court 334 times while TDA did this 33 times. In percentage terms, the agencies' use of interpreters outside the court was approximately proportionate to their annual caseloads - ACA (90 percent) and TDA (10 percent). The figure below shows that ACA's use of interpreters outside the court increased over the period, while TDA's usage was more constant.

Figure 8: Out of Court Monthly Interpreter Usage April 2006-April 2007



Our office analyzed SMC's May 2005 through May 2006 interpreter calendar and found many problems with this data. The SMC calendar did not always indicate the attorney or agency that was staffing the case, which interpreter was used, or the purpose of using an interpreter. Furthermore, SMC could not guarantee that the content of the information provided in the spreadsheet was complete or entirely accurate. However, SMC began improving its interpreter tracking system in April 2006.

Review of Interpreter Costs

We were unable to compare 2005 interpreter costs with the 2004 costs because the City of Seattle's 2004 contract with King County specified one payment of $580,248 for several purposes including interpreter services, eligibility determination, and case assignment. In 2005, SMC assumed responsibility for Spanish interpreter services; therefore, the costs in the table below do not include Spanish interpreter costs before 2005. Interpreter costs in 2005 and 2006 are comparable numbers and include the costs of all interpreter services. In 2006, the expenditures for interpreters increased by approximately $50,000 or 20 percent compared to 2005.

Figure 9: 2001-2006 Contract Interpreter Expenditures

Fiscal Year	2001-2006 Actual Expenditures for Contract Interpreters
2001	$ 134,018.00*
2002	$ 141,018.00 *
2003	$ 145,341.00*
2004	$ 132,508.00 *
2005	$ 271,954.00
2006	$ 325,916.00

Source: SMC
*2001-2004 figures do not include costs for Spanish interpreters, which were covered in a lump sum payment to the King County for several services.

Findings:

King County OPD did not track the agencies' use of interpreters in 2004; therefore, we could not compare interpreter usage between 2004 and 2005. According to OPD data for January through August 2003, even though ACA and TDA had roughly equal workloads, TDA used interpreters 110 times outside of the courtroom, which was much more than ACA (2 times) and Northwest Defenders Association (18 times). However, since that time, according to SMC data, ACA's use of interpreters outside of the courtroom has increased significantly. From April 2006 through April 2007, ACA, which had about 90 percent of the SMC workload, used interpreters 334 times outside of the courtroom.

We found that in 2005 about three percent of court hearings required interpreters, and about four percent in 2006.

Our review of a sample of thirty 2006 case files from each agency found one file from each agency that cited the use of an interpreter.

SMC data showed that ACA and TDA used interpreters outside of court hearings. Between April 2006 and April 2007, ACA and TDA's use of interpreters outside of court was roughly proportionate to the sizes of their caseloads. This data also showed that outside court ACA made increasing use of interpreters while TDA's use was constant.

Recommendations

R20. SMC should continue tracking public defense agency use of interpreters outside of court hearings. The collected information should also include the meeting's location, purpose, and duration.

R21. To help avoid court delays, OPM should include language in the public defense agency contracts requiring agency attorneys to arrange for interpreters for meetings and hearings at least an hour before the meeting or hearing.

R22. As part of its annual public defense agency audits, OPM should use SMC interpreter usage reports to evaluate public defense agency performance.

Appendix G: Issue 10: Analysis of Continuances

Issue: Did the number of defense requested continuances increase in 2005 compared to 2004 and from 2005 to 2006? If they did, what were the causes and consequences of that increase?

Background:

Seattle's prosecuting attorneys and most of the SMC judges we interviewed were concerned about the number of continuances requested by public defense attorneys in 2005. Several officials said that continuances could be requested because attorneys are not prepared when they appear in court, attorney workloads are too high which means that they don't have time to meet with their clients before going to court, and because there are a greater number of less experienced defense attorneys working in SMC than there were in prior years. Several officials noted that the City's authorization of only two Full-Time Equivalent Employee (FTE) TDA attorneys to handle cases in multiple SMC's courtrooms also contributed to continuances. One person suggested that attorneys are requesting continuances because they could be spending time preparing stronger defense cases. Some of the consequences of continuances include defendants waiting, sometimes in jail, which makes working with them more difficult, and court inefficiencies and delays because a hearing must be held to request a continuance.

Interview Comments:

Several officials suggested using the number of continuances as an indicator of quality public defense

Several officials suggested using the number of continuances as an indicator of quality public defense for the following reasons:

- The number of continuances may be an indicator that clients are staying in jail longer than needed.

- Continuances may have increased because ACA had to hire younger, less experienced attorneys when its workload increased significantly in 2005.

- A continuance may mean either that the attorney is spending time investigating the case and is preparing a stronger defense or that the attorney is not prepared and requires more time. In either case, continuances pose scheduling problems for the court, because attorneys must request a hearing to request a continuance.

- Officials stated that it is inefficient to staff TDA with only two FTEs in Seattle Municipal Court (SMC). TDA is responsible for covering cases in as many as seven SMC court rooms and the courts must wait on them to become available, which

means more continuances, and sometimes defendants having to spend more time in jail.

- Several officials indicated that since the City started contracting directly with a primary and a secondary public defender, there has been an increase in the number of continuances because defense attorneys are not prepared and are not talking with their clients before hearings. This has resulted in scheduling problems for the court. Pre-trial hearings are being scheduled, but not much is being accomplished, except for requests for continuances.

- One official said that ACA attorneys request a lot of pretrial continuances, and that the average length of continuances is six weeks. The official said that ACA assigns too many cases to too few attorneys and they are probably not meeting with clients before they appear in court, so time is wasted in pre-trial hearings and continuances have increased.

- One official suggested that one method to reduce costs and continuances would be if attorneys interviewed clients and made contact with them before a court appearance. This would normally occur after the arraignment and before the pre-trial. Both the defense attorneys and prosecutors accuse each other of causing continuances. This official believed that there are usually three continuances for each out of custody defendant. In-custody defendant hearings usually occur sooner than out of custody hearings and are not a driver to increased jail population. Another reason for continuances is that attorneys have trouble getting data from the Washington State Department of Licensing related to driving offenses. The number of continuances may have increased a bit, but continuances have always been a problem partially because of the difficulties attorneys face in contacting witnesses. Continuances are usually a certainty, especially with Driving Under the Influence (DUI) cases.

- Continuances are a good measure if you can break it out by the number of continuances at pre-trial versus trial. If continuances are occurring at pre-trial this is good because attorneys are preparing for the case. If they are doing it at trial this is not good. Continuances could be increasing because the Law Department is starting to prosecute Driving with Suspended License (DWLS) offenses again so you would need to factor those out.

- In a letter sent to Mayor Greg Nickels dated July 5, 2005, SMC Presiding Judge Bonner expressed concern over the number of TDA attorneys assigned to SMC. It noted that having one TDA attorney assigned to conflict cases in eight court rooms impedes effective case flow management because one court usually must wait for the attorney to complete hearings in other courts before making an appearance, which results in continuances.

Public defense agency officials questioned the appropriateness of using continuances as an indicator of quality public defense

Officials from ACA and TDA stated that a low number of continuances is not a good indicator of quality public defense because continuances often serve the client's best interests. Some examples include:

- When newly discovered evidence and witnesses require further investigation,
- When the defendant has an interest in alternative courts, e.g., Mental Health Court, which requires a continuance,
- When the defendant needs substance abuse, mental health or other evaluation in order to determine the best option for disposition.

Furthermore, it is SMC judges who grant or deny requests for continuances after evaluating the merits of the request. If the requester lacks good cause for the continuance, the judge will not grant it.

Related Standards:

In our review of public defense standards, we did not find any that suggested using continuances to evaluate the quality of public defense services.

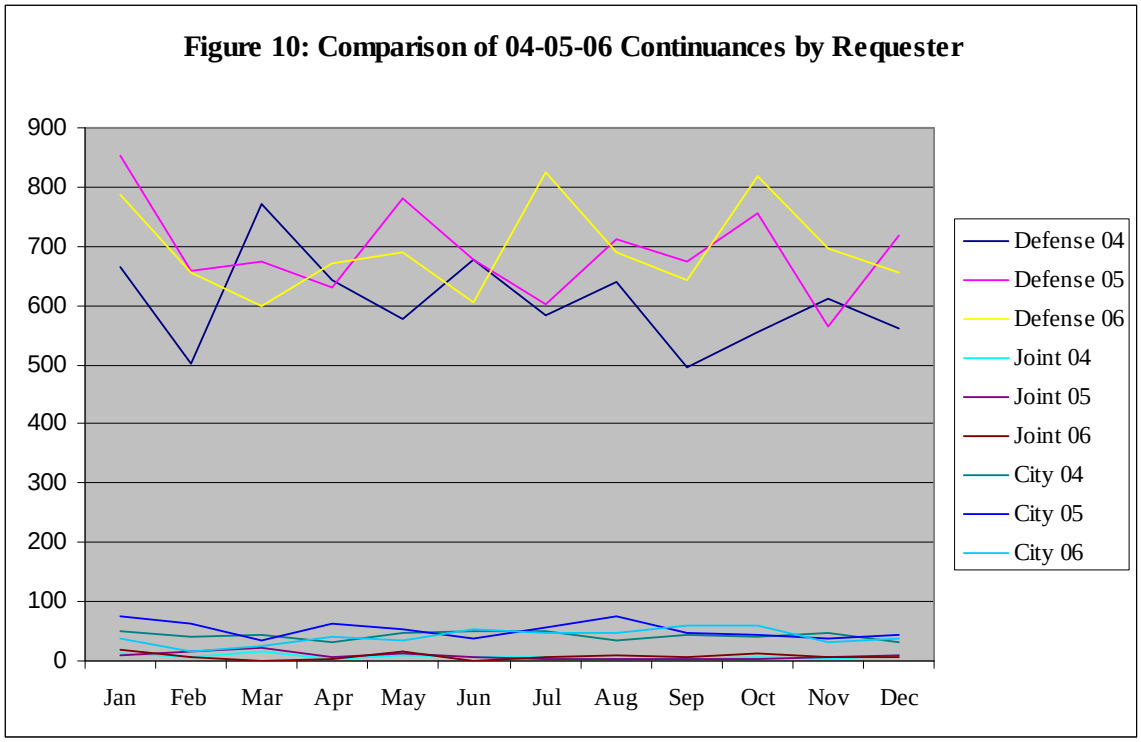
Data Analysis:

Defense-requested continuances represented the vast majority of continuances in SMC, over 90 percent, in 2004, 2005 and 2006. The other requests were made by prosecutors or by both prosecutors and defense attorneys. Of the defense-requested continuances, we do not know how many were requested by public versus private defenders. However, according to SMC, public defenders represent the majority of defense attorneys who have cases in SMC that do not get resolved in arraignment or during intake.

Figure 10 below shows that the number of 2005 defense requested continuances as a percentage of Law Department case filings increased by 17 percent over 2004. However, compared to 2005, in 2006 continuances declined by 17 percent as a percentage of Law Department case filings, and were a smaller percentage of case filings than they were in 2004.

	2004	2005	2006	04-05 % Change	04-05 % Change
Law Department Case Filings	12945	12584	15143	-3%	20%
Defense Requested Continuances	7277	8301	8336	14%	1%
Defense Requested Continuances as % of Law Case Filings	56%	66%	48%	17%	-17%

Figure 10: Comparison of 04-05-06 Continuances by Requester



Findings:

Seattle's prosecuting attorneys and most judges we interviewed expressed concerns with the number of continuances requested by public defense attorneys in 2005. They indicated that some of the consequences of continuances included defendants having to wait (sometimes in jail) longer to have their case resolved. This makes working with them more difficult, and leads to court delays because a hearing must be held to request a continuance.

In 2004 through 2006, the defense requested over 90 percent of the continuances requested in SMC. Other requests for continuances were made by prosecutors or by both prosecutors and defense attorneys. Of the defense-requested continuances, we do not know how many were requested by public versus private defenders. However, according to SMC officials, public defenders represent the vast majority of defense attorneys who

have cases in SMC that do not get resolved in arraignment or during intake.

The number of 2005 defense requested continuances increased by 17 percent over 2004 as a percentage of Law Department case filings. However, compared to 2005 the number of continuances requested in 2006 declined by 17 percent as a percentage of Law Department case filings.

Recommendations:

R23. SMC should track which public defense agency requests a continuance, the reason for the continuance, whether the continuance is requested at the pre-trial or for a trial. OPM should work with SMC to develop a performance goal related to continuances to include in the contracts with the public defense agencies.

Appendix H: Issue 11: Case Processing Time Standards

Issue: Is the length of time to process a case from its opening to its close a reasonable method to measure the quality of public defense services? If it is, was there a change in the length of time for processing cases from 2004 to 2005 and 2006?

Background: While several standards discuss the importance of timely resolution of cases, the standards we reviewed for case processing time apply to courts rather than to public defenders. However, because several officials suggested that we consider case processing time as a public defense service indicator, we examined ACA case processing time data and compared it to recommended court standards to determine if ACA was promptly processing cases.

Interview Comments:

Mixed opinions about the appropriateness of case processing time as a measure of quality public defense

The individuals we interviewed had mixed opinions on whether case processing times were an appropriate measure of quality public defense.

Some officials suggested that we review case processing times and compare them to state guidelines. However, one official cautioned that state guidelines are dated and do not account for the increasing complexity of cases that the Seattle Municipal Court has handled since the standard was established in 1992 and revised in 1997.

TDA officials stated that case processing time is not an appropriate standard for evaluating defense attorney performance. Case processing time standards are intended to address performance by courts, not by attorneys. These standards often conflict with the client's interests. For example, when the defense needs more time to investigate a case, it is the attorney's obligation to request this time, regardless of its impact on court statistics for case processing time.

Some officials suggested looking at alternative payment methods

Some officials said that the City's current method of paying its public defense agencies could provide an incentive to close cases faster. One indicated that paying public defense agencies by the number of cases they close is not a recommended way to manage caseload or provide quality criminal defense because it may provide an incentive for attorneys to close as many cases as fast as they can. Another individual stated that it may create an incentive to close a case as quickly as possible and not give it the attention that is needed. This official also stated that using workload and the complexity of a case as factors to determine payments to public defense agencies would be worth consideration.

A Washington State Office of Public Defense agency official noted that paying public

defense contractors on a closed cases basis provides an incentive or the appearance of one to close cases rapidly. The official said that while jurisdictions in Washington use different methodologies to pay contractors, most are based on assigned cases for this reason.

According to the King County Office of Public Defense (OPD), it pays its public defense agencies using a formula that considers workload, caseload and other costs related to the case such as salaries, benefits, support staff and overhead. The formula also ensures that public defenders' salaries are at parity with those of prosecuting attorneys. The City also pays the defense agencies based on factors that include salaries, benefits, support staff and overhead – the same factors that King County uses, but pays its agencies for cases closed.

According to an OPD official, output based payment contracts clauses, which the City uses, are frowned upon in the criminal justice community because they may create unintended incentives (e.g., rushing to close cases versus taking the time needed to research them). Also, paying on a monthly closed case basis requires a lot of administrative work. King County estimates its case workload and pays the contractors roughly the same amount each month, based on these projections. Every four months King County reconciles its accounts with the public defense agencies. King County does not track closed cases because payments are not based on closed cases.

According to an Office of Policy and Management (OPM) official, one of the reasons the City switched to paying on case closure was to ensure greater accountability over public defense spending. By paying on a closed case basis the City can track the disposition of cases, time to resolution, and the cases closed.

SMC does not track the time cases are open to when they are resolved or adjudicated in court

SMC does not track the time from when cases are opened to the time they are resolved or adjudicated by trial, plea, verdict, dismissal or some other dispositive action. However, SMC is in the process of trying to develop a system that can do this tracking. SMC has been discussing and working on this change, which will require some computer program changes. SMC plans to have this capability starting in 2007, but the system will not have historical information (i.e., data on cases handled before the start-up date).

Related Standards:

- Washington Defenders Association Standards for Public Defense Services Standard Fourteen: Qualifications of Attorneys, Commentary: "Inexperienced attorneys cannot only deprive their clients of their right to effective counsel; they also create problems for the criminal justice system itself. Inexperienced attorneys are less able to effectively negotiate with prosecutors, thus lengthening the time needed to resolve pre-trial issues. They are less efficient in bringing cases to resolution and may burden the court with irrelevant issues."

- American Bar Association: Defense Standards: Standard 4-1.3 Delays; Punctuality; Workload: (a) "Defense counsel should act with reasonable diligence and promptness in representing a client.

  (b) Defense counsel should avoid unnecessary delay in the disposition of cases. Defense counsel should be punctual in attendance upon court and in the submission of all motions, briefs, and other papers. Defense counsel should emphasize to the client and all witnesses the importance of punctuality in attendance in court.

  (c) Defense counsel should not intentionally misrepresent facts or otherwise mislead the court in order to obtain a continuance.

  (d) Defense counsel should not intentionally use procedural devices for delay for which there is no legitimate basis.

  (e) Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations. Defense counsel should not accept employment for the purpose of delaying trial."

- The Washington State Board for Judicial Administration, Court Management Council endorsed the following Advisory Case Processing Time Standards for the General and Limited Jurisdiction Courts of Washington State on May 15, 1992 and Revised September, 1997. Filing to Resolution time processing standards for the Courts of Limited Jurisdiction for criminal cases are as follows:

  - 90 percent of all criminal cases should be adjudicated within 3 months (90 days) of the filing of the complaint,
  - 98 percent within 6 months (180 days) of the filing of the complaint, and
  - 100 percent within 9 months (270 days) of the filing of the complaint.

  The Board for Judicial Administration's standards are used to measure the performance of courts. The Advisory defines "Filing to Resolution" as the time from the date of filing to the case resolution date by either trial verdict, notice of settlement or dismissal, or other dispositive action.

Review of ACA's Case Processing Time Data

ACA's 2005 open-closed case reports show that ACA attorneys took an average of 72 days to open and close a case. Since King County OPD could not provide data on the length of time that cases are open, we were unable to determine whether ACA's 2005 72-day average was an increase or decrease from 2004.

Another ACA report on its SMC cases opened and closed in 2005 indicated that ACA closed 74 percent of the cases within 90 days compared to the Washington State Board of Judicial Administration case-processing standard of 90 percent within 90 days. This ACA report also showed that ACA closed 93 percent of its cases within 180 days and 1 percent of the cases required over 270 days to be closed. According to the state standards, all criminal cases of courts with limited jurisdictions should be closed within 270 days. From January through June 2006, the number of cases ACA closed within standards deceased compared to 2005; ACA closed 62 percent of the cases within the 90-day/90 percent standard and eight percent within 270 days.

The time reported by ACA to close its cases may be overstated because it includes the time required for ACA to administratively close a case file after the case was resolved in court. The state standards allow courts an additional 80 days from resolution of a case to process sentencing orders, judgments and financial obligations.

The following table compares the length of time required to close ACA cases with the state court standards.

Figure 11: Court Filing-to-Resolution Time

Court Filing-to-Resolution Time Standards	**90%**	**98%**	**100%**	**0%**	
ACA Cases Open to Close 2005	90 Days	180 Days	270 Days	Over 270	Totals
February	195	0	0	0	195
March	472	0	0	0	472
April	400	45	0	0	445
May	392	66	0	0	458
June	289	81	0	0	370
July	530	141	30	7	708
August	566	180	42	0	788
September	555	321	145	0	1021
October	332	112	57	18	519
November	392	118	64	20	594
December	606	187	54	12	859
Total Cases	4729.00	5980.00	6372.00	57.00	6429
% of Total Cases	74%	93%	99%	1%	100%
ACA Cases Closed in 2006 through June 2006	2617	982	306	329	4234
	62%	85%	92%	8%	100%

Source: OPM: ACA Closed Case Reports

According to an ACA official, a closed case in its Closed Case Report does not represent the last court action, but includes the time it takes for attorneys to complete all the paperwork to close a case after the last court action. The official stated that most ACA attorneys close cases within two or three days from when they are disposed of in court

and are encouraged to close cases within 30 days from the last court action. Supervisors monitor cases and track cases opened longer than 45 days.

City's Contracts with Public Defense Agencies:

Seattle's public defense contracts for 2005-2007 do not require cases to be closed within a specific period. However, agencies are paid on a closed case credit basis; therefore, agencies have an incentive to close cases quickly.

Findings:

Long case processing times could mean one or more of the following: 1) attorneys are carrying too heavy of a caseload; 2) inexperienced attorneys are working on cases, thus requiring additional time; or 3) attorneys are thoroughly reviewing cases. Conversely, short processing times could mean that attorneys are not spending enough time on cases, or that the attorneys are experienced enough to move quickly through their assigned cases.

The City does not have a system to assess the duration of a case from assignment to resolution or adjudication in court. SMC is currently working on improving its systems to track open/closed case information and ACA currently tracks cases from assignment to the administrative closure of a case.

Although the case processing time goals are for courts and are not meant to apply to defense attorneys, several officials suggested that we assess the time it takes public defenders to complete their cases. In 2005 and 2006 ACA's cases did not appear to meet the recommended filing to resolution standards established for courts by the Washington State Board for Judicial Administration's Court Management Council. It is not clear what caused these long case processing times. SMC and the public defense agencies do not track when cases are opened to the time they are adjudicated; therefore, we were unable to determine whether attorneys were exceeding the state standards (ACA keeps data on the time from opening to closing cases, which includes the time it takes administratively to close a case). An SMC official cautioned that state case processing guidelines were old and do not take into account the increasing complexity of cases handled by SMC since the standard was established in 1992 and revised in 1997. Finally, TDA officials also noted that the 2005 contract change that extended the time for closure of bench warrant cases (i.e., absconds) from 90 days (the standard under the former King County contract) to 12 months may have extended average case processing times.

We did not find evidence that the City's payment methodology of paying by closed cases was providing an incentive to ACA to close cases prematurely. However, State and City officials stated that paying public defense agencies on a closed case basis provides an incentive or the appearance of an incentive to close cases faster. An ACA official noted that if the City's current payment method is giving an appearance that it has a detrimental impact on clients, it would be worth eliminating that concern by having the City pay the public defense agencies on an anticipated caseload basis. This official also stated that

ACA provides monthly closed case reports to King County, which does not pay on a closed case basis. The official said ACA provides closed case reports to the City and could continue to do so regardless of the payment method.

Recommendations:

R24. We endorse SMC's work in improving its automated systems so they can track open/closed case information. Agencies should also track cases from case assignment to court resolution or adjudication.

R25. SMC and OPM should evaluate case processing time information for adherence to state standards and significant changes between years.

R26. OPM should reconsider paying public defense agencies on a closed case basis to eliminate the appearance that it is providing an incentive to agencies to rapidly close cases. The City could pay public defense agencies on an assigned case basis and still hold agencies accountable by continuing to require closed case reports.

Appendix I: Issue 12: Dispositions/Outcomes Analysis

Issue: Are case dispositions a viable way to measure the quality of public defense services? If they are, what does the Law Department's 2004-2006 data reveal about the quality of public defense provided during those years?

Background:

Given expectations that attorneys achieve favorable outcomes for their clients, such as acquittals, dismissals, charge reductions, alternatives to incarceration, and the shortest possible incarceration time, is it reasonable to measure public defender performance based on dispositions data provided by the Law Department? While officials we interviewed noted that some dispositions could be good measures, such as charge reductions, others indicated that dispositions are not a good measure of quality public defense because defense attorneys have a limited ability to influence the outcome of a defendant's hearing. According to the National Center for State Courts' report "Indigent Defenders" Get the Job Done and Done Well," favorable outcomes depend more on the characteristics of the defendant than the counsel. Furthermore, in Seattle, a higher rate of plea bargains may be the result of alternative to incarceration programs such as Community Court, which began in 2005. Another reason that complicates using dispositions to measure the of quality public defense in SMC is that although SMC and Law Department officials agree that public defenders represent the majority of SMC defendants, they could not provide us with the percentage of cases represented by a public versus private attorneys. However, literature we found on public defense services indicates that case outcomes are meaningful and merit inclusion in the monitoring of public defense systems.

Interview Comments:

Officials have mixed views about the appropriateness of using dispositions to measure the quality of public defense

Some officials indicated that the outcomes or disposition of cases such as reductions in charges and dismissals are good indicators of quality public defense. However, other officials noted that defense attorneys have a limited ability to influence the outcome of a defendant's hearing when a judge has information about the defendant that indicates they pose a safety risk, or if there is a threat of further violence, or a high probability that the defendant will fail to appear. Another official cautioned reading too much into the disposition rates because when the Community Court started in March of 2005 it offered defendants a much better deal then they would have otherwise received, such as reduced sentences and community service rather than incarceration. The official noted that this could mean that the higher guilty plea rate in 2005 compared to 2004 may be the result of the Community Court.

Related Standards:

Although the public defense standards we identified did not mention dispositions as a way to measure quality public defense, according to the book "Indigent Defenders" Get the Job Done and Done Well, measuring case outcomes "seems sufficiently feasible and the results seem sufficiently meaningful to merit inclusion into the monitoring of indigent defense systems. Consequently, judges, policymakers, and others concerned with the quality of indigent defense representation should gather information on how well indigent defenders do in gaining favorable outcomes for their clients."

City's Contracts with Public Defense Agencies

The contracts do not require that public defense attorneys achieve favorable disposition rates and their performance is not measured by the City based on case dispositions. Moreover, OPM audits of the City's public defense agencies do not include a review of dispositions.

Summary of Law Department Disposition Data

The Law Department tracks the dispositions of its cases. Since some cases have multiple charges and not all charges in a case receive the same resolution (e.g., some charges may get dismissed while others may be plead), the total number of dispositions is greater than the number of Law Department case filings.

The table below summarizes Law Department data on total dispositions. It highlights those dispositions or outcomes that a defense attorney may influence such as in the case of "Plead Guilty Reduced," which means that the defendant pleaded guilty to reduced changes. Yellow represents favorable outcomes for defendants while red indicates unfavorable outcomes. Instances in which the charges were dismissed after the defendant completed treatment or probation conditions are green; we did not include these in our evaluation of outcomes because the defendant, not the attorney, had the most influence on the outcome.

Figure 12: Summary of Law Department Charge Disposition Data for Outcomes that Attorneys Could Influence

	2004	2005	2006	2004-2005 Change	2004-2005 % Change	2005-2006 Change	2005-2006 % Change
Deferred Prosecution	328	279	327	-49	-15%	48	17%
Dismissed Negotiated Plea	2942	3482	3676	540	18%	194	6%
Dispositional Continuance	1656	1407	1547	-249	-15%	140	10%
Plead Guilty Reduced	1067	660	884	-407	-38%	224	34%
Pre-Trial Diversion	444	567	576	123	28%	9	2%
Dismissed Proof Problem	1584	1530	1979	-54	-3%	449	29%
Not Guilty	120	87	95	-33	-28%	8	9%
Subtotal	8141	8012	9084	-129	-2%	1072	13%
Found Guilty	119	250	214	131	110%	-36	-14%
Plead Guilty	5219	6162	6482	943	18%	320	5%
Subtotal	5338	6412	6696	1074	20%	284	4%
Other Charges	3491	2620	2766	-871	-25%	146	6%
Total Charges	16970	17044	18546	1019	6%	1502	9%

Source: OPM and Law Department
Note: ACA provided disposition data for 2005 and 2006, but this information was not used in this analysis because we could not obtain comparable data from the other public defense agencies (TDA and the Northwest Defenders Association) for services they provided to SMC defendants during 2004-2006.

Based on case disposition information we obtained from the Law Department, as a percentage of total charges, defendants as a whole appear to have been better off in 2004 than 2005. However, we cannot say if the decline in favorable outcomes was the result of private or public defenders as the Law Department does not record this data, although the majority of cases are public defender cases. In 2006, the favorable outcomes for defendants improved compared to 2005, but overall were not as favorable as 2004.

Recommendation:

R27. OPM should review annual disposition data by agency for large quantitative changes from the previous year. Large changes between years could indicate systematic issues in public defense services, and such data should be shared with SMC and the City Council.

Appendix J: Issue 13: Analysis of Jail Population and Length of Stay

Issue: Are jail population and the length of time defendants spend to jail, useful measures for assessing the quality of Seattle's public defense program? If they are, have there been changes in the jail population and length of stay from 2004 to 2006 that may indicate a change in the quality of public defense provided at the Seattle Municipal Court (SMC)?

Background: Some literature suggests that jail sentences are an appropriate measure of the quality of public defense services because defenders are expected to represent their clients by achieving favorable outcomes such as alternatives to incarceration or the shortest possible periods of incarceration. However, all but one person we interviewed expressed concerns about using defendants' sentences, jail time or jail population to measure the quality of public defense. The primary reason for their concern was that the City of Seattle made a policy decision in recent years to reduce incarceration levels by offering alternatives to jail through programs such as Community Court, probation, work release, home monitoring, etc. Another reason that jail sentences are not considered a good measure, which is noted in literature and mentioned by officials we interviewed, is that they are heavily influenced by a defendant's prior record. Finally, data shows that while there was an increase in Seattle's average daily jail population in 2005 and 2006 compared to 2004, the jail population in 2005 and 2006 was still lower than all the other years since 1998 and was probably driven by the increases in criminal filings and bookings in 2005 and 2006. Data also indicates that the average length of stay in jail, which is a factor that may be influenced by a defense attorney's quality of representation, actually decreased for SMC defendants by 2 percent in 2005 and by another 2 percent in 2006

Interview Comments:

Most officials agreed that jail population and length of stay are not good measures of quality public defense

Most of the officials we interviewed expressed concerns over using jail population as a measure and about using length of time in jail as a measure of quality public defense. Some of the officials' comments about why jail population and length of stay were not good measures of quality public defense included:

- Some officials indicated that sentences are not a good measure of the quality of public defense because SMC is sensitive about jail space issues and has focused on alternatives to confinement (e.g., a work crew assignment that can lead to a reduction in a sentence). SMC created a committee to address alternatives to confinement to address space issues in the jails. Some alternatives include electronic home monitoring, day reporting, community service and work crews.

- The City has been aggressively seeking ways to reduce jail usage. In recent years, Seattle's jail population has decreased. In 1996, the City paid King County to incarcerate somewhere between 700 and 800 people. Now there are about 250 people incarcerated in King County and 80 in Yakima. Seattle's jail population is definitely lower than it was 10-20 years ago. In the late 1990s and early 2000s, crime went down and now it has started increasing. There are more police on the street, crime is up, and there are more people being booked due to Redmond vs. Moore, Driving While License Suspended in the third degree (DWLS3). After not booking anyone for DWLS3 and removing 4,500 cases out of the system, due to the changes enacted by the legislature in state law, the City is again prosecuting DWLS3s.

- An official indicated that sentencing guidelines are used to determine sentences and are based on the offense. Gross misdemeanors receive up to 1 year in jail and a $5,000 fine, misdemeanors receive up to 90 days in jail and a $1,000 fine and civil infractions have a fine, but carry no jail time. The official indicated that there are options to reduce sentences that have nothing to do with the quality of defense.

- One official cautioned that jail sentences can be deceiving because of suspensions. In other words, a defendant can receive a 365 day sentence, but it is rare that they serve all of those days. A judge will often order the person to serve, for example, five of the 365 days in jail with the other 360 being suspended as long as the defendant stays out of trouble.

- Some officials suggested that a number of factors influence jail population including the types of cases being tried, number of case filings and the City's emphasis on certain types of cases. Simply having more information on a defendant may influence a judge's decision on sentencing, especially with regard to domestic violence cases. If the defendant has a history of offenses, the judge will be more likely to select incarceration. The defendant's ability to post bail would also have an impact on whether or not he or she would go to jail. Prosecutors and judges will consider the likelihood of the defendant repeating the offense in determining sentencing.

- One official stated that sentencing has more to do with the judge's practices and those practices vary widely. Judges rarely impose the sentences that the Law Department recommends. In most cases you can get a good sense of what a judge will do. There is no reason to believe that defense lawyers are not making the same assessments. For example, it would not make sense to take a third time Driving Under the Influence (DUI) case before some judges.

- Jail population is affected by the number of police on the street, the number of arrests they make, and time of year. Special events such as Mardi Gras have an impact on jail population (i.e., such events create more arrests).

- Public defense attorneys have little influence over jail population. There are a core number of defendants that will never qualify for alternative to incarceration programs

or Community Court. If the defendant has a long history of assault they will not be released on their own recognizance.

- The judge's policy on holding defendants in jail also has a lot to do with jail population. Newer judges tend to hold defendants in jail more often.

Related Standards/City Contracts with Public Defense Agencies:

We did not identify any public defense standard that asserted that the quality of public defense services could be measured with jail sentences or jail population. Furthermore, the City's public defense contracts do not include any performance requirements related to jail sentences or jail population.

Data Analysis:

The following table demonstrates that in 2005 and 2006, an average of 289 and 310 people, respectively, were held in jail on a daily basis. Although these figures were increases over 2004, they were the second and third lowest jail populations since 1998. According to an OPM official, the increases in the jail population from 2004 resulted from an increase in jail bookings. The average length of stay, which is a factor more closely related to the quality of public defense than jail population, decreased in 2005 compared to 2004, and from 2005 to 2006.

Figure 13: Summary of Criminal System Indicators
(Monthly Average by Year)

	1998	1999	2000	2001	2002	2003	2004	2005	2006	% Change 04-05	% Change 05-06	% Change 98-06
Annual Criminal Filings (from SMC)	24,804	22,248	21,780	20,562	17,810	18,481	15,007	15,633	18,234	4%	17%	-26%
Annual Bookings	14,412	13,151	11,989	11,274	10,351	10,859	9,813	10,698	11,960	9%	12%	-17%
Average Length of Stay (Total)**	11.57	12.06	11.84	13.26	11.68	10.89	10.02	9.82	9.58	-2%	-2%	-17%
Average Length of Stay (King County)	11.57	12.06	11.84	13.26	11.68	8.10	7.03	6.91	7.44	-2%	8%	-36%
Jail Average Daily Population (ADP)	457	435	389	409	331	322	267	289	310	8%	7%	-32%
EHM Average Daily Population				27	34	52	81	70	94	-14%	35%	
DRC Pre-Trial Check-In									29			
Work Crew Average Daily Population				2	3	3	3	2	4	-25%	52%	
Average Jail + EHM + WC ADP	457	435	389	438	368	378	351	360	431	2%	20%	-6%
King County Jail ADP	457	435	389	409	314	241	188	197	237			
Yakima County Jail ADP					17	81	78	91	73			
Renton Jail ADP						1	1	1	1			
King County Jail Bookings	14,412	13,151	11,989	11,274	10,351	10,847	9,658	10,441	11,681			
Renton Jail Bookings						12	155	257	279			

*Data source: OPM.

**Includes both Yakima and King County Jails

Findings:

Several factors, such as police enforcement practices, have a greater effect on jail population than the quality of public defense. Although the City Attorney's sentencing recommendations and judges' sentencing practices impact the length of stay of SMC defendants in jail, length of stay in jail is an area in which defense attorneys have a greater impact on than the size of the jail population. In 2005, the length of stay decreased by 2 percent and by another 2 percent in 2006.

We do not have any recommendations for this issue area.

Appendix K: Issues: 14-15: Analysis of Appeals and Motions

Issue 1) Did the number of appeals and motions change from 2004 to 2005 and 2006, and if this occurred, what impact did this have on the quality of public defense in Seattle Municipal Court (SMC)?
Issue 2) Should The Defender Association (TDA) handle all of the City's defense appeals, including those cases originally assigned to the Associated Council for the Accused (ACA)?

Background: We did not identify public defense standards that indicate that defense attorneys should appeal a minimum amount of cases or file a certain number of motions. However, public defense standards we identified suggested that a reduction of motions over time may be the result of overburdened attorneys. Furthermore, some officials suggested that a reduction in appeals may mean that defense attorneys may not be advocating vigorously for their clients. However, other officials offered several reasons why motions and appeals are not good measures of quality public defense.

In 2006, the City's current Secondary Defender, TDA, started handling all of the City's appeals, even those for ACA clients. According to OPM, the reason TDA was assigned to conduct all the appeals was to give it enough work to maintain two Full-Time Equivalent Employees (FTEs) at SMC. While one official indicated that this prevents ACA from giving itself more work, another official thought that it was preferable to have the same agency or attorney where the case was originally assigned handle the appeal.

Interview Comments:

Officials' views mixed about the value of appeals and motions as measures of quality public defense

Officials' comments were mixed about the value of appeals and motions as measures of quality public defense. Some officials believed that decreases in motions and appeals signal a decrease in the quality of defense representation.

Through motions, defense attorneys can raise issues that could result in dismissals, such as a move to suppress evidence. One official expressed concern that ACA was not raising enough motions. For example, according to the official, criminal trespassing is a very suspect statute and ACA attorneys do not adequately consider it nor do they raise constitutional challenges.

A City official stated that appeals are important because case law is derived from misdemeanor appeals. A decrease in appeals could have been the result of ACA assuming the role of Primary Defender in 2005, and hiring a lot of attorneys who did not have a lot of training and expertise. An ACA official stated that the recent change that allows appellant courts to impose costs on the losing party in an appeal may cause

a reduction in appeals. Others disputed the value of motions and appeals as measures of quality defense by stating that motions can be frivolous, and used as "fishing expeditions", and noting that ultimately it is the client's decision to appeal. An official said that if appeals are to be used as a measure of quality public defense you need to know who initiated the appeal and its outcome. One official said that because of issues with the accuracy of appeal data, appeals should not be used to draw conclusions about the public defense agencies' performances.

Differing views on the City's practice of giving all appeals to the Secondary Defender

According to one official we interviewed, there are different schools of thought on whether the same agency filing an appeal should staff the appeal. Some say it is better for a different agency to handle the appeal because a "fresh pair of eyes" will review the case and if it is your own agency's case you would be less apt to spot mistakes. Also, if ACA were handling all the appeals, the City could experience more appeals because it would mean more work for ACA. The other school of thought shared by some officials was that the agency or attorney filing the appeal should staff the appeal because they have more knowledge of the case's issues.

According to an OPM official, the reason TDA is getting the City's appeals is because they would otherwise not have enough work with conflict of interest cases to staff two FTE attorneys at SMC. According to an OPM official, originally TDA was to get paid for three attorneys, but it was only getting enough casework for two and administratively it would be easier to have one agency do all the appeals.

Related Standards:

We did not identify any published standards related to the number or frequency of appeals and motions public defense attorneys should be making. However, standards indicate that the decision to appeal is the client's decision, while the decision to make motions is the attorney's. Furthermore, the Washington Defender Association commentary on its Caseload Limits Standard, cautions that overburdened attorneys are unable to meet their basic responsibilities such as the timely presentation of motions. See the commentary under Standard Three below.

- **Washington Defender Association Standards for Public Defense Services**

Standard Two: "The legal representation plan shall require that defense services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable state bar association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client."

Commentary: “Among the duties required of defense counsel in each case are investigation of the facts, research of relevant law, communication with the client, review of possible motions, review of plea alternatives, review of dispositional alternatives, trial preparation, and vigorous representation in court.”

Standard Three: Caseload Limits and Types of Cases: Commentary: **“**In addition to the risks of an innocent person being unjustly convicted and of accused persons receiving unequal treatment because they are too poor to retain private counsel, high caseloads have serious consequences to the integrity and efficiency of the judicial system. High caseloads result in correspondingly high turnover among public defenders; inexperienced defenders are less efficient, less able to move cases quickly through the system; and the number of cases which must be retried because of improper defense may increase. Finally, lawyers become vulnerable to malpractice lawsuits when they are unable to meet basic professional responsibilities. Legal research, investigation and the timely presentation of motions become luxuries to the attorney burdened with too many cases.”

- **National Legal Aid and Defender Association’s standard regarding continuity of representation**

The National Legal Aid and Defender Association’s Compendium of Standards for Indigent Defense regarding continuity of representation states: “There shall be continuity of representation by assigned counsel on appeal, which shall be provided by different counsel than at the trial stage, except when the best interests of the clients dictate otherwise.“

- **ABA Defense Standards on Motions**

Standard 4-3.6: Prompt Action to Protect the Accused: “Many important rights of the accused can be protected and preserved only by prompt legal action. Defense counsel should inform the accused of his or her rights at the earliest opportunity and take all necessary action to vindicate such rights. Defense counsel should consider all procedural steps which in good faith may be taken, including, for example, motions seeking pretrial release of the accused, obtaining psychiatric examination of the accused when a need appears, moving for change of venue or continuance, moving to suppress illegally obtained evidence, moving for severance from jointly charged defendants, and seeking dismissal of the charges.”

- **ABA Defense Standards on Appeals**

Standard 4-5.2 Control and Direction of the Case: (a) “Certain decisions relating to the conduct of the case are ultimately for the accused and others are ultimately for defense counsel. The decisions which are to be made by the accused after full consultation with counsel include:

(i) What pleas to enter;

(ii) Whether to accept a plea agreement;

(iii) Whether to waive jury trial;

(iv) Whether to testify in his or her own behalf; and

(v) Whether to appeal.

(b) Strategic and tactical decisions should be made by defense counsel after consultation with the client where feasible and appropriate. Such decisions include what witnesses to call, whether and how to conduct cross-examination, what jurors to accept or strike, what trial motions should be made, and what evidence should be introduced."

Standard 4-8.2 Appeal: (a) "After conviction, defense counsel should explain to the defendant the meaning and consequences of the court's judgment and defendant's right of appeal. Defense counsel should give the defendant his or her professional judgment as to whether there are meritorious grounds for appeal and as to the probable results of an appeal. Defense counsel should also explain to the defendant the advantages and disadvantages of an appeal. The decision whether to appeal must be the defendant's own choice."

- Ten Principles of a Public Defense Delivery System, Principle 7

"The same attorney continuously represents the client until completion of the case. Often referred to as 'vertical representation,' the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned from the direct appeal should represent the client throughout the direct appeal." (Office of City Auditor note: This principle does not say that the attorney representing the client through sentencing should represent the client in appeal.)

City Contracts with Public Defense Agencies: The City's contracts with the two public defense agencies (ACA and TDA) only discuss the process of appeals and require that the agencies report the number of appeals. The contracts do not require that the agencies report motions to the City.

Data Analysis:

Several issues emerged when we tried to gather the number of appeals and motions:

1) In our review of SMC dockets in which appeals were identified, we found that the docket did not provide an accurate number of appeals by agency because often the agency or attorney assigned was not noted nor was it clear which party initiated the appeal.

2) The City could not provide us with 2004 information on appeals by public defense agency to compare whether the number of appeals had changed since the 2005 changes in the City's public defense contracts. Only ACA provided appeal information for 2004. Both ACA and TDA provided appeal information for 2005 and 2006. However, this information conflicted with reports from the Law Department. There were cases on ACA and TDA's list of appeals that did not appear on the Law Department's list. ACA and TDA information includes one appeal per defendant. Conversely, the Law Department reports multiple appeals from the same person, one for each case the defendant has opened with the City.

3) SMC could not provide an accurate count of motions because it does not have a system to track motions that occur in trials and City contracts with public defense agencies do not require the agencies to report motions.

4) The increases in SMC cases and Law Case Filings in 2006 were the result of the City being able to prosecute DWLS cases again.

The following table shows that from 2004-2006 as a percentage of Law Department case filings, very few cases get appealed. The number of appeals as a percentage of Law Department cases filed in the same year was about one half of one percent between 2004 and 2006. However, the percentage decrease in the appeal rate between 2004 and 2005 was 22 percent, followed by an eight percent increase in 2006.

Figure 14: 2004-2006 Appeals

	2004	**2005**	**2006**	**Change 04-05**	**% Change 04-05**	**Change 05-06**	**% Change 05-06**
Law Case Filings	12945	12584	15143	-361	-3%	2559	20%
City Appeals	71	54	70	-17	-24%	16	30%
Appeals as % of Law Filings	0.55%	0.43%	0.46%	-0.12%	-22%	0.03%	8%

Source: OPM, SMC, Law and ACA

*City appeals include only criminal appeals from both agencies (ACA and TDA) and private attorneys. The Law Department does not track this data based on public versus private defenders.

Findings:

Appeals

As a percentage of Law Department case filings, very few cases get appealed: approximately half of one percent from 2004 through 2006. The data also showed that there was a 22 percent percentage change decrease in appeals as a percentage of case filings between 2004 and 2005, followed by an 8 percent increase in 2006.

OPM did not know why appeals decreased from 2004 to 2005, but noted that most of the 2005 City appeals originated in 2004 and concluded that the reduction in appeals was not due to the 2005 contract changes.

The appeals docket does not always provide information on the attorney initiating the appeal or which agency or attorney was assigned to the case.

In 2006, OPM assigned all SMC appeals to TDA to give it enough work to maintain two Full-Time Equivalent Employees (FTEs) at SMC. There were divergent views among the officials we interviewed regarding whether a defendant should have an attorney from a different agency. One official agreed with the change because it prevents ACA from giving itself more work, while another official thought it was preferable to have the agency or attorney where the case was originally assigned handle the appeal.

Motions

Although we did not identify any published public defense standards that indicate that defense attorneys should file a certain number of motions, some standards suggested that a reduction of motions over a period may be the result of overburdened attorneys. SMC could not provide a count of motions because it does not have a system to track motions that occur in trials and City contracts with public defense agencies do not require them to report motions

Recommendations

Appeals

R28. If OPM and SMC agree that appeals are a relevant measure of public defense quality, they should work together to improve the tracking of appeals information, including who initiated the appeal, the assigned agency and attorney on the appeal, and the appeal's outcome. Furthermore, each month OPM should reconcile agency appeal information against Law Department information.

Motions

R29. If OPM and SMC agree that motions are an indicator of quality public defense, OPM should work with the public defense agencies and SMC to start tracking information on motions, including who made the motion, the purpose of the motion, the type of motion, and the motion's outcome.

Appendix L: Issue 16: Analysis of Probation Revocation Hearings

Issue: Did the number of probation revocation hearings decline after 2004, and could this be a sign of a decrease in quality public defense?

Background: One person we interviewed requested that we examine the number of probation revocation hearings in Seattle Municipal Court (SMC). At probation revocation hearings defense attorneys contest probations or argue on their clients' behalf when the prosecution is trying to prove that conditions of probation have been violated.

Interview Comments:

One official believed probation revocation hearings are a good measure of quality public defense

One official suggested that we review the number of probation revocation hearings and probationary reviews because this is when defense attorneys contest probation conditions or probation conditions that defendants fail to meet. At probationary revocation hearings the prosecution has to prove that the defendant violated the conditions of probation. The standard of proof is a preponderance of the evidence. In a regular trial the standard of proof is beyond a reasonable doubt. Probation revocation hearings are like trials. There may be a good reason why a probation condition was not met. Sometimes the conditions of probation are in conflict with work requirements and may prohibit someone from going back to work. If the number of probation revocation hearings is decreasing, this could be of concern. According to an SMC official, probation revocation hearings are held to allow defense attorneys to contest probations.

Officials question using probation revocation hearings as a measure of quality public defense

Officials raised concerns about using probation revocation hearings as a measure of the quality of public defense. According to SMC officials, the 2005 and 2006 decline in probation revocation hearings resulted from SMC's successful efforts to get defendants to comply with probation conditions, including improving revenue recovery systems, having dedicated probation officers, and stronger case management. These measures result in fewer hearings.

Related Standards:

The public defense standards and legal literature we reviewed did not identify probation revocation hearings as a measure of quality public defense.

City Contracts with Public Defense Agencies:

The City's contracts with the public defense agencies require that the agencies report on all probationary hearings they staff, but do not specifically require that the agencies report on probation revocation hearings.

Data Analysis:

The following table shows that from 2004 to 2006 there was a significant decrease in probation revocation hearings set (i.e., scheduled). SMC officials indicated that the probation revocation hearing numbers do not identify the number of instances defense attorneys contested probation violations. These numbers could also include probation revocation hearings set, but not actually conducted, and instances in which the attorney did not contest the probation violation.

Figure 15: 2004-2006 Probation Revocation Hearings Set

2004-2005 SMC Court Indicators	2004	2005	2006	04-05% Change	05-06% Change
Law Department Filings	12945	12584	15143	-3%	20%
Probationary Revocation Hearings	1546	834	311	-46%	-63%

Source: SMC

Findings:

From 2004 to 2005 we found a 46 percent decrease in probation revocation hearings set. A further 63 percent reduction in probation revocation hearings set occurred from 2005 to 2006. While requesting a probation revocation hearing may speak to the willingness of an attorney to vigorously defend a client and challenge the prosecution, the reductions in 2005 and 2006 compared to 2004 could be the result of SMC's efforts to achieve greater defendant compliance with probation conditions.

Recommendation:

R30. SMC and OPM should consider whether the annual number of hearings in which defense attorneys contest probation violation allegations is an appropriate measure of quality public defense. If they determine it is, SMC should track such hearings and OPM should monitor this information for significant changes in the annual number of such hearings by public defense agency.

Appendix M: Issue 17: Analysis of Trial Data

Issue: Are the number of cases a defense attorney takes to trial an appropriate measure of quality public defense? If it is, did trial rates change between 2004 and 2005, and 2005 and 2006?

Background: In their audit request letter, City Councilmembers McIver and Licata specifically requested that the Office of the City Auditor compare the percentage of charges set for trial and the percentage of charges that go to trial to determine whether the quality of public defense has changed since the City of Seattle made changes to its public defense services contract in 2005. While some persons we interviewed expressed concern that the decline in cases going to trial since 2005 has resulted in a decrease in the quality of public defense services, others did not believe trials were an appropriate measure of quality public defense because of the factors that influence the decision whether or not to go to trial.

Although there are no standards that dictate how many cases or what percentage of their cases attorneys should be taking to trial, some officials suggested that defense attorneys should be taking cases to trial on occasion; otherwise prosecutors may want to plead weak cases knowing that the defense attorneys will not challenge them in court. The King County Office of Public Defense (OPD) reviews the percentage of cases going to trial and believes that roughly five percent of misdemeanor cases should go to trial.

Several officials commented about their belief that ACA tends to negotiate or plea bargain cases rather than taking them to trial. If the ultimate goal is to reduce a client's "loss of freedom," then quickly negotiating a case and having a client released from jail may be better for a defendant than having them incarcerated for days or weeks waiting for trial. On the other hand, if the defendant has no prior record, it may be worth additional incarceration time if going to trial results in a not guilty verdict. Also, one official noted that sometimes it is better for a defendant to spend more time in jail while awaiting trial if an important, precedent-setting (e.g., constitutional) legal issue is at stake.

Interview Comments:

Officials expressed opposing views on the appropriateness of trial data as a measure of quality public defense

Although ten officials said that the number and percentage of cases attorneys take cases to trial is a good measure of quality public defense, five officials listed many reasons why trial data is not a good measure.

Those that believe trial data is a good measure of quality public defense gave several reasons why and suggested many ways of assessing trial data:

- Some officials said that lawyers should be taking cases to trial a certain percentage of the time. One official indicated that there is not a "magic number", but attorneys should be taking some of their cases to trial. Some officials stated that it is not appropriate for lawyers to negotiate a plea for every case; this would indicate that the lawyers are just "rolling over" for the prosecutors. Clients need to know that the lawyers are willing to go to trial for them and not plead guilty all the time.

- Some officials stated that trial rates are a very good indicator of quality public defense, because if attorneys are not taking cases to trial they are not exercising their client's rights. Especially with misdemeanors, attorneys should be trying anything with an issue. One official said that if attorneys are not trying cases then defendants are getting "screwed". There are many defendants who just want to plead guilty so they could get out of jail, especially immigrants, which could really hurt them down the road. If an immigrant is in Federal Court and they have a misdemeanor record it has a huge effect on their case and increases the severity of the penalties. This is especially true for Hispanics and Blacks who tend to get harassed. Once they are in the Federal system they are "hammered" if they have a prior record.

- The trial rate is something the King County Office of Public Defense (OPD) reviews. OPD has an unofficial guideline that between 5 and 10 percent of the cases should go to trial depending on the type of case. For misdemeanor cases a five percent guideline is used. OPD believes that it is important to occasionally go to trial, because there could be times when the prosecutor does not have a good case and should be challenged. If the prosecutor's office knows it will not be challenged it may plea bargain weak cases or cases that don't have merit. It is a way to keep prosecutors "on their toes" and it's to everyone's benefit if defense attorneys take cases to trial at least occasionally.

- Some officials suggested that we examine trial set rates as a percentage of charges, the kinds of cases that are being set for trial, and the outcomes of both for the Primary and Secondary provider. One official noted that statewide trial rates would not be useful to review because of the unique circumstances faced in different parts of the state.

- One official suggested that we review the kinds of cases going to trial, such as drug traffic loitering. With drug traffic loitering charges, there doesn't have to be evidence of drugs present. The basis of the charge is whether the person fits a profile. It could be that the person was shaking someone's hand so it looked like an exchange may have been taking place. Blacks and Latinos are especially affected by this law. There could be no drugs or evidence of an exchange, so the charges could be merely based on the type of clothes worn by the defendant or the neighborhood in which they were situated, etc. If this is a charge people are pleading guilty to, then this is a concern. A lot of domestic violence cases usually go to trial because there are usually a lot of gray areas.

- One official suggested that we evaluate who is going to trial. How many trials are being set for clients that require interpreters versus those that don't? You may find that more trials are being set for clients who do not require interpreters. If people who require interpreters are not going to trial they are likely not receiving the level of service to which they are entitled. Look at cases, especially those involving minorities or when English is a second language, and also consider the race of the defendant set for trial.

- Some officials said that in order to determine if there is a difference in quality of public defense between 2004 and 2005, we should determine whether there was a change in the percentage of cases going to trial.

- One official suggested that we review the number of cases that go to trial and the conviction versus acquittal rate for major and minor charges. At one trial a minor charge may get acquitted and the major charge receives a conviction so you want to look at the trials and see whether all charges were acquitted or if there was a conviction for all the charges.

Reasons why trials are not a good indicator of quality defense services:

Five officials listed the following reasons why trials are not a good indicator of quality public defense:

- Comparing the number of jury trials is not a reliable indicator of quality defense services because the City Attorney's Office changed its filing practices, which has resulted in fewer "weak" cases going to trial. In the past, the public defender would be more willing to go to trial, but now with the City Attorney bringing generally stronger cases to court, the defense is more likely to settle before going to court.

- Statistics on trial set rates are problematic to interpret because sometimes witnesses do not show up in court.

- An attorney could spend quite a bit of time on a case, but if the person does not show up to the trial, the attorney will not get credit until a year later. Absconds are a big issue as Seattle's population is quite mobile.

- The number of trials is not a good indicator because it is ultimately the client's decision to go to trial or not. If an attorney strongly recommends not going to trial, but the defendant wants to go anyway you won't be able to tell that the lawyer was practicing good law.

- Going to trial is not always an indicator of service quality. An attorney should take a case to trial if the attorney has not received a reasonable offer from the prosecutor and/or if the attorney believes the judge will rule in the defendant's favor. The risk

of taking a case to trial is that prosecutors often add jail time if the defense doesn't accept their pre-trial settlement offer.

- The numbers of cases a firm takes to trial tells you very little about the quality of defense services because of the multiple variables that can influence whether a case goes to trial. Part of a defense lawyer's job is to convince a prosecutor that he or she doesn't have a good enough case to bring to trial, and obtain a plea bargain or dismissal of the case.

- Not all trials cases have public defenders. Although most clients are represented by public defenders, most Driving Under the Influence (DUI) cases are represented by private attorneys.

- Unless you know what the client's goal is, it is difficult to determine if going to trial was a good idea or not. Was not going to trial to avoid jail or to keep their drivers license? An attorney can increase trial sets, but it may not do anything for the client.

- Mental Health Court case numbers have been going up; therefore, the number of cases eligible for resolution through trial are doing down, because mental health cases do not go through trial.

- If a client loses when he goes to trial and gets 180 days rather than 7 if he had pleaded guilty, then going to trial was not in the client's best interest.

- Driving With License Suspended (DWLS) 3s will also affect trial numbers. DWLS3s almost never go to trial unless the person has multiple charges and is going to trial for the other charges or it is the wrong person. Therefore, the number of trials as a percentage of total cases will look distorted.

Comments regarding Seattle, ACA, and TDA's trial experiences

Almost everyone we interviewed commented on ACA and TDA's trial practices. They believed that, all things being equal, TDA tends to take more cases to trial than ACA and that ACA tends to negotiate or settle more cases than TDA. Some stated that they observed or believed that trials decreased when the City made the changes to the contracts in 2005 and that this resulted in a decrease in the quality of public defense services. A few stated that they have observed a recent increase in the number of cases going to trial.

Related Standards:

A review of public defense standards did not reveal anything related to the number or percentage of cases attorneys should be taking to trial. Based on our discussions with the Washington Defender Association and American Bar Association (ABA), there do not appear to be standards or guidelines related to the percentage or number of cases

attorneys should be taking to trial. However, ABA standards state:

- **PART VI. Standard 4-6.1 Duty to Explore Disposition Without Trial**

(a) "Whenever the law, nature, and circumstances of the case permit, defense counsel should explore the possibility of an early diversion of the case from the criminal process through the use of other community agencies.

(b) Defense counsel may engage in plea discussions with the prosecutor. Under no circumstances should defense counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial."

Trial Data Analysis:

The table below is an analysis of trial data from the Seattle Municipal Court and the Seattle Law Department for 2004 through 2006. There are several issues related to the data used in this analysis:

1) Although the City could not provide data on the exact number of trials held in any given year, the Law Department provided the number of charge dispositions reached through trial, SMC provided the number of jury trials held, and both SMC and Law provided the number of trial settings.

2) SMC's Municipal Court Information System (MCIS) data system could not be used to provide an accurate count of actual trials held because the data may include cases that were resolved after a jury trial was scheduled or during the jury trial. The two reports that SMC provided containing jury trial information did not reconcile with each other. One of the reports was based on a manual count of jury trials held, while the second included jury trials scheduled, but not held.

3) One reason why SMC's case numbers are higher than Law's is that MCIS assigns case numbers to cases that the Law Department does not prosecute. These cases do not register as a case in the Law Department count, but are counted as cases by MCIS.

Figure 16: 2004-2006 Trial Data

Trial Data	2004	2005	2006	% Change 04-05	% Change 05-06
Law Department Cases Filed	12945	12584	15143	-2.79%	20.34%
Actual Jury Trials Held					
# of Actual Jury Trials Held (SMC)	175	157	149	-10.29%	-5.10%

Actual Jury Trial Rate (SMC) as % of Law Cases Filed	1.35%	1.25%	0.98%	-7.71%	-21.13%
Trials Set					
# of Trials (Bench, Jury and Master) Set (MCIS)	2006	1772	1793	-11.67%	1.19%
Trial Set (MCIS) Rate as % of Law Cases Filed	15.50%	14.08%	11.84%	-9.13%	-15.91%
Readiness Settings					
# of Readiness Settings (Law)	3136	2685	3355	-14.38%	24.95%
Readiness Settings (Law) as % of Law Cases Filed	24.23%	21.34%	22.16%	-11.93%	3.84%
Jury Trials Set					
# of Jury Trial Settings (Law)	1976	1864	2042	-5.67%	9.55%
Jury Trial Setting (Law) Rate as % of Law Cases Filed	15.26%	14.81%	13.48%	-2.96%	-8.98%
Bench Trials Set					
Bench Trial Settings (Law)	102	75	59	-26.47%	-21.33%
Bench Trial Setting (Law) Rate as % of Law Cases Filed	0.79%	0.60%	0.39%	-24.36%	-34.63%
Dispositions (not cases) Resolved Through Trial					
	2004	**2005**	**2006**	**04-05% Chg**	**05-06% Change**

# of Total Dispositions	16970	17044	18546	0.44%	8.81%
# of Dispositions Resolved Through Trial	240	337	309	40.42%	-8.31%
% of Dispositions Resolved Through Trial	1.41%	1.98%	1.67%	39.81%	-15.73%

Results of Data Analysis

During 2004, 2005 and 2006, jury trials represented about one percent of cases filed in SMC. SMC (i.e., MCIS) data indicates decreases in the number of jury trials from 2004 through 2006. As a percentage of Law Department case filings, the percentage change in jury trials decreased approximately 8 percent in 2005 from 2004 and 21 percent in 2006 from 2005.

There were not significant changes in the number of cases set for trial between 2004 and 2006 measured as a percentage of Law Department case filings. The percentage changes were approximately of 9 percent in 2005 and 16 percent in 2006.

Law Department data indicates small reductions in readiness settings (hearings that occur to ensure cases are ready for trial), jury trial settings and bench trial settings as a percentage of Law Department case filings of approximately 3, .5, and .19 percent respectively, between 2004 and 2005. However, the percentage decreases in these rates were approximately 12 percent, 3 percent and 24 percent. After making adjustments for changes in DWLS3 cases, which for the most part the City was not allowed to prosecute in 2005, the readiness set rate, jury trial set rate, and bench trial set rate showed smaller decreases between 2004 and 2005. However, in 2006, readiness settings as a percentage of case filings increased by approximately one percent and 1.13 percent adjusting for DWLS3 cases. This represents a four percent increase in the readiness setting rate from 2005 to 2006, and a five percent increase adjusting for DWLS3 cases

Law Department data on how charges were resolved (dispositions) indicates a 40 percent increase in the number of dispositions resolved through trial in 2005. 2006 data indicated a decrease in charges resolved through trial as a total of dispositions. However, because multiple charges can be associated with one case this data is not a good measure of attorney trial practices. A trial from one case that resulted in both guilty and non-guilty disposition of charges is counted in the two categories.

In 2005, ACA reports that its attorneys resolved cases through trial (jury and bench) 43 times, and in 2006, 52 times. These numbers are consistent with several of our stakeholder interview comments that in early 2005, after ACA became the Primary

Defender, it did not appear to be taking many cases to trial, but it began taking more cases to trial in 2006.

Findings:

We did not identify any published standards or guidelines that dictate how many cases attorneys should be taking to trial as a percentage of caseload.

We could not verify the accuracy of SMC bench trial (trials that are scheduled to be heard before a judge rather than a jury) data; therefore, we were unable to determine the total number of cases resolved through trials in SMC. However, SMC provided us with trial setting information and a hand count of actual jury trials held from 2004-2006. In addition, the Law Department provided trial setting data and the number of dispositions or charges resolved through trial. Most of the trial data between 2004 and 2006 showed decreases:

- SMC data showed decreases in jury trials and trial settings from 2004 through 2006.

- Law Department data showed decreases in readiness settings (hearings that are scheduled to determine a case's preparedness for trial, which occur the week before the trial) bench trial settings, and jury trial settings (trials that are scheduled before a jury) between 2004 and 2005. However, in 2006 the readiness setting rate increased.

- Law Department data on how dispositions or charges were resolved showed an increase in dispositions resolved through trial in 2005 and a decrease in 2006, although 2006 was higher than 2004.

In 2005 and 2006 the City' current primary public defense agency, ACA, tried one percent of its closed cases, whereas the current secondary agency, TDA, tried two percent in 2005 and three percent in 2006.

Although some officials we interviewed stated that trial rates are an appropriate measure of quality public defense because attorneys should be taking some cases to trial, several individuals cited many different reasons why trials were not a good measure of quality public defense. According to SMC officials, the Court's purpose is to resolve cases and resolving them through trial is just one of many methods to achieve this objective.

In evaluating the City's Request for Proposal (RFP) for 2005 public defense services, one factor used to evaluate the respondents was an agency's willingness to address client's overall needs in problem solving courts. In order to participate in the City's problem solving courts, such as Community Court, defendants plead guilty and forgo their right to a trial, which may decrease the number of cases that get resolved through trial.

According to the RFP, the Executive believes in the importance of problem solving courts. The Executive expects the Primary Defender and the defense attorneys assigned to Mental Health Court to embrace its goals, provided that such a collaborative approach is not in conflict with counsel's duties under the Rules of Professional Conduct of zealous representation, confidentiality and undivided loyalty, and the constitutions of the United States and Washington State.

Recommendations

R31. While data on the number of trials cannot by itself adequately measure the quality of public defense, it reasonable for the City to expect public defense attorneys assigned to SMC to assess the merits of each case to determine whether they should go to trial. Further, it is reasonable for the City of Seattle and defendants to expect that City of Seattle public defense attorneys are willing to take cases to trial. Therefore, OPM should track of the annual number of cases its public defense attorneys are taking to trial, question those agencies who have attorneys that have the option to but never or rarely take cases to trial, and annually monitor trial rates for significant decreases. If there are significant decreases in the annual number of trials, OPM should report this to the City Council.

R32. The City should consider paying the public defense agencies on an assigned case basis. This could address issues raised by officials about the unintended incentives the current payment system may be providing to negotiate or plea bargain cases that may merit trials. (Note: see Case Processing Time Analysis above).

R33. SMC should consider modifying its information systems to facilitate and enhance the accuracy of reporting on all trials to include bench trials (not just jury trials). This will allow OPM to review trial data based on various factors (e.g., race) and type of case to evaluate possible trends.

Appendix N: Issue 19: Comparison of 2004 and 2006 King County versus City of Seattle 2005 Contracts with Public Defense Agencies

Figure 17

Contract Term Element	2004/06 King County Boiler Plate	2005 Seattle Primary Provider	Office of City Auditor Comments
Duration of Contract	One year	Three years	The City of Seattle may add amendments throughout the term of the contract.
Visit/intake of in-custody defendants	Within one day of assignment	Same	
Contact with assigned attorney	Five working days from assignment with both in and out of custody clients.	Five working days from assignment or no later than the day before the first pretrial hearing, whichever comes first with both in and out of custody clients.	Seattle and King County allowed this contact to take the form of a letter. However, given the importance of attorney-client contacts, a letter should be the method only when defendants are not in custody and cannot be contacted in person or by phone.
Complaints	Only written complaints shall be reported to the King County Office of Public Defender (OPD) (Note: in addition to written complaints, OPD has a system in place to receive phone complaints, which is not mentioned in this contract).	Same (Note: Seattle used the Citizen Service Bureau in 2005 to receive complaints from defendants about their public defense attorneys. In 2006 SMC assumed this function.).	The contract should require that OPM receive a summary of phone and written complaints from the public defense agencies because most complaints are made by phone. One of ACA's supervisors has a good system for tracking such complaints. OPD has a better system for receiving complaints. For example, complaints received by phone are made directly to an OPD official.
Investigators	The agency shall	One for every five attorneys	

	provide sufficient paraprofessional support staff, including investigators, social workers and paralegals to provide for effective assistance of counsel.		
Discovery	Within ten days (2004) Contract Within five days (2006) Contract	Within five days.	Seattle's contracts are consistent with King County's 2006 contracts.
Continuous attorney representation	Reasonable attempts to be made to continue with initial attorney throughout case	Same.	

Prior Attorney Experience	None required for misdemeanor cases	Same	
Continuing Legal Education	Seven hours of continuing legal education credits	Same	
Use of Rule 9 Interns	Allows use of with no limits on usage.	Allows use of; but no more than five percent of the cases may be assigned to Rule 9 interns.	
Supervisor Experience	No requirements indicated.	Supervisors required to have at least three years of criminal defense experience in Washington superior, district or municipal courts..	
Supervisor Caseload	Supervisors shall not carry a caseload.	Same	
Supervisor/attorney ratio	1 supervisor for every 10 attorneys	Same	
Attorney Caseload limits	450 case credits (assigned cases)	380 closed case credits	Case credit is a unit of work. One unit is equivalent to one case.
Payment to Public Defense Agencies	Based on an estimated workload, basically the same each month.	Based on closed case credits.	Stakeholders expressed concern that paying on a closed case basis creates an appearance that public defense agencies have an incentive to close cases rapidly.

Summary of Contracts Comparison:

The requirements for public defense agencies in Seattle's public defense contracts are either the same or stricter than the previous ones under King County. The only area in which King County's contracts offered a superior incentive for quality public defense was in its payment structure. King County pays its public defense agencies monthly on a projected assigned caseload, roughly the same each

month, based on those projections. Every four months King County reconciles its accounts with their public defense agencies. Since pay is not based on closed cases, King County does not track closed cases and there is no incentive to close cases without thorough review. Unlike King County, Seattle pays its public defense agencies on a closed case credit basis. The public defense agencies get paid only for the cases they close, which could provide an incentive or the appearance of an incentive to close cases quickly without sufficient review. We found no evidence of ACA or TDA closing cases quickly to get paid faster.

Appendix O: Responses from Office of Policy and Management, Seattle Municipal Court, ACA, and TDA to the Audit

City of Seattle

Gregory J. Nickels, Mayor
Office of Policy and Management
Mary Jean Ryan, Director

August 1, 2007

Susan Cohen, City Auditor
City of Seattle Auditor's Office
700 Fifth Avenue, Suite 2410
Seattle, WA 98124-4719

Dear Ms. Cohen,

Thank you for the opportunity to respond to the draft audit on public defense services. The City of Seattle is proud of the high quality public defense services it provides to indigent defendants charged with crimes in Seattle Municipal Court (SMC).

Since 1989, Seattle has funded a caseload standard of 380 misdemeanor cases per attorney. This is below the national standard of 400 misdemeanor cases per attorney as well as King County's standard of 450 cases per attorney. In fact, there are only a few other jurisdictions in the country that have a lower caseload standard than the City. Seattle is also one of the few jurisdictions to provide public defense attorneys at all first appearance hearings.

Prior to 2004, the City contracted with King County which in turn contracted with three non-profit public defense agencies to provide public defense services at SMC. This model provided little accountability and resulted in system inefficiencies.

The City has saved one million dollars each year since it started contracting directly with public defense agencies (rather than going through King County). We have preserved a high quality of public defense while achieving the following system improvements:

- Swifter justice achieved through faster assignment of attorneys: Previously there were delays in scheduling court hearings while waiting for an attorney from one of the three agencies to be assigned by the King County Office of Public Defense (OPD). Now, the primary defender automatically receives the case – leading to faster assignment of the case to an attorney.
- More consistent representation for defendants: Under the previous structure, a defendant had an attorney from one agency at arraignment; was likely to have an attorney from a different agency represent him at pre-trial hearings; and if the defendant came back for a probation hearing, could have an attorney from a third agency represent him. Now the primary defender agency represents the defendant at arraignment and then represents 90% of defendants at subsequent hearings.

- Improved communication: For example, when changes like use of pre-trial EHM or the creation of Community Court occurred, it was easier to brief and train attorneys at one agency rather than three agencies.
- Improved collaboration between the different criminal justice agencies: For example, the Director of the Primary Defender (ACA) was instrumental in working with the Presiding Judge and the City Attorney to create Community Court.
- Streamlined justice through improved processes: One example is the transfer of discovery from the City Attorney: Previously, defense agencies routinely complained that they hadn't received the discovery (it had to go from the City Attorney to King County OPD to the assigned defense agency and sometimes got lost or misplaced along the way). Because discovery now automatically goes to the primary defender, there are very few instances of discovery not being received.
- Improved data management and information: When the City contracted with King County, it was unable get data on how many cases by charge type were handled; how many cases went to trial; how long it takes cases to reach resolution; or how many attorney or investigator hours were spent on a case. This was caused in part by having three different agencies with different case management software systems – and in part because King County was unable to obtain and collect closed case information from the agencies. Now, all of this information is easily available.

Below are specific responses to issues raised in the audit.

Issue 1: Attorney Caseloads

The City of Seattle caseload standard of 380 cases per attorney is the lowest caseload standard for misdemeanor cases in Washington State. The national ABA standard is 400 misdemeanor cases per attorney. The Washington State Office of Public Defense published a report[1] in 2007 which included information on county caseload standards in the State.

County	Misdemeanor Caseload Standard
King	450
Snohomish	426.2
Spokane	491.3
Thurston	400

The City does not determine attorney caseload by using closed credits. The City reimburses the public defense agencies based on closed cases. The current contract states that "caseloads for Seattle misdemeanor cases shall be no higher than 380 case credits per attorney per year." It does not state whether these are assigned cases or closed cases. OPM agrees that the contract should be clearer in stating that attorney caseloads are based on assigned cases.

[1] Status Report on Public Defense in Washington State, January 23, 2007

Response to Recommendations:

R1: OPM will incorporate compliance reviews of attorney caseloads in its annual audits of the public defense agencies.

R2: OPM will clarify the definition of attorney caseload in the contracts with the public defense agencies.

R3: It is unclear how the size of the secondary agency relates to the issue of attorney caseload standards. In addition, the audit relies mainly on anecdotal reports to support the recommendation that the size of the secondary agency needs to be increased and does not include information on how often the court had to go into recess because an attorney was unavailable.

The purpose for having a secondary agency is to provide representation for defendants for whom the primary agency is unable to defend. As shown in the table below, the need for attorneys for conflict cases has ranged from 1.3 – 1.7 FTE.

Attorney FTE Needed for Conflict Cases

	Case Credits	Attorney FTE
2005	571	1.5
2006	644	1.7
2007 projected	503	1.3

In order to obtain more objective data and to take a more comprehensive approach to evaluating how to best provide legal counsel when there is a conflict or there are co-defendants, OPM will undertake the following evaluation to assess the best way to provide representation for conflict cases:

- Work with the Court to track how often the Court needs to go into recess because the secondary agency attorney is unavailable, and the Court is unable to hear other cases while waiting for the secondary agency attorney.
- Evaluate how much of this issue is due to the change by the Court to an individual calendar system (as stated in the Audit) and whether it could be remedied by returning to a master calendar system or other scheduling changes.
- Review the secondary agency's staffing model to find out if more flexible coverage would be possible.
- Research how other jurisdictions handle conflict cases that their primary agency is unable to take.
    - Assess whether a secondary agency is needed to handle conflicts or whether they could be handled by outside counsel (most jurisdictions only have one defender agency; conflicts are handled by outside attorneys).

- Evaluate whether a standalone division could be established within the primary agency to handle conflict cases (as is the case in Orange County).

Issue 2: Attorney – Client Contacts

R4: OPM will expand the number of cases it reviews during its annual public defense audits to at least 30 cases. OPM will also review whether attorneys are meeting with their clients at least one day before the pre-trial hearing.

R5: OPM will request that the public defense agencies revise their forms per the Audit's recommendation.

R6: OPM will clarify what constitutes assignment of a case in the contracts.

R7: OPM will negotiate with the public defense agencies to change the contract requirement regarding client contact such that the standard will be that the first contact is made in person and that contact is made via phone or letter only in situations where the client cannot be located or is unwilling to meet.

R8: OPM will require that the public defense agencies document evidence of attorney contacts with clients by including agency letters with the date of the contact in their client files.

R9: OPM will work with SMC to conduct client satisfaction surveys to provide feedback to the agencies and to establish a baseline for client satisfaction. The information from the surveys will be shared with the defense agencies, the Court, and the Council.

Issue 3: Client Complaint Process

R10: OPM and SMC have already worked together to improve the complaint process. The information sheets given to all defendants (both in-custody and out of custody) who are screened for public defense now include information on how to contact the screeners if they have a question or complaint about their attorney. In addition, a tracking form has been developed to ensure that all complaints are addressed in a timely fashion.

R11: OPM will modify the new contracts to require the public defense agencies to document all defendant complaints about attorneys (i.e., written, phone, and email complaints), address or follow-up on meritorious complaints, and respond to defendant complaints within one week of the complaint. OPM will require the agencies to provide copies of the complaints as well as the agency's response. OPM will also ask the agencies to provide explanations when cases are transferred due to a breakdown in attorney-client communications.

R12: Information about public defense and how to obtain an attorney is now included on the City's main website, the Court's website, and the City Attorney's website (see below for links).

http://www.seattle.gov/courts/general/pub_def.htm

http://www.seattle.gov/html/CITIZEN/legal.htm

http://seattle.gov/law/faq/#Legal

R13: OPM will work with both agencies to include information on their websites about what to do if a defendant has an issue with a Seattle public defense attorney.

Issue 4: Attorney Experience.

No response – the audit does not include any recommendations.

Issue 5: Supervision

R14: OPM will assess the supervisor to attorney ratio on a quarterly basis.

Issue 6: Training

R15: OPM will review a larger sample of attorneys with significant SMC caseloads from both agencies in the annual audits to determine if attorneys are meeting the continuing legal education requirements.

Issue 7: Performance Evaluations

R16. In the annual compliance audits, OPM will evaluate whether the agencies conducted performance evaluations that were consistent with contract requirements.

R17. OPM will work with the agencies to determine what information can be shared to make this tool more useful while at the same time maintaining the confidentiality of employee personnel records.

Issue 8: Investigators

R18: The primary defender already reports the number of investigator hours spent on each case. OPM will request that the secondary defender also provide this information.

R19: OPM will compare the actual use of investigators to the level that the City has funded.

Issue 9: Interpreters

R20: No response (recommendation applies to SMC data tracking).

R21: OPM will work with the Court and the public defense agencies to ensure that attorneys are requesting interpreters in a timely manner.

R22: OPM can include Court information on the use of interpreters in its annual compliance reviews of the agencies. However, it is more likely that the use of interpreters will be affected more by factors outside the system (e.g. more people moving to Seattle that speak another language).

Issue 10: Continuances

R23. OPM will work with the Court and the public defense agencies to develop a performance goal related to the number of continuances requested by defense attorneys.

Issue 11: Case Processing Time

R24. No response (recommendation applies to SMC tracking open and closed case information).

R25. OPM will work with SMC to evaluate case processing time information for adherence to state standards and significant changes between years.

R26. As the audit states, no evidence was found that reimbursing agencies after the case was closed led to attorneys closing cases too quickly. In fact, the opposite problem has occurred where some attorneys did not administratively close their cases in a timely manner (sometimes months after the case was resolved). In addition, the audit found that ACA was taking longer to close cases than State Standards (State Standards call for 90% of cases to be closed in 90 days; 74% of ACA cases were closed in 90 days). Finally, there is no relation between when the attorneys are paid (they receive a regular salary) versus when the agency is reimbursed – so it is not clear how agency reimbursement would affect attorney performance.

When the City contracted with King County, it was unable to obtain any reliable closed case information (e.g. how many cases went to trial) because the agencies were not submitting their closed case reports. For example, King County found in their 2004 Contract Compliance Review that two of the agencies (NDA and TDA) did not submit <u>any</u> closed case reports from 1992 – 2004. Because agencies were paid upon case assignment, there was little incentive for them to submit the closed case reports.

Without closed case reports, it is impossible to track data such as case disposition (how many cases went to trial); how many hours attorneys spend on cases; use of investigators; and many other items that this audit is requesting that OPM track. The challenges King County faced in obtaining these closed case reports are why the City decided to reimburse agencies on a closed case basis.

Issue 12: Dispositions

R27: The conclusion that defendants appear to have been better off in 2004 than in 2005 is invalid because it ignores the fact that Community Court began in 2005. In order to participate in Community Court, defendants must plead guilty. The establishment of Community Court has led to an increase in the number of defendants pleading guilty. If defendants opt in to

Community Court, analysis has found that they spend less time in jail than they would have if they went the traditional case processing route. In addition, defendants are given the opportunity to access social services. The underlying premise of Community Court is that by linking defendants to social services, defendants will be better off than if they had gone through the regular trial route. Community Court proponents would argue that if a defendant pleads guilty but spends less time in jail and is connected to greatly needed social services, the defendant is better off – not "worse off" as the audit concludes.

In addition, the audit also cites a National Center for State Courts' report that states that favorable outcomes are more dependent on the characteristics of the defendant than on counsel. The audit also finds that the public defense standards it identified do not include dispositions as a way to measure quality of public defense. Given this, it is hard to understand why the audit is using dispositions as a measure to draw conclusions about whether defendants are better or worse off.

Finally, the City Attorney already provides and shares disposition data by year. This information is already reviewed to identify system changes.

Issue 13: Jail Population

As the audit notes, the length of stay for SMC defendants in jail has decreased since the change in public defense contracts. OPM agrees that jail population and length of stay are not good measures of public defense quality since there are so many variables that affect them. However, OPM would point out that presumably defendants are better off than they were in 2004 since they are spending less time in jail.

Issue 14: Appeals

R28: OPM will discuss with the Court and the public defense agencies whether the number of appeals is a good measure of the quality of public defense.

Issue 15: Motions

R29: OPM will discuss with the Court and the public defense agencies whether the number of motions is a good measure of the quality of public defense.

Issue 16: Probation Revocation Hearings

R30: OPM will discuss with the Court and the public defense agencies whether the number of revocation hearings is a good measure of the quality of public defense.

Issue 17: Trial Data

R31: The trial rates between the two agencies are not comparable because their case mix is very different. The Secondary Defender handles cases where the Primary Defender has a conflict. Often, these involve assault cases (these cases are more likely to have witnesses, victims, and/or co-defendants that increase the likelihood of a conflict). This means the secondary agency is more likely to represent defendants on case types like assault that are more likely to go to trial. They are unlikely to represent defendants charged with Driving with License Suspended (DWLS) because few DWLS cases involve conflicts; DWLS cases are also unlikely to go to trial. The trial rates for attorneys will be significantly affected by the mix of cases they are handling. An attorney handling primarily DWLS cases would have fewer trials than an attorney handling DV assault cases.

For example, in 2006, 60% of the cases the Primary Defender brought to trial involved assault or DUI charges. However, assault and DUI cases represented only 30% of their total caseload. DWLS cases comprised 9% of the Primary Defender's caseload; none of these cases went to trial (which is typical for this case type).

OPM will continue tracking the number of cases that are resolved through trials.

R32: As the audit states, no evidence has been found that reimbursing agencies after cases close caused an increase in the number of plea bargains. In fact, data from the City Attorney's Office found that the trial rate increased after the City started paying the agencies on a closed case basis.

R33: No response (recommendation applies to SMC and its tracking of trial data).

Issue 18: Assessment of Seattle's Adherence to ABA's Ten Principles of a Public Defense System

R34: OPM is willing to administer the assigned counsel cases should the Court no longer wish to handle this function. In King County, this function is handled within the Executive Branch by the Office of Public Defense. OPM will work with the Court to identify each of the functions associated with managing assigned counsel and then develop options for how to manage each one.

R35: OPM will assess whether the public defense agencies are making reasonable efforts to provide continuous representation to defendants.

R36: Both of the public defense agencies use an attorney pay scale that is tied to the salaries in the King County Prosecutor's Office. The majority of attorneys in both firms work on King County cases. Creating a second pay scale based on Seattle City Attorney salaries would lead to parity issues within the firms.

Thank you for the opportunity to comment on the draft audit. Should you have any questions, please don't hesitate to contact me at 206-684-8725.

Sincerely,

Catherine Cornwall
Senior Policy Analyst

cc: Regina LaBelle, Counsel to the Mayor
Mary Jean Ryan, Director, Office of Policy and Management
Dwight Dively, Director, Department of Finance
Doug Carey, Public Safety Team Lead, Department of Finance

ACA response to City Audit of indigent public defense services program

Associated Counsel for the Accused has been providing public defense services for the City of Seattle since 1973. We have worked hard to ensure that our clients have been treated fairly, listened to, and empowered to make a choice about their case. ACA believes that it is our job to advise our clients about the many options they have to resolve their case. Often the advice begins shortly after an arrest when a client finds himself or herself in jail. It may be when they show up from out-of-custody for a first appearance. ACA attorneys are always there to discuss the case with them.

In 2005 the City decided to change the Public Defense contracts and oversight of the service providers. ACA was privileged to gain the primary provider status under this new system. We contracted to handle 6,168 case credits for 2005. A case credit is not equal to a "criminal case". Usually a criminal case is counted as one case credit. A probation hearing is equal to .6 of a case credit. The caseload standard for the City of Seattle is 380 cases per year. To complete 6,168 case credits in a year ACA agreed to provide the services of 16.23 attorneys on caseload for 2005.

We started the contract in 2005 with 17 attorneys on caseload, 3.5 attorneys handling the calendars for in and out of custody clients, 2 Mental Health Attorneys and 2 supervisors. ACA has remained staffed above the contract since January of 2005. We have consistently adapted to the ebb and flow of case assignments. Since we cannot control the number of arrests and/or charges brought by the City of Seattle, we must watch the trends and staff appropriately to balance the caseload assignments between attorneys and comply with the caseload standard of 380 case credits per attorney per year. In 2005 the charge of driving while license suspended returned and caused a significant increase in criminal filings. ACA worked with the City Attorney to establish a diversion program for these charges. The goal was to get the client time to get his or her license reinstated. This contributed to heavy case assignments and many continuances.

To reach 380 case credits per year each attorney should be assigned 31.67 credits per month. ACA balances the caseloads by watching the case assignments daily and making adjustments where possible. We have tried to assign our attorneys by courtroom, as does the City Attorney, so they can better understand each Judge and prosecutor. This sometimes causes some attorneys to be assigned more cases than others due to how Seattle Municipal Court processes cases. Some Courts within Seattle handle more cases than others. When case assignments went up, ACA hired additional attorneys and rule nine students to stay within contract levels. ACA also rotated more experienced attorneys into SMC to provide additional support and mentoring.

ACA agrees that a few attorneys were assigned more than 380 case credits in 2005. We did our best to stay within the caseload standards while trying to comply with the new contract and increased charging trends of the City. The new contract also made it difficult to determine the proper case credits for ACA. We were not paid for case assignments when we had to withdraw due to clients who failed to appear, retained private counsel, or we were required to withdraw

from their representation due to the Rules of Professional conduct and conflicts. We have found that approximately 8 % of our case assignments resulted in closing the case and not receiving a case credit.

The new contract with the City of Seattle did provide payment for the clients who failed to appear but only after the case had been closed for a year. This change in contract language required that ACA pay for attorneys and staff to stay abreast of caseloads as they are assigned but not be paid for this work for at least a year. ACA remained staffed above the contract level and understood that it would take a year to get a good understanding of how this new contract would begin to balance out. ACA's expenses for 2005 exceeded its revenue from Seattle. This was primarily due to the change in payment method.

The 2005 contract paid based on closed case reports submitted to the City. Previously the contracts provided for payments based on yearly projections of case assignments and the contracting defenders receiving $1/12^{th}$ of the projected case assignment payments each month. The defender agencies provided closed case reports for reporting purposes but not for payment. ACA understood the changes in the new contract and has done its best to comply with all aspects.

ACA requested changes to the contract in 2006 and 2007. In 2006 and 2007 we requested additional supervisors due to the increase in case assignments and attorneys hired to keep up with the caseload standard. In March of 2007, Seattle agreed to fund an additional .5 supervisor. Seattle also agreed to change the payment method of clients who fail to appear. Since April of 2007 we now receive payment the same month we close the case in which the client failed to appear. If they reappear within a year we simply finish the case and do not bill for the additional time. In 2006 Seattle agreed to pay for cases in which ACA withdrew due to the hiring of private counsel or conflicts when we had over two hours of attorney time on the case.

During the time frame of the new contract with Seattle ACA has undergone a complete review of our internal policies and procedures. We hired an outside consultant to assist us with mapping our internal processes. We mapped our case assignments, employee advancements, hiring, rotations, job description, evaluations, and training. This took much longer than we originally thought it would. During this time we formed three committees to help complete the work.

The mapping process resulted in many changes within ACA. During this time we informed the City of Seattle and King County that we were writing new job descriptions and evaluations. ACA has hired a Human Resource Manager who has been working on implementing new procedures, processes, job descriptions, and evaluation tools. ACA did evaluate some, but not all of its employees during 2005 and 2006. We anticipate being in full compliance with the contract in this area by the end of 2007. The new evaluation process is designed to measure performance based on written standards and job descriptions that match our expectations. We have also trained our supervisors how to score and use the evaluation to improve our overall performance.

SPECIFIC COMMENTS

Are Continuances a true measurement of quality of public defense services? The audit discusses this by stating: **"Several officials suggested using the number of continuances as an indicator of quality public defense for the following reasons:**
Continuances may have increased because of ACA having to hire younger, less experienced attorneys when its workload increased significantly in 2005. Appendix G, page 61.

Since 2005 ACA has hired attorneys to address the increase in caseloads. These attorneys have different experience levels. Many have had prior Public Defense experience while others have only recently passed the bar. We have hired 3rd year law students who can practice with supervision as rule nine attorneys. Two of these students pioneered a challenge to criminal trespass orders that impacted many clients right to use public transit. ACA believes that a diverse experience level has energized our practice. Often the young and less experienced attorneys are setting more motions and trials than their counterparts. Additionally, many of the same individuals held leadership roles at their respective law schools or were involved in working on issues of injustice. Regardless of the age and experience of the attorney, all clients must receive competent representation. ACA works hard to assure that we provide the best service possible for our clients.

The audit reports that: **"A continuance may mean either that the attorney is spending time investigating the case and is preparing a stronger defense, or that the attorney is not prepared and requires more time. In either case, continuances pose scheduling problems for the court, because attorneys must request a hearing to request a continuance."** Appendix G, page 61.

There are many reasons for continuances. The single most significant change in continuances has come form the efforts to get our clients licensed due to the driving while license suspended charges returning as a criminal charge. For several years prior to 2005 the City did not charge many clients with DWLS. This was due to the impound law and a Supreme Court decision which struck down the law. ACA hired the attorney who wrote the brief and argued the case, Ms. Cherilyn Church who she is still part of our SMC team.

The decision to continue a client's case does not happen in a vacuum. There are no continuances without a Judges approval. Continuances may be based on the following: new evidence has materialized, and thus more time for investigation is required; a hostile witness will not make her/himself available to the defense attorney or investigator, thus requiring intervention of the court and the city; clients and/or their witnesses are homeless, thus creating delays in establishing contact; clients have pending cases in other courts or jurisdictions, and the outcomes of those cases may impact the current case; clients may want to opt in to an alternative court because of their personal circumstances; or other parties within the criminal justice system responding to defense requests for discovery reveal conflict issues at the last minute. This list of reasons for continuances is not exhaustive. Regardless of the stated reasons for a continuance, if the attorney of record is using due diligence to resolve his clients case in an effective manner,

this should not be held against that attorney or the agency unless it can be objectively shown that this is an on-going issue with that particular attorney or agency. One thing the attorney understands is that his or her clients would like immediate resolution of their cases, if at all possible. Clients, however, also understand that continuances are necessary if the circumstances dictate it.

Several officials indicated that since the City started contracting directly with a primary and a secondary public defender, there has been an increase in the number of continuances because defense attorneys are not prepared and are not talking with their clients before hearing. Appendix G, page 62.

The public defense contract with Seattle outlines the contact requirements that ACA attorneys are to have with their clients. If the client is in-custody, a staff person must see that individual within 24 hours, and if out of custody, contact must be initiated within 5 days. The report states that it was difficult to determine if ACA staff members were adhering to the requirement that they meet with in-custody clients within 24 hours. Appendix B. Page 35. However, ACA has a staff person who keeps detailed records regarding her in-custody visits. This notebook is maintained to keep record of our compliance with contact by this staff person. This system was put in place after the audit revealed potential problems. Although attorneys often speak or meet with their clients before the next court date, due to time constraints or other circumstances, on occasion contact information does not get noted in the file. This is an area that attorneys could easily improve upon by making contemporaneous notes. ACA has changed the monitoring of our attorneys to improve in this area.

The audit states: **" The number of continuances may be an indicator that clients are staying in jail longer than needed."** Appendix G, page 61.

There are many factors that go into a client remaining in jail. Sometimes they have other holds that can impact what the City Attorney's recommendation is for the current charge. Other times additional investigation is required and the client agrees to the continuance to strengthen his or her case. The attorneys understand the plight of the client in jail and must advise their client of potential defenses and outcomes and allow the client to make an informed decision about which option to take.

In 2005, the length of stay decreased by 2 percent and by another 2 percent in 2006. See Appendix J., page 73

The length of stay in jail is the primary concern for a majority of clients, and the fact that length of stay in jail has decreased demonstrates several things: 1) that the attorneys are working the cases that need to go to trial in a timely manner to shorten the time in custody for their clients: 2) that as a result of the implementation of alternative courts and the collaborative efforts of SMC, the City Attorney's Office and ACA, the attorney of record can discuss more options with his or her clients. Instead of looking at more jail time, the client has options that may include Community Court or Mental Health Court: These options provide more meaningful services to the client, and the community as a whole benefits as well, thus, highlighting the contradiction of

the finding that clients are staying in jail longer than needed; or 3) that the attorney is negotiating with the City Attorney for alternatives which do not include more jail time.

ACA attorneys request a lot of pretrial continuances. The average length of continuances is six weeks. ACA assigns too many cases to too few attorneys and they are probably not meeting with clients before they appear in court, so time is wasted in pre-trial hearings and continuances have increased. Appendix G, page 61.

The statement by the Auditor does not take into account that the majority of clients have been contacted prior to the pretrial. There are times when attorneys have not had contact. There are various reasons why this occurs: contact information is wrong; a client may be in-custody and for whatever reason the attorney was not able to receive access to his/her client (for example, a court hearing or the client was in the infirmary); last minute case assignments; or a notice of appearance not filed. When an attorney does not see his or her client, more often than not this is the exception and not the rule. ACA has learned to monitor this contact and require corrective action when it is appropriate.

"Continuances are a good measure if you can break it out by the number of continuances at pre-trial versus trial." Appendix G, page 61.

ACA concurs with this statement. If data is gathered at the front end as to why a pretrial hearing needs to be continued and that information is accurately noted, then it can be readily retrievable, thereby alerting all the parties as to what has or has not been accomplished in a particular case. This would hold true for trial as well. It may also show patterns of behavior by a particular attorney or client. The number of continuances may be an indicator that clients are staying in jail longer than needed. Appendix G, page 61.

There are many factors that a client must weigh at their first appearance from in-custody. When a client remains in jail after their first appearance until the resolution of his case, it is often because the client has discussed the merits of his or her case with counsel and has decided to proceed to trial, or the client has communicated with his or her attorney of record that he or she has other pending cases which prevent the client from bailing out or from resolving the current case at an earlier date.

The audit states: **One official expressed concern that ACA was not raising enough motions. For example, according to the official, criminal trespassing is a very suspect statute and ACA attorneys do not adequately consider it nor do they raise constitutional challenges**. See Appendix K, page 80.

ACA attorneys have filed and litigated motions that have addressed the criminal trespass statute, they have challenged the admissibility of DOL records, and they are constantly looking at ways to challenge the prosecutions case in every matter set for trial. It is unfortunate that the current practice of Seattle Municipal Court is to reserve motions until the day of trail. Many motions would be dispositive of a case but are left unanswered until the day of trial.

Under the ABA Defense Standards on Motions, many important rights of the accused can be protected and preserved only by prompt legal action. See Appendix K, page 82. The current practice of the Court has been to reserve these motions until the day of trial. This causes great concern to ACA and has been raised in numerous meetings with the Court and its administrators. We concur with ABA Defense Standards regarding motions and the importance they play in the defense protecting the rights of their clients by addressing legal issues. We also concur with the Audits finding that SMC does not have a system to track motions that Defense has set, and thus there is no objective data available to support the assertion that ACA attorneys have not set motions on continuous bases. Appendix K, page 84. Conversely, we disagree with the Audits statement that, "some standards suggested that a reduction of motions over a period may be the result of overburdened attorneys." See Appendix K, page 84. There is no empirical data to support this assertion

Communication Breakdown

ACA has concerns over recommendation 11 on page 13 which would require the agencies to provide OPM with an explanation as to why cases are transferred due to a "breakdown in attorney-client communications." A "breakdown in communication" is a term of art that describes an attorney-client relationship where counsel's interests become adverse to the client's, where the accused and the attorney are "embroiled in irreconcilable conflict." It encompasses much more than a failure of communication. For example, a breakdown of communication can occur where a client intends to commit a fraud on the court or when a client engages in threatening or harassing conduct toward the attorney. Under most circumstances, the attorney is still obligated under the Rules of Professional Conduct to preserve the attorney-client privilege and maintain the confidences and secrets acquired during the course of representation. The attorney is not allowed to withdraw without the courts permission. Many times the reason for the withdrawal is only revealed to the Judge to preserve the clients privilege. A very small percentage of the thousands of cases ACA handles in a given year are transferred due to a "breakdown of communication." However, a requirement to provide the explanation for the transfer of such a case is inconsistent with the Rules of Professional Conduct. ACA attorneys understand the importance of bringing timely motions to the court when there is a conflict between the client and attorney over trial strategy.

A glaring case on this point is Personal Restraint of Stenson, 142 Wn. 2d 710 (2001). Mr. Stenson was convicted of two counts of aggravated first-degree murder and sentenced to death. He sought relief from personal restraint on claims that he received ineffective assistance of counsel. Mr. Stenson wanted his attorney to do everything he could to prove his innocence. His attorney felt that Mr. Stenson had little chance in the guilt phase and concentrated his efforts to saving Mr. Stenson's life in the penalty phase. Mr. Stenson filed motions with the trial court for new counsel. Since this issue was one of trial strategy the court looked at three factors in determining the issue of effective assistance of counsel: 1) the reasons given for dissatisfaction, 2) the court's own evaluation of counsel, and 3) the effect of any substitution upon the scheduled proceedings. After hearing testimony outside the presence of the prosecutor, the trial court denied him new counsel. The Washington Supreme Court upheld the trial courts finding of no

conflict. The death penalty and verdict were affirmed. ACA attorneys bring these matters to the courts attention and abide by the courts ruling. This does not mean that the ACA attorney failed to communicate with the client or did something inappropriate.

Appeals

Whether to appeal a case is one of the few decisions that belong to the client. It is made after a full consultation with counsel where the client must weigh the potential costs of the appeal with the likelihood of prevailing on appeal. These costs come in different forms and can have a chilling effect to filing an appeal. An appeal generally results in a delay of the final resolution of the case of up to one year or more. Some clients simply want finality to the proceeding rather than to extend the case with an undetermined outcome. An appeal bond can also be required in order to stay the sentence on appeal. If an appeal bond is not authorized or the client is unable to post the appeal bond, the bulk of the sentence is often served prior to a decision by the appellate court. One of the most significant considerations is the recent practice of the City Attorney to request costs on the defendant for failing to prevail on an appeal. These costs have generally been imposed by the court and are in excess of $1,600.00. In February of 2006, the Court of Appeals affirmed the City's ability to recoup these costs on the defendant. *City of Seattle v. Hammon*, 131 Wn.App. 1037 (2006). These various costs tend to have a chilling effect on the filing of an appeal.

Principle 8 Defense Counsel as an Equal Partner in the Justice System. See audit page 5.

ACA has worked closely with Seattle criminal justice agencies to effectuate change and alternatives to incarceration and intensive probation. We have helped establish Seattle Mental Health Court, Community Court, and Diversion for DWLS charges.

ACA has played a significant role in the development of policy and procedures within the Seattle Municipal Court. This influence comes from the involvement of ACA management, attorneys, and staff in committees and related organizations that are devoted to developing fair and efficient operations in Seattle Municipal Court.

The managing director of ACA serves on the Criminal Justice Committee. This group consists of the leaders in city government responsible for community safety and criminal justice. This includes the Seattle City Attorney, the Chief of Police, as well as leaders from SMC, the mayor's office, city council, and the King County Correctional Center. The ACA management team also participates in the monthly Bench/Bar Meetings where issues related to court operations are addressed. Additionally, ACA management, attorneys, and staff have been involved in numerous work groups that helped design and coordinate SMC transition to an individualized calendaring system.

There are numerous other groups where ACA has been an integral player in developing SMC policy. Some of these include: the restitution work group, where new procedures were developed for determining restitution; the DWLS work group, which developed protocols for the DWLS

diversion program and associated intake process. Some other work groups include: Domestic Violence work group, Discovery work group, and jail alternatives work group.

ACA is a key player in the development of Community Court. Community Court is a cutting edge approach to dealing with property offenders by requiring community service and connection to social services rather than the expense of lengthy incarceration and probation. ACA is also involved with the Co-Stars program. This innovative program works to find housing, employment and treatment for selected offenders in an effort to reduce recidivism among this group. ACA's Director, Dave Chapman has traveled to New York and Canada with the City Attorney, Tom Carr, and the Presiding Judge, to present their experience with Community Court.

The ACA Mental Health Court team is not only a leader in the day-to-day operation of the court but also as a spokesperson for the court around the nation. The lead ACA attorney in MHC leads monthly MHC meetings and quarterly collaborative meetings with Western State Hospital, King County Jail, SPD's Crisis Intervention Team, and Civil Commitments. With the MHC team, ACA presents semi-annually to the Seattle Police Department and at conferences around Washington state. The city of Vancouver, BC hosted the entire MHC team in 2004 to teach them how to form a MHC.

The lead ACA attorney in MHC, Russell Kurth, presented on "Mental Health Law and Practices in Courts of Limited Jurisdiction" at the 2006 District and Municipal Judges' Spring Conference. In April 2007, the GAINS Center, a federally funded mental health agency, flew Mr. Kurth to Washington, D.C. to present on strategies to address delays in mental health evaluations. They were impressed enough to spotlight the SMC MHC and Mr. Kurth in their April 2007 newsletter. Moreover, Mr. Kurth was invited to be one of two presenters in a June 2007 nation wide Web Teleconference. Upcoming presentations for Mr. Kurth include the August 2007 National Police Crisis Intervention Team Conference in Memphis and the 2008 Washington State Municipal Prosecutors Conference.

In Summary:

This audit of public defense services addresses important factors in the quality of the services being provided in the Seattle Municipal Court. It fails, however, to recognize certain important concepts that need to be considered in trying to draw conclusions from the information. First, is the unique relationship created where attorneys are hired to represent a third party. Second, the criminal defense attorney is one participant in a complex interaction between the Client, the Prosecutor, the Police Department, the Court, the Judges and the City of Seattle. In order for statistical measures of the performance of any part of this process to be meaningful they must account for changes in the performance, policies and procedures of the other participants. The alternative assumption that the performance, policies and procedures of these other participants remain static over time is unwarranted.

ACA is an organization that focuses on our clients foremost. It is the goal of ACA and should be the goal of public defense to put our clients in the same position as those who can afford to hire

their own attorneys. There is more to that goal than the quality and speed of the dispositions. Most important in this context is providing our clients with the service, support and respect such that they can respond to their legal predicament in a manner that suits them. This is a more complex issue than a minimum of punitive sanctions or the speed of resolution. To define a positive disposition in a manner inconsistent with what the client desires as an outcome does not serve any meaningful purpose in assessing the quality of services provided. The essential question must be, "did the attorney provide the client with the opportunity to achieve a positive disposition", as opposed to whether it was achieved.

This is a subtle nuance, but an important one. Our goal is not necessarily the best result for our client. Our professional responsibility is to achieve or attempt to achieve the goals identified by our clients. Public defense is not a mechanism to protect the Constitution, keep the police in line or even to challenge the authority of the Courts and Prosecutors, unless our clients tell us that is our goal.

The role of the lawyers at ACA is to identify the legal situation our clients face. We must identify the ethical responses to that situation and execute the alternate that our clients choose. It is our role to counsel our clients and recommend the best disposition, but it is not our role to identify the appropriate disposition and require our clients to pursue that.

It is easy to misconstrue the role of a public defense attorney or any other defense attorney in the criminal justice system. While on a macroscopic level, the overarching goal is to assist your client through the system with a minimum of punitive impact, on a microscopic level the role of the defense attorney is to achieve the goals set by the client. An attorney's conduct is governed by the Rules of Professional Conduct (RPC) which are adopted the Supreme Court. RPC 1.2 (A) states, "A lawyer shall abide by a client's decisions concerning the objectives of representation ... and shall consult with the client as to the means by which they are to be pursued."

To assess the quality of public defense based on outcomes without factoring in the directives of the client regarding those outcomes is a significant problem. If the client chooses to plead guilty in order to obtain release from custody, the outcome may appear not to be positive but is positive relative to the goals of the client. If a client chooses to ignore the opportunity to resolve their case by pleading guilty to a lesser offense or undertaking some other alternative disposition and is convicted as charged then the outcome may be deemed not positive, but the result is appropriate because the lawyer abides by the client's choices. Where the interests of the client and the interests of the attorney diverge, a conflict of interest is created. When the attorney must consider the impact of a disposition or strategy or tactic on the perceived quality of his or her performance, conflict of interest problems will arise.

The true goal should be that the attorney is prepared and ready to seek dispositions, strategies or tactics that are beneficial to the client and the criminal justice system. However, this must be secondary to the client's objectives. The attorney must implement the ones chosen by the client, if permitted by the RPC's, after appropriate consultation between the attorney and that client.

RPC 5.4 (c) addresses this issue, "A lawyer shall not permit a person who recommends,

employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services." In this regard, performance-measuring systems that create this conflict of interest must be avoided.

Broad statistical measures, while helpful in assessing systemic health, must be used cautiously to avoid creating actual or even appearances of conflict of interest.

The disconnect between the client's goals and what an observer would consider the best interests of the client is reflected in many of the issues examined in the audit. Continuances requested by the defense rarely happen unless the client perceives them to be in their best interest. Continuances always require the approval of the Judge. It is not a safe conclusion that the defense request for a continuance reflects the desire of the attorney rather than the client.

Trial settings occur for three reasons: 1) the client chooses not to plead guilty on the terms offered by the prosecutor; 2) the prosecutor has not made an offer; 3) the client is not prepared at this time to resolve the case either because he or she can't make up their mind what to do or simply want to delay resolution of the case. Few of these reasons are specifically reflective of the performance of the attorney. The role of the attorney is to enable the client to choose the course of going to trial as a means of resolving the case, not forcing them into one role or another.

ACA remains committed to working with the City Attorney's office and the Court to find alternatives to the traditional model of dealing with crime. We have worked very hard at developing the Mental Health Court and Community Court to give our clients options that may lead to changed behavior and productive lives while remaining in the community rather than jail.

It is unfortunate that the audit did not address the efforts of ACA in these problem-solving Courts but rather looked at the traditional model that only studied trial work.
The interplay between the calendar courts, community court, mental health court, and trials should have been included in this audit. It is important to look at an entire body of work when making judgments about the quality of public defense services. ACA consistently has shown the ability to understand the particular client's needs and focus on which option the client decides is best for them.

The Defender Association
810 3rd Avenue, Suite 800
Seattle, Washington 98104
206-447-3900
FAX: 206-447-2349
TTY Relay Service: 1-800-833-6384

July 26, 2007

Mr. David Jones
Ms. Virginia Garcia
City Auditor's Office
City of Seattle
P O Box 94729
Seattle, WA 98124-4729

Re: Draft audit of indigent defense services program

Dear Mr. Jones and Ms. Garcia:

Thank you for the opportunity to review the final draft audit and to provide comments. The audit clearly involved the collection and a review of a great deal of information and your thoughtful analysis.

Issue One: Attorney Caseloads

You find that the Primary Defender caseloads exceeded the 380 case credit standard if credits are understood to mean cases assigned rather than cases closed. You state that "[t]he Primary Defender's contract does not clearly state whether a case credit means an assigned case or a closed case."

The Primary and the Secondary Defender contracts use the same language that had been employed in contracts for SMC defense services for many years while King County OPD administered the contract. Historically, 380 credits have always been understood by contractors and by King County OPD to mean cases assigned, not cases closed. This has been part of the payment system; the county paid contractors on a cases assigned basis. During the RFP process, the City repeatedly stressed that it was maintaining the 380 case credit standard that had been in place previously. The Council reaffirmed the maintenance of the 380 limit in an ordinance. The defender agencies understood that 380 meant 380 assigned cases <u>not</u> closed case credits.

You recommend that the contract be clarified. We ask that you note the inconsistency between the defender's understanding and the OPM practice. We note the following important language from the ordinance that supports the conclusion that the Council anticipated 380 case <u>assignments</u> per year:

> WHEREAS, THE American Bar Association recommends an average of 6 hours per case bringing the optimum number of cases handled to 275 per year; and

WHEREAS, THE King County Bar Indigent Defense Services Task Force developed a 300 case per attorney, per year guideline in 1982; and

WHEREAS, the Seattle City Council adopted Resolution 27696 on September 28, 1987, adopting a framework and schedule for implementing recommendations contained in the 1987 Public Defender Salary and Caseload Review conducted by City Council staff, which report led to a 1989 City Council Budget Intent Statement (attached as Attachment 1 and incorporated herein by reference) establishing a 380 case per-attorney, per-year limit, and conditions leading to those recommendation have not materially changed; and

WHEREAS, the City is guided by the standards referenced in Chapter 10.101 RCW and the American Bar Association's Ten Principles of a Public Defense Delivery System attached as Attachment 2 and incorporated herein by reference;

City agreements with indigent public defense service providers shall require caseloads no higher than 380 cases per-attorney per-year.

We further ask that you note that the caseload limit was increased de facto by the City's adoption of a 12 month period before abscond cases can be closed and new credit awarded upon the client's re-appearance. The prior standard under the county OPD contract was 90 days. This change has increased the caseloads of all SMC attorneys.

We also ask that you note (R1) that TDA already adheres to monthly and quarterly assignment limits.

Issue Two: Attorney-Client Contacts

We ask that you indicate that the in-custody client contact requirement is triggered "after assignment" of a case, and that agency contact with the client in preparation for an arraignment does not satisfy this contact requirement, which is intended to commence the attorney's investigation of the client's case in preparation for the pre-trial hearing and for possible release motions post-arraignment. Your current draft implies that this requirement might be met by contact in preparation for the arraignment calendar.

Issue Three: Client Complaints Process

In your section on complaint systems, we ask that you note that our supervisors do keep track of and follow up on complaints. We also ask that you note that we told you we received only one client complaint through 2005 and 2006, from a pro se litigant from whose representation ACA had withdrawn and whose views on the scope of our role as stand-by counsel were rejected by the court. We immediately reviewed and responded to all complaints from that client.

As we asked previously, please indicate in your recommendation 13 that our office has a web site and we were one of the first Defenders in the country to have a web site. In assessing the current situation, it is more complete to reference that fact. This information also should be included in Appendix C.

Issue Five: Supervision

Regarding supervision, you make a finding on ACA's inconsistent compliance with the supervision requirement but do not note that we have complied with that requirement. As you do reference our

evaluations of our attorneys, it would provide a complete picture to mention our compliance with the supervisory ratio. We note that according to your report, ACA is moving to comply with the contract requirement only by obtaining additional funds from OPM [authorization to hire an additional

supervisor]. If this interpretation is correct, it would appear to be a modification of the contract to provide additional funding that was not offered to our office for supervision.

Issue Seven: Performance Evaluations

You note that our evaluation summary "does not indicate how well attorneys assigned to SMC were performing...." The contract did not require more than we provided; nor did OPM request any additional information, other than our evaluation template. The implication of your comment is that these summaries demonstrate that attorneys are not substantively evaluated for performance The template evaluation form demonstrates that attorneys are substantively evaluated for performance in all areas of their work. Privacy considerations of our staff would preclude specific reference to how individual attorneys are performing. Please delete the sentence referring to our summary in the final full paragraph under Issue 7.

Issue Ten: Continuances

We have no objection to the court's keeping track of continuances and the reasons for them. We suggest that you modify the recommendation that "OPM should develop a performance goal or requirement related to the number of continuances to include in the contracts...." as it would be arbitrary to develop such a number. In some cases, one continuance might be appropriate. In others, three or more might be needed to address the need for investigation, locating witnesses, preparing complex briefs and arguments, or because of illness of counsel or client. To say that a defender office must limit continuances could be to undermine the obligation to provide effective representation to each client and could create a conflict of interest for the office between meeting a contractual obligation and doing what is needed for the clients.

In reviewing a case in which a continuance had been denied the Court of Appeals concluded:

> In our opinion, the failure of counsel to adequately acquaint himself with the facts of the case by interviewing witnesses, failure to subpoena them, and failure to inform the court of the substance of their testimony, both at the time of argument on the motion for continuance and for a new trial, were omissions which no reasonably competent counsel would have committed.

State v. Jury, 19 Wn. App. 256, 576 P.2d 1302 (1978).

You quote an OPM official that "the reason TDA is getting the City's appeals is because they otherwise would not have enough work with conflict of interest cases to staff two FTE attorneys at SMC. According to an OPM official, originally TDA was to get paid for three attorneys, but it was only getting enough casework for two and administratively it would be easier to have one agency do all the appeals."

It is important to note that the RFP contemplated a second office with 3 full-time attorneys. After the selection process had been completed, OPM did not follow the original plan. Both TDA and ACA offered plans on how the cases could be assigned to provide three or more caseloads to The Defender Association, which would have benefited clients according to both agencies (e.g., by assigning SMC

cases to us where the clients had current open cases with other divisions in our office) but OPM declined to accept those plans, and limited TDA primarily to conflict of interest cases.

Issue Eleven: Case Processing Time

While tracking case processing time is a good idea, it should be noted that a targeted case processing time is a goal of the courts and not necessarily a best practice for defense attorneys.

We also note that extending the time for closure of a bench warrant case from 90 days (the standard under the former OPD contract) to 12 months (the present Seattle standard) by necessity extends case processing averages, at least if case times are calculated based on how long the defense file is open.

Issue Eighteen: Assessment of Seattle's Adherence to ABA's Ten Principles of a Public Defense System

We note that you find that the City's public defense function complies with the ABA Principle on independence because the selection of the contractors was done through an RFP with "an independent review board". The ABA commentary states: "The public defense function should be independent from political influence...." It recommends a non-partisan board to oversee defender systems. There is no such board in Seattle. The last RFP "review board" was selected by the Mayor's office, half of the Board worked in the Mayor's office, and the board was staffed by the Mayor's office.

We recommend that you point out that parity includes benefits as well as salary, and that the defenders do not have benefit packages that are in parity with County prosecutor benefits, including health care and retirement.

Thank you.

Sincerely,

Floris Mikkelsen

Floris Mikkelsen
Director

THE MUNICIPAL COURT OF SEATTLE

Ron A. Mamiya
Presiding Judge

To: Susan Cohen, City Auditor

Attention: Virginia B. Garcia

From: Ron A. Mamiya, Presiding Judge

Date: July 30, 2007

Re: Formal Comments On Public Defense Audit

Thank you for the opportunity to both participate in the audit and to review the final draft before its release.

In December of 2005, when Councilmembers Licata and McIver asked your office for assistance in reviewing public defense services, they requested that the following areas be included in the audit:

- Whether the new contracting method is succeeding in maintaining service quality
- Whether the change in the defense contact has any role in the escalating jail population
- Training and experience of attorneys
- % of charges set for trial
- % of charges that go to trial
- % of charges with different dispositional outcomes
- Tools that determine client satisfaction
- Perspectives from judges, pro tems and prosecutors

The court has reviewed the final draft and has submitted specific comments about each issue and recommendation on the attached matrix.

The audit seems to have addressed most of the technical, data-driven issues noted above but, as we have stated in previous interviews with you, it is difficult to evaluate whether the Primary Defender (ACA) is "succeeding in maintaining service quality" without looking at ACA's entire body of work in Municipal Court.

As you know, ACA provides attorneys for defendants appearing at the in-custody arraignment calendars, the out-of-custody arraignment calendars (for Domestic Violence, Criminal Intake, DWLS 3 Intake, DUI and Bail-outs), the Mental Health Court and the Community Court. The quality of representation at these initial appearance calendars is just as critical as individual case assignments and can, in fact, have a great impact on the overall quality and

Seattle Justice Center, 600 5th Avenue, P.O. Box 34987, Seattle, WA 98124-4987
Seattle Justice Center, Room 1037, 600 Fifth Ave, P.O. Box 34987, Seattle, WA 98124-4987
TDY (Hearing & Speech Impaired) 684-5210
www.cityofseattle.net/courts Tel: (206) 684-8709 Fax: (206) 615-0766 ron.mamiya@seattle.gov

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cost of the criminal justice system. The audit is incomplete without evaluating ACA's role and performance in these venues. Although most of the attorneys who staff these calendars do not carry a traditional caseload, they must deal with a high volume of defendants each day, provide effective legal representation and recommend appropriate outcomes. The level of performance by the Primary Defender on any of these calendars would have a significant effect throughout the criminal justice system.

One question the court anticipated being addressed was whether there was any significant difference in the way King County's Office of Public Defense (OPD) administered public defense services in Municipal Court than in the way the City of Seattle's Office of Policy and Management (OPM) currently manages them. Although the audit does contain some recommendations related to OPM, this overall question does not seem to be addressed by the audit. (The court has asked to see the audit responses from OPM, ACA and TDA. Comments from these agencies might have helped the court gain better insight into the management of the Primary and Secondary contracts by OPM. So far, however, the court has not been provided with copies of these responses.)

An additional comment relates to the Status Report on Public Defense In Washington State, issued in January 2007. This report was prepared through the Washington State Office of Public Defense, with the assistance of an Advisory Committee which consisted of retired judges, state representatives, attorneys and AOC staff. The Washington State Office of Public Defense has $100,000 in grant funding available for local jurisdictions to use for improving public defense services. The court would strongly recommend that the city apply for some of this grant money and commission a similar report and undertake a more comprehensive review of public defense services in the city of Seattle, including issues related to administration, attorney and agency performance, and assigned counsel protocols.

In closing, let me say that the court believes high quality public defense services are critical to the court's mission, as well as critical in informing public perceptions in such areas as access to justice and fairness. Ensuring that appropriate public defense standards enumerated in RCW 10.101 are reflected in SMC 121501 is critical to the provision of quality services to our public. To the extent that your audit has reinforced these concepts, thank you.

Please let us know if you have any questions about our specific responses on the attached matrix.

cc: SMC Judges
Yolande E. Williams, Court Administrator
Bob White, Chief Clerk
City of Seattle Public Safety, Governmental Relations and Arts Committee
Regina LaBelle, Legal Counsel, Office of the Mayor
Doug Carey, Assistant Director, Department of Finance
Dave Chapman, Director, Associated Counsel For The Accused
Floris Mikkelsen, Director, The Defender Association

City Auditor's Public Defense Summary of Analysis

Revised 7/30/07

Issue Analyzed	Contract Term and/or City Standard	Other Professional Standard	Results of Issue Analysis: Comparison of 2004 to 2005 and/or 2006 Performance	Office of City Auditor Recommendation
1. Attorney Caseloads	**Yes**	**Yes**	**Old system measured caseload differently - Found issues with new method to count caseload.**	**Yes**
R1. Based on our review of industry standards, legal literature, interview comments, and attorney caseloads, we recommend that OPM, in its role as administrator of the City's public defense contracts, conduct compliance reviews of attorney caseloads in its annual audits of the public defense agencies. In reviewing caseloads, OPM should consider the number of cases attorneys are handling by determining the number of cases assigned relative to the number of cases closed, and/or assess the amount of time attorneys spend on cases. Furthermore, OPM should consider requiring agencies to adhere to monthly or quarterly caseload standards, and review cases on that basis in addition to reviewing annual attorney caseloads. OPM should provide the audits' results to the City Council and SMC. ***R2.*** The City should clarify the definition of attorney caseload in City Ordinance 121501 to indicate that caseload refers to cases assigned. The definition of caseload in the City's contracts with public defense agencies should be changed to be consistent with the definitions contained in the ordinance. ***R3.*** The City should have a larger secondary public defense agency. To determine the secondary agency's FTEs, OPM's analysis should include tracking the number of times the secondary agency's attorneys are required to appear simultaneously in multiple courtrooms for hearings. OPM should provide the results of these analyses to the City Council and SMC. **SMC comment: The court has requested council to review Ordinance 121501, particularly the 380 caseload standard, and incorporate additional criteria to measure attorney performance and compliance with public defense standards. The court has also asked OPM and council to determine a better way to fund in order to provide for more effective attorney FTE coverage.**				
2. Attorney-Client Contacts	**Yes**	**Yes**	**Issues under both systems: OPM only looked at 10 cases.**	**Yes**
R4. OPM should expand the number of case files it reviews during its annual public defense agency audits to determine whether attorneys are meeting with clients according to contract terms, and require corrective measures by an agency if it does not adhere to the contract. At a minimum, 30 cases should be reviewed, which is a common "rule of thumb" for audits, regardless of the size of the population being sampled. The OPM audits should also include an examination of agency files to determine whether agency attorneys are complying with the requirement to meet with their clients no later than one day before the pre-trial hearing. **SMC comment: The court agrees that case files audits are an effective measure. If the purpose of such a review is to determine when attorney-client**				

contact occurred, OPM is qualified to perform that function. However, if case file audits are intended to review other issues, someone with legal background should perform this audit.

R5. Public defense agency forms should be revised to indicate whether the agencies are meeting the 24 hour in-custody client contact requirement, and when the first attorney contact with the client is made.

SMC comment: Agree.

R6. To help determine whether contract requirements related to defendant contacts are being met, OPM should clarify what constitutes assignment of a case.

SMC comment: Agree. People should understand the hand-offs from indigency screening to referral to agency, to conflicts check, to actual assignment of the case to agency attorney or to secondary agency or assigned cousnel.

R7. Although agencies are allowed to use phone calls and letters to meet attorney-client contact contract requirements, only in situations in which locating a client or a client's unwillingness to meet prevents attorneys from meeting with clients should a phone call or letter meet the contract requirements related to attorney contact.

SMC comment: Agree. This should be clarified in new contracts.

R8. The public defense agencies should document evidence of attorney contacts with clients by including agency letters documenting the date of the contact in their client files.

SMC comment: Agree.

R9. OPM should work with SMC to conduct an annual or biannual client satisfaction survey to provide feedback to agencies, and use the results of this audit's defendant survey as a baseline. OPM should provide the survey's results to the City Council.

SMC comment: Although this kind of feedback can be helpful, defendant surveys can create attorney-client privilege issues.

3. Client Complaints Process	**Yes**	**Yes**	**Better system in 2004-Found issues.**	**Yes**

R10. OPM should work with SMC to provide clear information to defendants regarding who they can call if they have concerns about their public defense attorney. The information should first direct defendants to their attorney's agency or their attorney's supervisor, and then, if they believe their concern has not been addressed, to a phone number at SMC. This information should be given to defendants eligible for public defender assistance when they are given information about who has been assigned to be their public defender. This information should be provided to both in-custody and out of custody defendants.

SMC comment: SMC and OPM have been working together to formalize the complaint process so that defendants know whom to contact. A tracking form has been developed to ensure that all complaints are addressed in a timely fashion.

R11. The City's contracts should require agencies to document all defendant complaints about attorneys (i.e., written, phone, and email complaints), address or follow-up on meritorious complaints, and respond to defendant complaints within one week of the complaint. Client complaints should be documented in the case files. The agencies should provide OPM copies of complaints and how they were addressed so that OPM can determine if the complaints are persistent problems, and ensure that responses are being provided to defendants who have meritorious complaints. The agencies should also provide OPM with explanations about why cases were transferred from the Primary Defender to the Secondary Defender or from the Secondary to assigned counsel due to a breakdown in attorney-client communications.

SMC comment: Forms are currently being amended and will be given to defendants when they are screened for indigency. The form will provide a telephone number to call if the defendant wants to file a complaint. We are also attempting to make this number available within KCCF.

OPM can determine it defendant complaints are persistent but cannot always tell if the complaints have substance. The system may well be better served by having a legal panel evaluate defendant complaints.

The court should also receive copies of defendant complaints about attorneys.

R12. OPM and SMC should provide information about the City's public defense agencies on the City's InWeb and PAN web sites. The City's public defense agencies web site could include information about the primary and secondary defender, the court process, who to call if a defendant has an issue with a Seattle public defense attorney, and other valuable topics.

SMC comment: Agree. SMC has already added information to its web. This was coordinated with OPM.

R13. The City's Primary Public Defender should have a web site for its organization that is linked to the City's web site that includes information about what to do if a defendant has an issue with a Seattle public defense attorney. ACA, which is the City's current Primary Public Defender, does not have a web site, but is currently working on creating one.

SMC comment: Agree and secondary agency should, too.

4. Attorney Experience	**No**	**No**	**Greater average years of attorney experience in 2004, median years comparable; agencies are complying with contract terms in 2005 and 2006.**	**No**
We do not have any recommendations for this issue area.				
5. Supervision	**Yes**	**Yes**	**ACA did not consistently comply with City requirements related to the supervisor to attorney ratio.**	**No**
R14. OPM should assess the supervisor to attorney ratio on a quarterly basis and take corrective actions if the City's guideline of one supervisor for 10 attorneys is not being adhered to. Corrective action could include assigning cases to the City's other public defense agency until additional supervision is in put in place				

by the offending agency.

SMC comment: Agree that supervisor to attorney ration is important. Not sure as to remedy and implications.

6. Training	**Yes**	**Yes**	**Complied in 2005-2006.**	**Yes**

R15. To determine if attorneys are meeting contract continuing legal education requirements, OPM's annual audits should include a review of a larger sample of attorneys, attorneys with significant SMC caseloads, and attorneys from both agencies.

SMC comment: Agree that a larger sample is needed.

7. Performance Evaluation	**Yes**	**Yes**	**ACA did not evaluate attorneys in 2005; worked with consultant to improve evaluation process for 2006.**	**Yes**

R16. OPM audits of the public defense agencies should determine whether the agencies conducted performance evaluations that were consistent with contract requirements.

SMC comment: Agree.

R17. OPM should assess the purpose of the agencies' performance evaluation summaries, and determine what information should be reported to make this tool more useful in communicating how well SMC defense attorneys are performing.

SMC comment: OPM can ensure that this is done but an independent panel can better address and should address the quality or value of the attorney evaluation.

8. Investigator Use	**Yes**	**Yes**	**ACA met the standard in 11 of 15 months reviewed. ACA started tracking usage in 2005, and use increased.**	**Yes**

R18. OPM should add investigator use reporting requirements to the primary defender agency contract. OPM should review the number of hours used by investigators from both public defender agencies to evaluate agency performance.

SMC comment: The number of hours used should not be a key measurement to evaluate agency performance. The nature and timeliness of investigators is more relevant. This should also apply to the Secondary agency as well as to assigned counsel.

R19. OPM should compare the agencies' use of investigators to their costs to determine if the City is paying the agencies an appropriate amount for investigators given how often they are used by the agencies. This analysis could help OPM determine whether it should consider paying agencies on a per usage basis versus the current practice of having one investigator for every five attorneys.

SMC comment: This issue needs further discussion.

9. Interpreters Use	No	Yes	ACA increased use since 2005.	Yes

R20. SMC should continue tracking public defense agency use of interpreters outside of court hearings. The collected information should also include the meeting's location, purpose, duration and time of day at which it occurred.

SMC comment: Agree, although not sure information like time of day is helpful.

R21. To help avoid court delays, OPM should include language in the public defense contracts requiring agency attorneys to arrange for interpreters for meetings and hearings at least an hour before the meeting or hearing.

SMC comment: It is not realistic to expect this, especially for all hearing types. Additionally, attorneys should contact the court's Interpreter Coordinator in advance (48 hours) to arrange for office visits.

R22. As part of its annual public defense agency audits, OPM should use SMC interpreter usage reports to evaluate public defense agency performance.

SMC comment: Need more information about how this would be tracked and evaluated.

10. Continuances	No	No	Better in 2004 than 2005/ Improved in 2006.	Yes

R23. SMC should track which public defense agency requests a continuance, the reason for the continuance, whether the continuance is requested at the pretrial or for a trial. OPM should develop a performance goal or requirement related to the number of continuances to include in the contracts with the public defense agencies.

SMC comment: Agree that the court's case management system should be able to track this data. Disagree that OPM should establish a performance goal related to continuances. Although defense lawyers play a large role in the number of continuances, it is not always a defense attorney that asks for or causes a continuance.

11. Case Processing Time	No	Yes-for Courts	Not applicable.	Yes

R24. We endorse SMC's work in improving its automated systems so they can track open/closed case information. Agencies should also track cases from case assignment to court resolution or adjudication.

SMC comment: An integrated information system is needed so the court and criminal justice agencies can track and report common caseflow data.

R25. SMC and OPM should evaluate case processing time information for adherence to state standards and significant changes between years.

SMC comment: This is a judicial determination and should not be a function of the Executive.

R26. OPM should reconsider paying public defense agencies on a closed case basis in order to eliminate the appearance that it is providing an incentive to agencies to rapidly close cases. The City could pay public defense agencies on an assigned case basis and still hold agencies accountable by continuing to require closed case reports.

SMC comment: Agree that the present caseload definition and manner of accounting is inappropriate; and significantly affects quality representation.

12. Dispositions	**No**	**No**	**Better in 2004 than 2005/ Improved 2006.**	**Yes**

R27. OPM should review annual case dispositions by agency for large quantitative changes from the previous year. Large changes between years could indicate systematic issues in public defense services, and such data should be shared with SMC and the City Council.

SMC comment: Significant changes in dispositions could be the result of City Attorney practices and/or introduction of things like Community Court. Dispositions need to be considered in light of defendant outcomes.

13. Jail Population/ Length of stay	**No/No**	**No/No**	**Not a good measure/Better in 2005 than 2004.**	**No**

We do not have any recommendations for this issue area.

SMC comment: Defense attorneys can contribute to length of stay if cases are continued unnecessarily but SPD practices, City Attorney practices and court release criteria have more influence on jail population more so than defense attorneys.

14. Appeals	**No**	**No**	**Negligible decrease in 2005.**	**Yes**

R28. If OPM and SMC agree that appeals are a relevant measure of public defense quality, then they should work together to improve the tracking of appeal information, including who initiated the appeal, the assigned agency and attorney on the appeal, and the appeal's outcome. Furthermore, each month OPM should reconcile agency appeal information against Law Department information.

SMC comment: Discussion needs to continue about the worth of this information for effective public defense services and advocacy.

15. Motions	**No**	**No**	**No data.**	**Yes**

R29. If OPM and SMC agree that motions are an indicator of quality public defense, OPM should work with the public defense agencies and SMC to start tracking information on motions, including who made the motion, the purpose of the motion, the type of motion and the motion's outcome.

SMC comment: The use of Motions is a defense strategy that cannot be evaluated by the Executive. If this is a legimate measure, someone with trial experience should evaluate it.

16. Probation Revocation Hearings	**No**	**No**	**Better in 2004 than 2005/Worse in 2006 than 2005.**	**Yes**

R30. SMC and OPM should consider whether the annual number of hearings in which defense attorneys contest probation violation allegations is an appropriate measure of quality public defense. If they determine it is, SMC should track such hearings and OPM should monitor this information for significant changes in the annual number of such hearings by public defense agency.

SMC comment: "Better in 2004 than 2005/Worse in 2006 than 2005". Not sure what this means? A defendant has a right to be represented at each hearing, including probation revocation hearings. If Probation alleges that a defendant is not in compliance, the defendant can either admit or deny the allegation. Tracking just the number of hearings does not address the quality of representation.

17. Trial Data	**No**	**No**	**Decreases in four of five areas analyzed.**	**Yes**

R31. While data on the number of trials cannot by itself adequately measure the quality of public defense, it reasonable for the City to expect public defense attorneys assigned to SMC to assess the merits of each case to determine whether they should go to trial. Further, it is reasonable for the City of Seattle and defendants to expect that City of Seattle public defense attorneys are willing to take cases to trial. Therefore, OPM should track of the annual number of cases its public defense attorneys are taking to trial, question those agencies who have attorneys that have the option to but never or rarely take cases to trial, and annually monitor trial rates for significant decreases. If there are significant decreases in the annual number of trials, OPM should report this to the City Council.

SMC comment: . Although the court would agree that it is reasonable to expect lawyers to take matters to trial, tracking the number of trials is not, by itself, a useful indicator of attorney performance.

R32. To address issues raised by officials about the unintended incentives the current payment system may be providing to negotiate or plea bargain cases that may merit trials, the City should consider paying the public defense agencies on an assigned case basis. (Note: see Case Time Processing Analysis above).

SMC comment: For reasons beyond these concerns, caseloads should be based upon "assigned" cases and not "closed" cases.

R33. SMC should consider modifying its information systems to facilitate and enhance the accuracy of reporting on all trials to include bench trials (not just jury trials). This will allow OPM to review trial data based on various factors (e.g., race) and type of case to evaluate possible trends.

SMC comment: The court's information system can distinguish and track jury and bench trials. One useful measurement is the number of trials set, the number of trials held and the outcome. Subsets of information such as charges, original city recommendations and defendant demographics could also be tracked.

18. ABA's 10 Principles	**Not applicable**		**Meet four; partially meets six.**	**Yes**

Principle 1: The public defense function, including the selection, funding, and payment of defense counsel, is independent.

R34. To better adhere to this principle, we recommend that the management of assigned counsel be made by an entity independent of SMC.

SMC comment: This will be reviewed as part of larger issues within Ordinance 121501.

Principle 2: Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

Principle 3: Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after client's arrest, detention, or request for counsel.

Principle 4: Defense counsel is provided sufficient time and a confidential space with which to meet with the client.

Recommendations: Recommendations related to attorney-client contacts are found above under Attorney-Client Contract recommendations 4 and 7.

Principle 5: Defense counsel's workload is controlled to permit the rendering of quality representation.

Recommendations: Recommendations related to caseload are found above under Caseload recommendations 1 and 2.

Principle 6: Defense counsel's ability, training, and experience match the complexity of the case.

Principle 7: The same attorney continually represents the client until completion of the case.

R35. In its annual audits of public defense agencies, OPM should assess whether reasonable efforts are being make to have continuous representation.

Principle 8: There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

R36. The City should consider City of Seattle prosecutor salaries and benefits when determining parity.

SMC comment: This will be reviewed as part of larger issues within Ordinance 121501.

Principle 9: Defense counsel is provided with and required to attend continuing legal education.

Principle 10: Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

19. Comparison of Contracts	**Not applicable**		**Some terms strengthened in City's 2005 contracts.**	
Recommended changes to the contract are listed under the various findings and recommendations sections of this report.				