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**REVIEW OF THE CADDO PARISH  
INDIGENT DEFENDER OFFICE**

*FINAL REPORT*

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## **Introduction**

At the request of the Caddo Parish Indigent Defender Board, The Spangenberg Group (TSG) conducted this study of the Caddo Parish, Louisiana Indigent Defender Office. The Indigent Defender Board (IDB) sought our assistance in assessing the Indigent Defender Office that it oversees, including the quality and efficiency of services provided, and an analysis of public defender caseloads and workload management.

The Spangenberg Group is a nationally and internationally recognized criminal justice research and consulting firm that specializes in indigent defense services. TSG has conducted research in all 50 states and provides consultative services to developing and developed countries that are reforming their legal aid delivery programs. TSG has conducted comprehensive statewide studies of indigent defense systems in more than half of the states, and has performed many county and regional studies, including studies of individual public defender offices.

Since 1985, The Spangenberg Group has been under contract with the American Bar Association's Bar Information Program, which provides support and technical assistance to individuals and organizations working to improve their jurisdictions' indigent defense systems. As the ABA's sole provider of technical assistance relating to indigent defense systems, TSG has worked with judges, bar associations, state and local governments, legislative bodies and public defender organizations in over 40 states around the country. TSG has performed extensive work for the ABA's Bar Information Program and has provided such technical assistance in every state. Our work has included assisting state commissions in reviewing their indigent defense systems, providing cost analyses of alternative delivery systems, reviewing workload and developing funding formula tied to workload, developing written indigency standards and assisting in the design of special projects to provide defense counsel in death penalty cases.

Prior to conducting this study in Caddo Parish, TSG was very familiar with indigent defense systems in Louisiana. In 1992, TSG conducted a statewide study of Louisiana's indigent defense system for the Task Force on Indigent Defense of Louisiana Supreme Court's Judicial Council, and reviewed provisions for state indigent defense systems. Later that year, TSG studied the indigent defense system in East Baton Rouge Parish for the Indigent Defender Board of the 19<sup>th</sup> Judicial District. In 1996, TSG prepared a report for the Louisiana Indigent Defender Board (LIDB) on the indigency determinations, partial indigency, and cost recovery in Louisiana. In 1997, TSG conducted a study of the Orleans Parish indigent defense system for LIDB). Finally, in June 2006, Robert Spangenberg visited Orleans Parish with Professor Norman Lefstein, on behalf of the ABA, to assess the indigent defense system post-Katrina. This recent work was conducted for the Louisiana State Bar in conjunction with the National Legal Aid and Defender Association.

## **Methodology**

Our goal in conducting this study was to assist the Caddo Parish Indigent Defender Board and the Indigent Defender Office (IDO) in their important task of ensuring that public defenders are able to provide indigent defendants with adequate and effective assistance of counsel.

The focus of our study was on the overall operation of IDO<sup>1</sup> and its provision of indigent defense services. Our overall methodology included the following:

- Review of the program’s budget, staffing, and allocation of resources;
- On-site interviews with Indigent Defender Board members and the Indigent Defender Office administrative staff;
- On-site interviews with Indigent Defender staff attorneys of all levels, as well as support staff;
- On-site interviews of other criminal justice stakeholders in the parish, including judges and prosecutors;
- On-site interviews with the Caddo Parish Commission’s Director of Finance and the Parish Attorney;
- Court observation;
- Review of office policies, procedures and practice standards;
- Review of attorney practices, including client contact, motions practice, trials, and use of investigators and expert services;
- Review of the training, supervision and evaluation of attorneys;
- Review of all staff salaries;
- Review of previous reports regarding the Indigent Defender Office, including:
  - *The Provision of the Right to Counsel in Caddo Parish, Louisiana*, by Bernadette Jones Palumbo and Jeff Sadow, Louisiana State University, Shreveport (July 2004).<sup>2</sup>
  - *Office of the Indigent Defender, First Judicial District, Caddo Parish, Financial Audit* by Samuel W. Stevens, III (released August 9, 2006);
  - *Operational Review of the Office of the Indigent Defender, Findings and Recommendations*, by Heard, McElroy & Vestal (July 11, 2006); and
  - *Caddo Parish, Louisiana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, by the National Juvenile Defender Center and the Juvenile Justice Project of Louisiana (August 2006);
- Collection and analysis of indigent defense caseload data; and
- Review of the current indigent defense case management system.

During the week of October 2<sup>nd</sup>, 2006, a four-member TSG project team visited Caddo Parish. During our visit, we met with over two-thirds of IDO attorney staff, nearly every non-attorney IDO staff member, three IDO contract attorneys, three prosecutors and two judges in the Caddo Parish District Court,<sup>3</sup> Criminal Division, as well as the District Court presiding judge and each of the three juvenile judges in the Juvenile Division. In addition, we met with former IDB member, Henry Walker.

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<sup>1</sup> Note that we were asked to focus our study on IDO staff and not on the conflict panels.

<sup>2</sup> Although we reviewed this report, we did not rely on it in the current study due to problems that we perceived with its methodology and with some of its findings.

<sup>3</sup> Note that at least two judges declined to speak with us.

We would like to thank all persons who gave their time to meet with us during that week. We would like to especially thank IDO and Office Manager Cindy Murray for making the necessary contacts to put together our schedule for our site visit.

## CHAPTER 1: CADDO PARISH INDIGENT DEFENSE SYSTEM

### The Right to Counsel

Since 1932, indigent defendants in state court have had a due process right to assistance of counsel within the meaning of the Fourteenth Amendment to the United States Constitution under *Powell v. Alabama*.<sup>4</sup> In *Powell*, the United States Supreme Court held that it was a violation of due process for a state court to fail to appoint counsel in a capital case. Thirty-one years after *Powell*, in the seminal case of *Gideon v. Wainwright*,<sup>5</sup> the Court held that the Sixth Amendment right to counsel applied to indigent defendants in state court through the Fourteenth Amendment, placing the states under the obligation to furnish indigent defendants with counsel. While *Gideon* clearly established the right to counsel in felony cases, *In re Gault*<sup>6</sup> held that the right extended to juveniles detained for a delinquent act, and *Argersinger v. Hamlin*<sup>7</sup> held that the right extended to any adult criminal defendant who is sentenced to incarceration, including petty offenses and misdemeanors. In 2002, the Court decided another seminal case, *Alabama v. Shelton*,<sup>8</sup> in which it held that a suspended sentence that may result in incarceration may not be imposed unless the defendant was afforded counsel in the prosecution of the underlying offense for which the suspended sentences was received.<sup>9</sup>

In addition to the federal right to counsel, Louisiana's constitution and statutes provide for indigent defense services. The constitution requires "a uniform system for securing and compensating qualified counsel for indigents."<sup>10</sup> The law further requires that appointed counsel be provided "at each stage of the proceedings" for all indigent persons in Louisiana who are "charged with an offense punishable by imprisonment."<sup>11</sup> In delinquency proceedings, juveniles must also be provided with counsel "at every stage of proceedings," and if the parents "are financially unable to afford counsel," the court must appoint counsel or refer the matter to the indigent defender board for representation.<sup>12</sup> Louisiana law also provides the right to appointed counsel at every proceeding in children in need of care cases (where the state alleges abuse and neglect by the child's parents), although the court may "order the parents to pay some or all of the costs of the child's representation" should the court find that they are financially able to do so.<sup>13</sup>

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<sup>4</sup> 287 U.S. 45 (1932).

<sup>5</sup> 372 U.S. 335 (1963).

<sup>6</sup> 387 U.S. 1 (1967).

<sup>7</sup> 407 U.S. 25 (1972).

<sup>8</sup> 535 U.S. 654 (2002).

<sup>9</sup> In other words, if the defendant fails to comply with the terms of a suspended or probated sentence (e.g., commits a new offense, fails to pay a fine, or fails to meet the terms of probation), that sentence may not be imposed nor probation revoked unless the defendant was afforded counsel or waived counsel on the underlying charge that resulted in the probated or suspended sentence.

<sup>10</sup> La. Const., Art. 1, Sec. 13.

<sup>11</sup> *Id.*; see also C.Cr.P. Art. 512, 513.

<sup>12</sup> La. Children's Code (CHC), Art. 809 (A) and (C).

<sup>13</sup> CHC Art. 607 (A) and (B); see also La. Supreme Court Rules, Part J, Rule XXXIII, Subpart II, Stand. 1.

## **Caddo Parish Indigent Defense System Overview**

Caddo Parish (Shreveport), the third-largest parish in Louisiana,<sup>14</sup> is governed by the Caddo Parish Commission, a political subdivision of the State of Louisiana with 12 elected members. However, its indigent defense system is established and managed by an indigent defender board. Louisiana law requires each judicial district in the state to establish an indigent defender board to establish and oversee the district's indigent defense system.<sup>15</sup> Each board must consist of three to seven members chosen by the district court.

In Caddo Parish, Louisiana's First Judicial District, the seven-member Indigent Defender Board established the Caddo Parish Indigent Defender Office with salaried attorneys and support staff to provide indigent defense representation to: (1) adults charged with capital and non-capital felonies; (2) youths charged with delinquent acts; and (3) children in need of care (CINC) cases. In conflict felony cases and in all misdemeanor cases, indigent adults are represented by private attorneys who contract on an annual basis with the Indigent Defender Office for a flat fee. In juvenile delinquency cases in which there is a conflict, juveniles are represented by private *pro bono* attorneys who are appointed from a list maintained by the juvenile court. Appeals are handled by the Louisiana Appellate Project.

Each judicial district in Louisiana is also required by state statute to also establish an indigent defender fund that is administered by the indigent defender board.<sup>16</sup> This account, which is primarily funded by a \$35 fee imposed to all persons convicted of any state or local violations (except parking tickets)<sup>17</sup> and fluctuates monthly, must fund all of the district's indigent defense services. The Louisiana legislature has determined that no parish in the state or the City of New Orleans is required to provide parish funding to support indigent defense, and few if any parishes have done so over the years. (In contrast, each parish is required to help fund the its District Attorney's Office.) The Caddo Parish Indigent Defender Fund not only funds the Indigent Defender Office, but also funds all contract counsel services and expert and investigative services both for contract counsel and for private counsel when the court has deemed the client indigent.<sup>18</sup>

## **Case Processing and Handling**

### Felonies

The Caddo Parish District Court has jurisdiction over all felony cases in the First Judicial District. The District Court hears felonies from arraignment through disposition and sentencing in one of five criminal sections, four regular sections and one section for drug cases.

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<sup>14</sup> Estimated population (2005) is 251,304, according to the U.S. Census Bureau.

<sup>15</sup> La. Revised Statute (RS) §§144, 145.

<sup>16</sup> La. RS §146.

<sup>17</sup> *Id.* Originally, this statute was enacted to include persons charged with moving traffic violations because they would have a greater ability to pay the fee than other offenders.

<sup>18</sup> For further discussion of the Indigent Defender Fund, see Chapter 4.

If a defendant is released on bond after a felony arrest, then s/he appears at a District Court arraignment date, at which time IDO is appointed if the defendant is determined to be indigent. Defendants who remain in custody after arrest first appear in the District Court at a 72-hour “jail clearance” docket via a live videophone from the jail. The jail clearance docket is held in one of the criminal sections each day of the week (except weekends) and is attended in court by a staff attorney from the Indigent Defender Office (IDO). Although the court sets bond, the staff attorney is unable to communicate confidentially with the defendant over the videophone and makes no bail argument. Once the court has determined indigency, all felony cases are assigned to IDO unless the court has determined that IDO has a conflict of interest. The cases are assigned to a criminal section and given a date for a preliminary examination (PE) hearing, which is an adversarial hearing at which the state must show that there is probable cause that the defendant committed the alleged offense(s), unless the defendant has already been indicted by the grand jury. The preliminary examination hearings, which are to be conducted “promptly,”<sup>19</sup> are scheduled between 30 and 60 days from the jail clearance docket. The IDO policy is to hold the PE hearing for all in-custody clients. Bail arguments are not normally made by the ID attorney until the PE hearing. We were told that the reason for this is a lack of discovery or information to support a bail reduction motion at this stage. From the PE hearing, a date is set for argument and hearing at which pre-trial issues such as motions to suppress may be litigated. From argument and hearing, trial dates are set.

Within each of the four regular sections of District Court, felony cases are handled by two staff (junior) attorneys and one senior attorney at IDO. In the drug section, which is the busiest District Court section, felony drug cases are handled by three staff attorneys – although during our site visit, one of the staff attorneys in the section was promoted to senior attorney.

Each District Court section has one primary contract attorney to handle felony conflicts; multiple co-defendant or conflict cases are assigned to contract attorneys from other sections.

### Misdemeanors

The Caddo Parish District Court has jurisdiction over all felony and state misdemeanor cases in the First Judicial District. The Shreveport City Court also has concurrent jurisdiction over state misdemeanor cases arising within the City of Shreveport and jurisdiction over all city ordinance violations.

All misdemeanor cases in Caddo Parish are assigned to contract attorneys. Five private attorneys hold contracts to handle misdemeanors in the District Court – one attorney in each section, and five attorneys hold contracts to handle misdemeanors in City Court. Misdemeanor cases are assigned to the contract attorney at misdemeanor arraignment sessions, which are held once or twice a month in each courtroom. Most misdemeanors are resolved on the day of arraignment; those that are not are scheduled for trial.

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<sup>19</sup> See La. CCRP 293.



## Juvenile Delinquency and CINC Cases

The Caddo Parish Juvenile Court has jurisdiction over juvenile delinquency and children in need of care (CINC) cases. Two sections of the Juvenile Court hear delinquency cases, and a third section hears CINC cases.<sup>20</sup> The two delinquency sections are staffed by one full-time and one part-time ID attorney, respectively. The section hearing CINC cases is staffed by one part-time attorney.

Caddo Parish Juvenile Court cases involve short-term statutory time limits and/or additional hearings not required in the adult criminal cases. In delinquency cases, if a juvenile is in custody after arrest, a continued custody hearing is held within three days in one of the delinquency sections;<sup>21</sup> the juvenile is represented by an ID attorney at this hearing. However, most juveniles are out of custody in delinquency cases and appear within 15 days of the filing of charges to answer the delinquency petition.<sup>22</sup> If the juvenile wishes to admit to the petition, the staff attorney in the section speaks to the juvenile and represents the juvenile for purposes of entering the plea. If the juvenile wishes to deny the petition, IDO is formally appointed and a trial date is scheduled within 30 days if the juvenile is in custody or otherwise within 90 days.<sup>23</sup> Finally, a disposition hearing to determine the juvenile's sentence must be held within 30 days of adjudication.<sup>24</sup>

In the civil section of Juvenile Court, when a child is removed from the parents' home, a continued custody hearing is held within three days of the removal; the ID attorney is appointed to represent the child (or all children) at that time.<sup>25</sup> Within 30 days of the custody hearing, the CINC petition is filed and must be adjudicated within 45 days of filing if the child is in custody or within 105 days if the child remains in the parents' custody.<sup>26</sup> If the child is adjudicated in need of care, a disposition hearing to determine the child's placement is held either immediately following the adjudication or within 30 days thereof.<sup>27</sup> Review hearings are then held at least every six months until a permanent plan is in place for the child.<sup>28</sup> Finally, a permanency hearing must be held to determine the permanent plan no later than one year after the child's removal, and review hearings continue every year after that until a permanent placement is found.<sup>29</sup> Representation of the child continues throughout each of these stages of a CINC case.

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<sup>20</sup> The Caddo Parish Juvenile Court also hears other juvenile and family law matters not handled by IDO and not addressed in this report (e.g., adult family drug court, family support, adoption and mental health proceedings).

<sup>21</sup> See CHC Art. 819.

<sup>22</sup> See CHC Art. 854.

<sup>23</sup> See CHC Art. 877.

<sup>24</sup> See CHC Art. 892.

<sup>25</sup> Parents are appointed private attorneys who are compensated at hourly rates by the state.

<sup>26</sup> See CHC Art. 632, Art. 659.

<sup>27</sup> See CHC Art. 678, Art. 681.

<sup>28</sup> See CHC Art. 692.

<sup>29</sup> See CHC Art. 702.

## **CHAPTER 2: INDIGENT DEFENDER OFFICE**

The Caddo Parish Indigent Defender Office (IDO) has one central location that houses all District Court felony attorneys and support staff and one satellite location that houses all juvenile attorneys and support staff at Juvenile Court. IDO is currently staffed with a total of: 18 indigent defender (ID) attorneys, including the Chief Counsel; four investigators,<sup>30</sup> including the Chief Investigator; and ten secretaries, including the Office Administrator.

### **Assignment of Cases**

Most new criminal cases assigned to IDO are assigned to ID attorneys according to predetermined variables, as opposed to cases being assigned on an individual basis to particular attorneys. Three capital attorneys, including the Chief Counsel, handle all of the cases in which a notice to seek the death penalty is filed. In addition, the capital attorneys handle a number of non-capital murder, rape and armed robbery cases when needed to help ease the caseloads of some senior attorneys. New non-capital cases are assigned within IDO according to the assigned criminal section of the case. One senior attorney in each section handles the armed robbery, rape, kidnap and non-capital murder cases that arise in that section. Two staff attorneys in each section split the remaining less serious felony cases in their section.

The two staff attorneys in each section receive assignments according to docket number, with one attorney receiving odd-number dockets and one receiving even-number dockets. Cases are assigned automatically by the receptionist according to this system. While this method of case assignment should ultimately result in equivalent caseloads among the two attorneys over the course of a year, at any one time this is not always the case, as one attorney may be disposing of a greater number of cases more quickly than another attorney. For instance, in at least one snapshot of open cases per staff attorney, open caseloads between the two staff attorneys in each criminal section differed by 18, 29, 34, 51 and 98 cases. While in the latter section, the attorney with the fewer cases is a new attorney, in two other sections, the newer attorneys (2006 hires) have larger caseloads than the other attorneys with whom they share the section. Even a caseload differential of 18 cases can be significant when handling felonies, and we feel that open caseloads should be considered more frequently as a factor in making new assignments. The staff attorneys are also responsible for handling the daily jail clearance docket for one week when it is rotated into their criminal section.

In Juvenile Court, the two delinquency attorneys (one part-time position and one full-time position) receive all cases assigned to their respective juvenile court sections. In addition, every two weeks the attorneys rotate the duty assignment of handling all continued custody hearings. On the civil side, the part-time CINC attorney is the only attorney appointed to all children in CINC cases (unless a conflict arises).

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<sup>30</sup> One investigator was on a leave of absence at the time of our visit.

## Office Policies and Procedures

The Indigent Defender Office has a comprehensive personnel manual for all IDO employees. This manual is given to each new employee and covers a number of issues, including employment at will, code of conduct, office hours, outside employment, hiring procedures, job descriptions and leave policies.

The office has also created a comprehensive Attorney Desk Reference manual that sets forth performance standards for all attorneys. These performance standards are from Chapter 6 of Louisiana Standards on Indigent Defense from the Louisiana Indigent Defense Assistance Board (LIDAB).<sup>31</sup>

In addition to the policies and procedures set forth in the personnel manual, various office policies are circulated in the form of intermittent memoranda to staff. For example, five memos were distributed to all attorneys and/or staff between December 2003 and February 2005 addressing or reinforcing policies on the following topics:

- Opening new files and meeting new clients and files.
- Limitations on providing clients with copies of discovery.
- Informed pleas.
- Handling non-IDO cases.
- Post-trial motions and appeals.

As indicated in the office's personnel manual, formal IDO policy allows full-time attorneys to retain a private practice outside of the office, as long as they do not handle criminal cases within the district. However, ABA standards state that defender offices should be staffed with full-time attorneys who are prohibited from engaging in private practice.<sup>32</sup> During our site work, the absence of a new full-time staff attorney who had been hired in August was noted; we were told that he was out of the office because he was winding down his private practice.<sup>33</sup> In addition, the full-time juvenile attorney continues to keep a private practice.

## Client Contact

The jail that houses Caddo Parish inmates is located within approximately 15 minutes (driving time) of IDO. Each housing unit at the jail has private interview rooms for the attorney-client meetings, and ID attorneys are allowed access to inmates at any time. Attorneys spoke highly of their relationship with jail personnel and of the access that the jail provides them to their clients. Attorneys are also able to phone when they need to speak with an inmate, and the jail will then allow the inmate access to a free phone to call the attorney who made the request.

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<sup>31</sup> Available at <http://www.lidab.com/standards.htm>. These performance standards pre-date the new LIDAB performance standards for indigent criminal cases in trial court, adopted June 20, 2006.

<sup>32</sup> *ABA Standards for Criminal Justice Providing Defense Services*, Third Ed., Standard 5-4.2.

<sup>33</sup> Many public defender offices permit private attorneys to take a short period of time to close existing private cases, but the newly hired attorney should become full-time as soon as possible.

The Chief Counsel established an office rule that (1) secretaries must notify attorneys of new cases and to deliver the new case files to them within three days of IDO appointment; and (2) attorneys must visit new in-custody clients within 10 days of appointment (except for vacation, illness, leave or trial).<sup>34</sup> While most attorneys said that they aim to abide by this 10-day rule, they are not always successful. A senior attorney commented that while senior attorneys should be able to follow the 10-day rule, staff attorneys cannot. This senior attorney visits the jail “ideally once a week,” but sometimes only once or twice a month. Another senior attorney tries to see clients within a week of appointment and normally spends six hours each Friday at the jail. However, another senior attorney admitted to not complying with the 10-day rule, but visiting clients at the jail after the preliminary examination, which can be a month or more after the appointment to IDO at jail clearance. Still another said he usually talks to clients on the phone rather than in person as his visits to the jail are “sporadic.” One staff attorney who supports the 10-day rule, admitted that he does not get to the jail within 10 days; rather, his goal is to see the client within two weeks of the preliminary examination date so that witnesses can be subpoenaed if necessary. Another staff attorney who tries to see clients twice at the beginning of a case – more if there will be a trial – noted going to the jail on the weekends to see a large number of clients. We were also told that on occasion, inmates will file pro se subpoenas for jail visitation records to who the court that their attorney has failed to visit them. These problems with client contact suggest that many staff attorneys are operating with excessive caseloads.

At least one person working in the District Court suggested that the level of communication between ID attorneys and incarcerated clients in non-capital felony cases could be improved, as the defense is not always prepared to respond to plea offers at the time of the argument and hearing date. We were also told that in one courtroom, the judge allows three hours in the middle of the day for attorneys to interview in-custody clients. However, there does not appear to always be an opportunity for confidential meetings in the courtroom, and there is currently only one holding cell in the courthouse available for all Caddo Parish attorneys to meet with in-custody clients.

Client contact does not appear to be an issue for the capital attorneys who have more serious cases but fewer clients. At least one capital attorney sees new clients within two days of receiving the new assignment.

Out-of-custody clients are told to call the office to make an appointment for an interview, although we were told that few clients do this; as a result, attorneys are frequently speaking with out-of-custody clients for the first time in court.

In addition, support staff do not always get new files to attorneys within three days. One attorney said that although he goes to the jail once a week and tries to see new clients within seven days, it could take a week or more to receive the new case file from support staff. Another attorney estimated that it took approximately four days to receive a new file.

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<sup>34</sup> We were told that this 10-day rule is also a rule of the Caddo Parish District Court.

## Attorney Experience and Training

Although the capital attorneys and most senior attorneys in the office are very experienced criminal defense attorneys, the Indigent Defender Office has few minimum qualifications for hiring new attorneys other than being licensed to practice law in Louisiana. Although the office seeks to hire attorneys who have some exposure to criminal justice and criminal defense law, this is not a requirement. In addition, while we were told that most new attorneys are not hired directly out of law school, few appear to have any significant amount of experience in trying criminal cases. For example, the previous positions of five attorneys hired in the last five years include: law clerk; a position with the Innocence Project;<sup>35</sup> a practice telecommunications law; general private practice; and law student. We met other ID attorneys whose experience prior to coming to IDO was in civil law.

There is no formal training process for either new or experienced attorneys within the office. Some informal training occurs for new attorneys in the office. New attorneys are provided with a written attorney orientation packet. This packet includes general information on the public defender's job and duties, including the duty to investigate, being an effective advocate, and conducting preliminary examinations. Although a senior attorney or experienced staff attorney is supposed to accompany the new attorney during the first few weeks in court and at the first trial, we learned that this is not always the case (see below).

Like all attorneys practicing in Louisiana, ID attorneys are required to complete 12.5 hours of Continuing Legal Education (CLE) credits each year. To fulfill these requirements, IDO will send attorneys to criminal law seminars offered by the Louisiana Public Defender Association. Attorneys are also reportedly given periodic updates on the law. When funds are available, a senior attorney is given the opportunity to attend a national criminal defense training seminar.

Several attorneys discussed with us the lack of formal IDO training. New attorneys are normally assigned the existing caseload of the previous attorney in the position (unless hired to fill a newly-created position). In other words, rather than new attorneys beginning with a small caseload that gradually becomes larger as they become more experienced, they begin with a large felony caseload. One attorney in the office, who had civil but no criminal law experience before coming to the office, started with an open caseload of 200-250 felonies and the training as "on-the-job training." A staff attorney who came to the office out of law school started with a caseload of 270 felony drug cases. Another attorney said that when she came to the office, she did not know what a preliminary examination was; yet she received little training. Similarly, a senior attorney said that she had no training when she started at the office, but learned by asking for help.

New staff attorneys receive little to no formal training in conducting trials. One staff attorney said that he would have liked to have more training, especially for trial practice skills. He came to the office with no experience and no trial practice training in law school. In preparation for his first trial, the staff attorney met with a private attorney for advice. He admits

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<sup>35</sup> The Innocence Project is an organization that conducts factual investigations and helps to clear wrongful convictions, but does not represent criminal defendants at trial.

that he could have done better for his clients had he had more training. A senior attorney who reported that more training is needed in jury trial preparation was unable to help a staff attorney at his first trial because the senior attorney was sent to a swing judge to try his own case on the same day; the new attorney reportedly had a “bad experience” with the trial. A staff attorney commented that the new attorney training “depends on who’s around when you start;” although he felt that he had received a good amount of instruction and advice, he never had an experienced attorney sit with him during a trial. Another new staff attorney noted that the judge has provided some assistance by explaining things. This judge confirmed that he has “helped [this staff attorney] along,” and describes the attorney’s courtroom performance as too “timid.”

One staff attorney who came to the office with no experience in criminal law or conducting trials reportedly conducted six jury trials – two as second chair and four trials as first chair – within the first five months of being in the office. The trials included cases involving the following felony charges: sexual molestation of a juvenile; fourth felony drug offense; and aggravated arson. Defendants in these cases face significant jail time. In addition, two of the trials occurred in successive weeks.

Training is an essential component to a successful public defender office. ABA standards require that “effective training, professional development and continuing education of all counsel and staff” be provided through the use of public funds.<sup>36</sup> The *ABA Ten Principles of a Public Defense Delivery System* (see Appendix A) and the Louisiana Standards on Indigent Defense also require that defense counsel be provided with continuing legal education.<sup>37</sup> These principles also require that case assignments should be made on the basis of an attorney’s ability, training and experience.<sup>38</sup> Therefore, if a number of attorneys on staff lack experience and training in handling certain case types, those case types should not be assigned to those attorneys. Lack of attorney training not only affects the ability of the individual attorneys to handle certain matters, but it should also limit the ability of the office to assign those matters within the office.

Training of new attorneys is especially important when those attorneys lack experience. As Louisiana Performance Standards state, “In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the State of Louisiana.”<sup>39</sup> Further, office and state standards provide that “[d]efense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation... .”<sup>40</sup>

Where formal training is sparse, training in the area of collateral consequences of criminal convictions (e.g., loss of immigration status or public benefits) has not yet occurred. We spoke with several attorneys who, although they may be generally aware of some collateral consequences, have not been trained in how to handle them in the course of their representation

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<sup>36</sup> *Id.*, Standard 5-5.1.

<sup>37</sup> See ABA Principle 9; Louisiana Standards on Indigent Defense, Standard 1-1.4. See also Louisiana Performance Standards for Criminal Defense Representation in Indigent Criminal Cases in the Trial Court [hereinafter Louisiana Performance Standards], Standard 1.B (A) (June 2006), available at [www.lidab.com](http://www.lidab.com).

<sup>38</sup> See Principle 6; see also Louisiana Performance Standards, Standard 1.B(B).

<sup>39</sup> Louisiana Performance Standards, Standard 1.B (A).

<sup>40</sup> Attorney Desk Reference, Caddo Parish Public Defender, Standard 1.2(E), also found in Louisiana Standards on Indigent Defense.

in a criminal case. Since 1997, ABA standards have stated that “to the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea.”<sup>41</sup> In order to meet this obligation, ID attorneys must be properly trained in the area of collateral consequences.

## **Supervision and Evaluations**

Like training, supervision is especially important for new attorneys that lack actual criminal trial experience. Direct supervision and mentoring can not only provide new attorneys with greater skills and confidence, but can also improve the quality of representation provided to clients. Yet, like training, the supervision in the office is informal and dependent upon the willingness and availability of the experienced attorneys in the office, as well as on the willingness of the staff attorneys to seek advice. Generally, the senior attorneys informally supervise the two staff attorneys in their criminal section by answering any questions the staff attorneys may have. They will normally provide greater assistance for the first few weeks; this then tapers off, although they remain available for questions. One staff attorney had a senior attorney from another section accompany him to court for his first week, and this was the extent of his supervision. Senior attorneys may also field complaints from clients and family members of staff attorneys and will occasionally take problem cases from the staff attorneys.

IDO lacks written procedures for conducting formal evaluations of attorneys and staff, although formal IDO policy, as indicated in the personnel manual, requires that the performance of attorneys and support staff be evaluated annually. ABA Principle 10 also requires that attorneys and support staff of a defender office – as well as assigned counsel and contract defenders – be supervised and systematically reviewed for competency and efficiency. Unfortunately, formal evaluations are not occurring at IDO, largely because the Chief Counsel, capital and senior staff attorneys carry significant caseloads and lack the time. However, we were told that IDO intends to create a form for conducting annual evaluations of staff in the future.

## **Investigations**

IDO investigations are performed by one of three staff investigators or by the Chief Investigator. The Chief Investigator has been employed by IDO for over 27 years; one investigator has been employed for eight years, and two have been employed for approximately two years. The Chief Investigator supervises the investigator staff, handles all requests for photographs, and has a reduced caseload. The most senior staff investigator (who was on leave at the time of our visit) performs most of the mitigation investigations (e.g., getting client’s medical, social and family histories). In addition to conducting investigations, the staff investigators assist in the indigency screening process by attending misdemeanor arraignment sessions and escorting out-of-custody defendants back to the office where they must complete an application form to determine if they are financially eligible for IDO services. Although the investigators may visit a client at the jail in order to obtain information on locating a witness, they do not visit clients or conduct client interviews when attorneys are unable to do so.

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<sup>41</sup> *ABA Standards for Criminal Justice: Pleas of Guilty*, Third Ed., Standard 14-3.2(f).

ID attorneys must formally request investigations by completing a form with the defendant's name and charge(s), the name and contact information of witnesses to be contacted and any other relevant information or request. This form is given to the Chief Investigator who then evaluates the request, reviews the investigators' caseloads, and assigns the case accordingly.

The Attorney Desk Reference packet which is provided to all ID attorneys and which mirrors the Louisiana Standards on Indigent Defense, sets forth the attorneys' duty to promptly investigate facts relevant to the merits of a case or to the potential penalty "regardless of the accused's admissions or statements to counsel of facts constituting guilt or the accused's stated desire to plead guilty."<sup>42</sup> In addition, as part of the orientation packet, new attorneys are provided with guidelines and protocol that underline this duty to investigate "when a client disputes any material fact or witness account" or "raises any line of defense that requires corroboration." Further, attorneys are informed that this duty is "not dependent on guilt or innocence" and that they should not assume that police reports are correct. The office protocol for making investigation requests requires timely requests and submission of request forms with any relevant reports.

The Chief Investigator reported that in the first nine months of 2006 (as of the first week of October 2006), attorneys had requested 350 investigations in the calendar year, which averages approximately 39 investigation requests per month. These investigations may range from a diagram or photograph, to obtaining records, to interviewing multiple witnesses. At the time of our visit, the two staff investigators each had five or six active cases on which they were performing investigations.

## **Support Staff**

IDO's non-attorney staff consists of one office manager, eight secretaries, one chief investigator, and three staff investigators. IDO's Office Manager has been with the office for nearly 30 years. The Office Manager performs the administrative tasks for the office. She pays bills, takes care of all personnel and administrative paperwork, and fields phone calls and requests from the court, private attorneys, and IDB. She also supervises the secretarial staff and coordinates their duties and coverage. We were also told that after orienting a new secretary, the Office Manager will assign an experienced secretary to be a mentor. While the office does not currently have a formal process for conducting evaluations of support staff, we were told that the office is discussing implementing this in the future.

When new assignments come to the office, the receptionist creates the new files. These files are then given to the secretaries according to the criminal section to which they and the case are assigned. Four of the criminal sections and juvenile court are supported by one secretary, and one section is supported by two secretaries, although the second secretary also supports the Chief Counsel and has additional duties. Generally, the secretaries answer the phones for their section, speak with clients and clients' families, schedule appointments, prepare letters and motions, organize and maintain case files, track the list of clients in jail, track case files and court dockets, enter case data into the data system, and close files. In the Drug Section, which has the

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<sup>42</sup> Attorney Desk Reference, Caddo Public Defender Office, Standard 3.1.



highest volume of cases, the secretary might handle as many as 200 files in one day. The receptionist - who was on leave at the time of our site visit - answers the office phone, interacts with the public, provides defendants with application forms, receives the jail clearance list and creates new case files. The secretaries also have additional duties assigned to them when coverage is needed in the event of a secretary's absence.

A number of the secretaries have additional duties beyond their general duties. For example, the secretary for the two capital attorneys is also responsible for the paperwork associated with appeals which needs to be prepared prior to sending the case to the Louisiana Appellate Project, as well as handling outgoing mail and maintaining subscriptions and office archives/storage. The secretary that supports the Chief Counsel and one of the section's senior attorneys also has a significant amount of work that is unrelated to attorney support. She is responsible for collecting all fees and payments from out-of-custody defendants in District, City and Juvenile Courts, including application fees (\$40), partial reimbursement payments (up to \$500 in felonies and \$300 in misdemeanors), and child support and enforcement fees (\$25); the latter category of fees are not collected from IDO clients. In collecting these fees, an IDO secretary must attend City Court two mornings a week and the District Court Drug Section misdemeanor arraignment session one-to-two mornings a month. After collecting the fees, the secretary deposits them with the Caddo Parish Commission.

We were generally impressed with the attitude and professionalism of the IDO support staff, especially given their low salaries. We were also very impressed with the Office Manager who, with her experience and knowledge and positive manner, is an invaluable member of the IDO team. The duties appear to be well allocated among the secretaries, and there was a general attitude of cooperation. Unfortunately, too often we have witnessed low morale and poor attitudes among secretarial staff in public defender offices; but such was not the case at IDO. Including addition to the Office Manager, half of the support staff have remained with the office for 11 years or more. Those that were newer to the office spoke highly of their jobs and of the office environment.

The attorney-support staff ratio for the office as a whole is approximately 2:1. Among the individual sections, however, most attorney-support staff ratios are 3:1. In our experience, although this ratio is slightly higher than most offices and than our average recommended ratio (usually closer to 4:1), given the high volume of cases being handled by the office and by the individual attorneys, we feel that the current ratio is appropriate. Further, due to the case volumes and the additional time-consuming duties of the IDO support staff that are not present in most public defender offices (e.g., collecting fees and attending court sessions), we feel that the office would benefit from one additional floating secretary to assist with opening cases, coverage in the event of absences, supporting the section secretaries when they are overloaded, with other administrative duties in the office.<sup>43</sup>

## **Salaries**

At the time of our site visit, most IDO staff had not received raises for approximately five years. Between 2001 and 2003, the Indigent Defender Fund experienced a year-end deficit of

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<sup>43</sup> It is our understanding that, during the drafting of this report, IDB approved the addition of a floater secretary.

between \$21,000 and \$48,000, and no action was taken to increase IDO compensation. In 2004 and 2005, the fund experienced a year-end surplus between \$140,000 to \$152,000, and the Board approved two one-time supplements for IDO staff. In 2004, attorney staff received a one-time \$700 supplement and support staff received a \$350 supplement. In 2005, all staff received a one-time 10 percent cost-of-living adjustment (COLA). Other than these supplements, IDO salaries for the most part have remained static since 2001, although we were told that the cost of living has increased during that time by over 15 percent.

The starting salary for a staff attorney is \$31,000, and the highest paid staff attorney with seven years of experience is compensated at \$34,800. In juvenile court, the salary of the full-time staff attorney is \$37,000 and the salary of the part-time attorneys is \$30,000. The salaries of the senior attorneys, who have between three and twelve years of experience on the job, range from \$37,800 to \$46,500. Capital attorneys with 15-20 years of experience on the job make between \$53,000 and \$61,800. The salary of the Chief Counsel is \$82,482, and the salaries of the long-time Office Manager and Chief Investigator are \$50,470. Staff investigators make between \$29,000 and \$31,000. Finally, the salaries of the secretaries range from \$18,000 to \$37,035.

In an October 19, 2006 letter to IDB, we recommended immediate salary increases for IDO. We stated the following:

Specifically, we recommend that all attorneys, including staff, senior and capital attorneys, receive a 15% raise from their current salaries. This increase would result in a staff attorney starting salary of \$35,650, up from \$31,500. IDO's long-time top administrative staff – chief counsel, office manager and chief investigator – should also receive the same 15% increase.

With regard to support staff, we recommend that the staff investigators receive a slightly lower increase of 10%, which would keep the starting attorney salary slightly higher than the investigators' salaries in order to reflect the attorneys' higher level of education, case responsibilities and workload. Finally, we recommend that the starting salary of \$18,000 for the new secretaries be raised by 25% to \$22,500 in order to attract and retain quality staff. Currently, at least two of the secretaries at the starting-salary level are working second jobs in order to make ends meet. The remaining secretaries should, like most staff, receive a 15% increase in compensation.

We base these recommendations both on our years of experience in studying public defender systems at the state and local level across the country, and on salary information that we currently have from a number of public defender programs in the southern states, including Georgia, North Carolina, Tennessee, Virginia and West Virginia. It is important to note that, even with the recommended salary increases, most Caddo Parish IDO attorneys would still be making less than their counterparts in other southern states.

We also considered the salaries at the Caddo Parish District Attorney's Office. With the recommended raises, Caddo Parish IDO attorneys would still be making less than their counterparts in the Caddo Parish District Attorney's Office. According to the District Attorney's Office, the starting attorney salary is \$38,500, which increases to approximately \$50,000 after three years, and the most senior attorneys can make up to \$100,000. We received additional information that in 2005, the average salary for a misdemeanor attorney in the District Attorney's Office was approximately \$44,000, over 25% higher than the starting salary of a felony IDO attorney. The average salary for a district attorney section chief with ten years of experience was approximately \$64,000, several thousand higher than the most senior IDO capital attorney with 19 years of experience.<sup>44</sup>

In addition, the state has granted a 2006 supplemental increase in prosecutors' salaries of over \$5,700 per district attorney. Although Caddo Parish reportedly then voted to decrease funding by \$3,000 per district attorney, the result remains an increase for district attorney salaries which are already higher than those of the defenders.

Principle 8 of the American Bar Association's *Ten Principles of a Public Defense Delivery System*, by which indigent defense systems can be judged, states: "**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.** There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense" (see [Appendix A](#)).<sup>45</sup> While we understand that the Caddo Parish District Attorney's Office and the Indigent Defender Office have different funding sources and that parity would be difficult to achieve, our recommendations do not provide full parity. Rather, our recommendations raise the IDO salaries closer to those of the District Attorney's Office.

The total cost for the recommended one-time IDO raises is \$188,499. As of the end of September 2006, the Caddo Parish Indigent Defender Fund had \$841,551 in available funds (cash balance and month-end investments), approximately four-and-a-half times the proposed cost for the raises, which would still leave \$653,052 in surplus funds.

After initial percentage increases, merit raises should be considered and granted in the future to deserving staff based upon formal performance evaluations which we will address further in our report. Finally, annual COLA increases should be made available to all IDO staff beginning in January 2007.

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<sup>44</sup> Further (although not originally stated in our October letter), we were also told by a Caddo Parish attorney that in Shreveport City, prosecutors who have no jury trials make \$42,000, and that in Bossier Parish, a part-time public defender makes \$24,000 with benefits.

<sup>45</sup> This last sentence was not completely quoted (as here) in the original October letter to IDB.

In addition to the ABA standards, LIDAB's Louisiana Standards on Indigent Defense, state, "The chief defender and staff should be compensated at the rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices."<sup>46</sup>

In our estimation, ID attorneys and staff are dedicated to their work and are indeed deserving of raises. In addition, improving IDO compensation is essential to attracting and retaining quality personnel. Many of our recommendations address the need for systemic reform in a number of areas. In our professional judgment, the problems of IDO are largely the result of an historically under-funded and overburdened system rather than the fault of individual IDO staff. That is, the burden for the systemic deficiencies should not rest on the shoulders of individual IDO personnel who are doing their best with what they have been given.

## **Office Space**

LIDAB Standards on Indigent Defense state: "Every defender office should be located in a place convenient to the courts and be furnished in a manner appropriate to the dignity of the legal profession." In addition to a sufficient library, "other necessary facilities and equipment should be provided."<sup>47</sup>

The downtown IDO office space is well-equipped with individual offices for each attorney and administrative staff, and an adequate area for the support staff. All IDO staff have desks, computers and phones. IDO also has a library. Although one attorney complained about the lack of sufficient resources in the library, each attorney in the downtown office has access to Lexis/Nexus for conducting online legal research. Finally, the downtown office is within easy walking distance to the district court.

While the juvenile unit of IDO is conveniently located within the juvenile court, which is approximately 10 minutes (driving time) from the district court and the downtown IDO, the physical space and available resources are inadequate. IDO space in the court consists of three very small rooms on the first floor of the courthouse. One office is for the secretary, one for the full-time attorney, and one for the part-time attorneys to share. Two offices have a computer and phone; however, the third room for the part-time attorneys has a desk and two chairs, but no computer and no phone. In addition, the secretary's room houses the current juvenile files, which are now being stacked on top of several full filing cabinets. The secretary does not have access to an IDO fax or copier, but uses the court's facilities on the second floor of the courthouse. While we were told that the court has very limited space available to house IDO, the current facilities and resources provided to IDO staff at the time of our site visit are inadequate.

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<sup>46</sup> Standard 1-4.1.

<sup>47</sup> Standard 1-4.3. Note that while Standard 11-2.1 states that counsel should be paid a minimum of \$30,000 and "no more than 95% of the compensation level of a similarly situated prosecutor in the district," the proposed IDO raises would remain within these guidelines.

## **IDO in Juvenile Court**

During the final drafting of this report, we were informed that IDO will be receiving a juvenile court compliance grant from LIDAB to hire additional juvenile attorneys and staff as well as renting an office space. In receiving the grant, IDO will be required to handle juvenile cases in Red River Parish as well as Caddo Parish. According to IDO's implementation plan for the grant funds, IDO will have: one senior supervising attorney; one full-time attorney to handle Red River Parish cases; four full-time delinquency attorneys – an addition of 2.5 full-time equivalent (FTE) attorney positions; one full-time CINC attorney – an addition of 0.5 FTE attorney positions (assuming the part-time position at 0.5);<sup>48</sup> two full-time secretaries – an addition of one FTE secretary; and two full-time investigators, both of which are additional positions. This staff is to be housed in a separate office location downtown. We expect such staff increases to help greatly improve the situation at juvenile court. In addition, we were told that the new supervising attorney at juvenile court is instituting new policies and procedures regarding IDO representation at juvenile court. At the time of our site visit in October 2006, however, a number of problems existed, which we discuss below.

LIDAB Standards on Indigent Defense state that “[d]efense organizations should be staffed with full-time attorneys.”<sup>49</sup> However, the juvenile unit of IDO is staffed – at the time of our site work – with two part-time attorney positions and one full-time attorney position, although the latter attorney also maintains a private practice.

One attorney represents all children in CINC cases, unless there is a conflict – which is rare - in which case private attorneys handle the case without compensation. Although the CINC attorney is designated and compensated part-time, he is retired from private practice and essentially works for IDO on a full-time basis. He came to the position two years ago with no prior experience in child welfare law. The CINC attorney is normally in court all day, five days a week, making any out-of-court work nearly impossible.

In the two delinquency sections, one court is staffed with a part-time IDO attorney and one is staffed by a full-time IDO attorney.<sup>50</sup> When IDO has a conflict, private attorneys are appointed to handle the case pro bono. While the part-time attorney has a significant private practice outside of his work with IDO, the full-time attorney also reported to maintain some level of a private practice. The two attorneys rotate a duty week that requires them to be in court between 9 a.m. and 4 p.m., Monday through Friday, to handle appearance to answer dockets and continued custody hearings. On off-duty weeks, the delinquency attorneys are required to be in court three days a week.

In both CINC and delinquency cases, client contact generally takes place in court prior to hearings. The court hearing CINC cases had previously perceived a problem with the level of

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<sup>48</sup> It is our understanding that the grant for this position is from the Louisiana Department of Social Services, Office of Community Services (OCS).

<sup>49</sup> Standard 1-4.2.

<sup>50</sup> We were told that the full-time attorney became full time two years ago, but that, with the exception of benefits, the compensation and hours remained the same. It is interesting to note that the juvenile judges were of the understanding that both delinquency attorneys remained part-time positions.

client contact, the situation reportedly improved after the court raised the issue with the attorney directly. Still, the CINC attorney reportedly does not visit child clients in their placements, as he is in court every day and lacks the time.<sup>51</sup> Rather, client contact occurs in court. The court hearing delinquency cases had mixed reviews on the level of client contact taking place. While one judge was unsure of the level of client contact, he reported that the ID attorney is always prepared. Another judge was unhappy with the level of client contact from the ID attorney in his courtroom. This attorney confirmed that client contact is “kind of nonexistent.” However, we were told that this is due to a “lack of interest” on the client’s part.

When IDO is assigned a new delinquency case, the juvenile client is not sent a letter from IDO explaining the case process or the importance of meeting with the ID attorney prior to the trial date. Rather, if a child denies the allegations at the Appearance to Answer date, then the case is set for trial, and the child is given a piece of paper entitled “Client Responsibilities.” At the top of this paper, the child is given an appointment date with the ID attorney for the following Tuesday afternoon, at the courthouse. The child is also told that he or she is “responsible for preparing a witness list identifying any individuals who you believe can testify on your behalf at the trial of this matter.” The child is instructed to provide to the ID attorney, two weeks before the trial date, the name, address and telephone number of each witness and a description of each witness’ testimony. At the bottom of the paper, the child is given the date and time for his or her trial.<sup>52</sup>

The juvenile detention center is located next to the Juvenile Court. However, it is unclear how frequently the delinquency attorneys are visiting them at the detention center. We are concerned that such meetings are not taking place as often as they should, as the attorneys are overloaded with cases in addition to maintaining private practices. Further, one attorney admitted that he does review list of in-custody clients each day in order to determine who needs to be visited. Rather, he will visit a client when the detention center calls to tell him that a client wants to see him, placing the onus is on the child client to initiate the contact.

Some of our concerns, especially those regarding client contact, were recently reported in report by the National Juvenile Defender Center.<sup>53</sup> In addition, the court reported client contact problems with one delinquency attorney dating back to 2003, when the court issued a memo to express concern over the attorney not requesting a continuance of a trial for serious charges when the attorney had not spoken with the client. The attorney responded by saying that neither the client nor the client’s parent had contacted him.<sup>54</sup> The court was additionally concerned that this attorney had not filed any motions to suppress or any appeals. The attorney reported to us

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<sup>51</sup> See *ABA Standards of Practice For Lawyers Representing a Child in Abuse and Neglects Cases*, Standard C-1 (“Establishing and maintaining a relationship with a child is foundational to representing a child. Therefore, irrespective of the child’s age, the child’s attorney should visit with the child prior to court hearings and when apprised of emergencies or significant events impacting on the child.”) Standards and commentary available at [www.abanet.org/child/rep-actions.html](http://www.abanet.org/child/rep-actions.html).

<sup>52</sup> On this same paper, the client is informed that there will be an Order for Partial Reimbursement for the cost of IDO representation that must be paid within 60 days.

<sup>53</sup> National Juvenile Defender Center, *Caddo Parish, Louisiana: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, conducted for the Caddo Parish Children and Youth Planning Board (August 2006).

<sup>54</sup> The Client Responsibilities sheet was likely created – at least in part - to help prevent such situations.

that he files “very few” motions and did not know whether or not his computer had Lexis/Nexus access for performing online legal research. Concerns regarding this attorney have reportedly been raised with IDO by the court on more than one occasion. Unfortunately, we were told that little had changed. IDO’s Chief Counsel was addressing the situation at the time of our site visit by swapping the juvenile attorney with an attorney in the adult felony drug section in District Court.

We are also concerned that few if any juvenile cases are being investigated. In CINC cases, we are concerned that the “part-time” attorney is unable to visit child clients in their placements to conduct thorough investigations. In CINC cases, the duty of the child’s attorney to investigate includes not only reviewing social service records and court files, but also contacting and meeting with the parents of the child and visiting the home.<sup>55</sup> Similarly, in delinquency cases, attorneys have a duty to conduct investigations.<sup>56</sup> Although the IDO investigators in the downtown office are available for use on juvenile cases, it does not appear that they are being utilized. While one delinquency attorney acknowledged that he could use the downtown investigators if he needed to, he generally relies on the client’s story and does not see a need for further investigation. The other delinquency attorney reported using an investigator “once or twice.”<sup>57</sup> Rather than the attorneys eliciting information regarding witnesses and potential investigations, the responsibility for providing such information and requesting investigations appears to be placed on the child clients as set out on the Client Responsibilities sheet. By contrast, in adult cases, the ID attorneys are responsible for getting such information from clients during client interviews and giving it to staff investigators with their investigation requests.

Unfortunately, as is often the case in our work, juvenile representation is a low priority of a public defender office in comparison to adult representation. Many defenders view juvenile law as less important, with less serious consequences to the clients, and therefore deserving of less attention and fewer resources. However, representation of children is of critical importance in any indigent defense system and should be treated as such.<sup>58</sup> In Juvenile Court, ID attorneys do not receive specialized juvenile training, nor is there any supervision or oversight of the attorneys’ performances in Juvenile Court. The attorneys are compensated as part-time attorneys and are overburdened with cases.

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<sup>55</sup> *ABA Standards of Practice For Lawyers Representing a Child in Abuse and Neglects Cases*, Standard C-2 and commentary, available at [www.abanet.org/child/rep-actions.html](http://www.abanet.org/child/rep-actions.html).

<sup>56</sup> *IJA-ABA Juvenile Justice Standards Relating to Counsel for Private Parties*, Standard 4.3 (“It is the duty of the lawyer to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts concerning responsibility for the acts or conditions alleged and social or legal dispositional alternatives... The duty to investigate exists regardless of the client’s admissions or statements of facts establishing responsibility for the alleged facts and conditions or of any stated desire by the client to admit responsibility for those acts and conditions.”)

<sup>57</sup> This attorney has been practicing in Juvenile Court for approximately 30 years.

<sup>58</sup> *IJA-ABA Juvenile Justice Standards Relating to Counsel for Private Parties*, Standard 2.1 (“Provision of satisfactory legal representation in juvenile and family court cases is the proper concern of all segments of the legal community...”); American Council of Chief Defenders, National Juvenile Defender Center, *Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery System*, Preamble, Principles 1-3.

Finally, as noted by the Juvenile Court judges themselves, in comparison to the District Attorney's Office, IDO in Juvenile Court is extremely under-resourced. While IDO is essentially staffed with three part-time attorneys (including the designated full-time attorney who is paid part-time and maintains a private practice), the District Attorney's Office has four full-time attorneys in Juvenile Court. Further, although the District Attorney's Office handles CINC cases up to the point of disposition, the cases are transferred to in-house counsel for the Department of Social Services (DSS) to handle the long-term post-disposition phase of the case; the ID attorney, on the other hand, handles CINC cases up to and post-disposition.

### **IDO Reputation and Leadership**

IDO has a positive reputation in the Caddo Parish criminal justice community. During our site visit, the judges and prosecutors confirmed that IDO is a well-respected office that generally provides adequate representation to indigent defendants. However, some views differed in relation to the experience level of the attorneys. While many spoke highly of the quality of representation provided by capital attorneys and some senior attorney staff, some noted – as one would expect – that this quality drops with some less-experienced staff attorneys. Again, this speaks to the lack of criminal law experience and training discussed earlier, as well as to the simple lack of time on the job.

IDO's Chief Counsel has been an ID attorney for 16 years and Chief Counsel for nearly nine years. He has a reputation in the legal community as being a skilled litigator and good leader. As Chief Counsel, he is responsible for the overall administration of the office, the hiring and firing of personnel, overseeing and advocating for the budget, and overseeing and administering the conflict attorneys. In addition, the Chief Counsel is a capital attorney with a full caseload of serious felonies. In 2005, for example, the Chief Counsel was assigned to five homicides, two sexual assault, one robbery and one other felony case (see Table 1-A in Appendix B). This is a significant caseload for any attorney, and for the Chief Counsel, it is simply too high. Because the Chief Counsel is handling so many serious cases, he has less time to run the office and perform other duties such as training and supervision. We believe that the historic lack of resources, culture of practice (as discussed in Chapter 3), and the Chief Counsel's significant caseload have hampered IDO reform.



## CHAPTER 3: CASELOADS

### Case Management System and Data

In order to assess IDO caseloads, we needed to review not only IDO data, but also data from the District Attorney's Office. IDO's current case management system has several areas in need of improvement, although most will be moot when new LIDAB case management system is implemented. The current IDO data, however, is not by itself sufficiently reliable and is not adequately and uniformly tracking relevant case data. For instance, although the case management system tracks the specific charge(s) associated with each case, there is no case type grouping, such as arson, burglary, sex crime, etc., to help determine the seriousness of cases in an attorney's caseload. Also, there is no field for the disposition of a case. At best, the case activity information, which is kept inconsistently or not at all, refers to the disposition of the case in a comments field, and this precludes any statistical analysis of case results. The office transfers all cases from a departing attorney to a new attorney by changing the name of the attorney on the case, because the system is not capable of transferring cases. The system may also assign cases to attorney names, rather than the actual attorney in the courtroom. For example, a juvenile attorney who was to be transferred to criminal section 5 had received 121 open drug cases as of September 2006; however, as of the first week of October when we visited Caddo Parish, this attorney was still working in the juvenile court. This is the method the office uses to transfer cases from an outgoing to an incoming attorney, and all information as to who was handling the case at a given point in time is lost.

Another problem we encountered is that a number of entries have opening or closing dates in the future, or logical inconsistencies in the data, such as case closing dates that occur prior to the date the case was assigned. We also found 262 cases in the system in which a bench warrant had been filed and which had case open dates in the distant past but that are still counted as open; because these cases are no longer active, they are skewing the open cases report. Many jurisdictions perform an administrative closure of outstanding bench warrants after a given period of time, anywhere from one month to one year after issuance of the warrant.

In addition, each of the IDO secretaries are entering case data, and they do not appear to be doing so uniformly or consistently. For example, the arrest date in each case is not consistently entered, making it difficult to determine time to appointment and time to disposition and whether any right to counsel or speedy trial issues need to be addressed. Case opening and case closing dates are not consistent with the information recorded by the District Attorney and may reflect different events.

The District Attorney's Office records a number of elements associated with each case that are also or should be recorded in IDO's system, such as filing date, attorney appointment date, charge and case type grouping. Implementing a system that would select case data from the prosecutor's system for transfer to the IDO system would be a wise investment of resources, and would save a significant amount of data entry time. Even when the LIDAB system is in place, this routine would be able to populate the LIDAB system. This procedure would also ensure consistency between the District Attorney and IDO systems, and could serve as a model for other

jurisdictions within the state. While this may take some effort to accomplish, the benefits clearly are worth the time.

In preparation for the transfer of data to the LIDAB system, a number of improvements to the data should be made to facilitate the conversion. Specifically, there are a number of entries which have opening or closing dates in the future, or logical inconsistencies in the data, such as case closing dates that occur prior to the date the case was assigned. Also, most of the charges entered in the system have no entries in the date field, making it impossible to determine whether there are right to counsel or speedy trial issues which need to be addressed.

A number of other problems make it difficult to determine the number of cases that represent probation violations, the cases in which attorneys are relieved for conflict, the bond amount for each case, and the disposition of the case. Additional data fields should be created to track the disposition (e.g., trial, plea, dismissal) and outcome (e.g., guilty, not guilty, diversion) rather than tracking this information in the activities section of the system. Again, the LIDAB system could resolve such problems.

Currently, information regarding the contracts that defendants sign agreeing to reimburse IDO is stored in three locations: the case management system stores the original amount of the contract, data is entered in QuickBooks to generate statements, and a Word document is used to keep a tally of contract payments made. We highly recommend that adjustments be made to the case management system to enable it to perform all of these functions. Even when case information is entered in the upcoming LIDAB system, the contract data can be linked to the LIDAB system to continue to perform these functions.

IDO would greatly benefit in a number of areas if one or more support staff received training in Microsoft Office applications. The current case management system and the LIDAB system both contain data elements that would allow attorneys and support staff to benefit from automated document generation. The user would be able to open a word processing template and generate the document using data already in the case management system. Training in Excel would allow staff to generate reports and tabulate data on a regular basis, without relying on outside sources to interpret information in the case management system.

Finally, it is important to note that a critical step in assessing caseload data is determining how an organization is counting their cases. While IDO is tracking a number of relevant data categories (e.g., defendant name, case docket number, and all charges), and therefore is able to generate a number of reports regarding workload (e.g., clients, charges, or docket numbers being handled), the most meaningful report is that which counts and reports their cases according to docket number. The District Attorney's Office also counts cases according to docket number. One docket number is attributed to one defendant, but can include multiple charges arising out of the same incident. This appears to follow not only the recommended case definition issued by the National Center for State Courts,<sup>59</sup> but also the case definition that, as of 2006, is required by

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<sup>59</sup> This definition is commonly referred to as "one defendant, one incident." For example, if it is alleged that one defendant committed a burglary, then drove while under the influence of drugs, was pulled over and assaulted the police officer, the three charges arising from this incident would be counted as a single case. If another person was alleged to have been involved in the incident and is charged, this would result in a second case.

Louisiana law to be used when reporting case data to LIDAB.<sup>60</sup> It is this definition that we used in assessing and reporting IDO caseloads.

### **Caseload Standards**

The only national source that has attempted to quantify a maximum annual public defender caseload is the National Advisory Commission (NAC) on Criminal Justice Standards and Goals, which published its standards in 1973. In its report, NAC set the following maximum annual caseload standards per *full-time* public defender attorney: 150 felonies; 400 misdemeanors (excluding traffic); 200 juvenile court cases; 200 mental health cases; or 25 appeals.<sup>61</sup> (Because these standards have been cited with support by the ABA, they are sometimes referred to as the “ABA standards.”) The NAC standards refer to the maximum number of cases an attorney should handle if handling only that one case type. In other words, the caseloads are exclusive and not inclusive of each other. If, as is often the case, an attorney is handling a more than once case type (e.g., felonies and misdemeanors), the percentage of the maximum caseload for each category should be assessed and the combined total should not exceed 100 percent.

The NAC caseload standards refer only to the number of assigned cases over the course of a year and do not refer to open or pending caseloads. Because an attorney’s open caseload is constantly fluctuating over the course of a year, the number of open cases is not a good measuring point for a caseload standard. Further, we know of no caseload standard that refers to or requires a set number of open cases; rather, the standards refer to assigned cases. In general, annual caseload standards assume that an attorney begins the year handling a reasonable number of cases at which point he or she should be assigned no more than X number of new cases during the course of one year. Open or pending caseloads per attorney should be far fewer than the number of assigned cases annually.<sup>62</sup>

In addition, Louisiana Standards on Indigent Defense set forth maximum annual caseload ranges per staff, contracted or appointed counsel that “district indigent defender boards and individual attorneys should strive over time to achieve.”<sup>63</sup> Like the NAC standards, these annual standards refer to maximum caseload ranges for individual attorneys exclusively handling one case type, and although not specified in the standards themselves, it is safe to say that they also refer to assigned cases. According to the Louisiana standards, over the course of one year, an indigent defender attorney, handling one of the following case types exclusively, ideally should not be assigned more than:

#### **Louisiana Standards on Indigent Defense – Caseload Standards**

<b>Charges</b>	<b>Caseload Limit</b>
Capital	3 - 5
Automatic Life	15 - 25
Non-Capital Felonies	150 - 200

<sup>60</sup> La. RS 15:145.1(A), (C) (“a charge or set of charges contained in a charging instrument or petition against a single accused arising out of one or more events, transactions, or occurrences, which are joined, or which may be joined...”) Cases with multiple charges are to be recorded according to the highest charge.)

<sup>61</sup> National Advisory Commission on Criminal Justice Standards and Goals, *Report of the Task Force on Courts* at 186 (Washington, D.C. 1973), Standard 13.12 on courts.

<sup>62</sup> For IDO open cases per attorney, see Table 3 in [Appendix B](#).

<sup>63</sup> Louisiana Standards on Indigent Defense, Part II, Standard 12-2.1.

Misdemeanors	400 - 450
Traffic	400 - 450
Juvenile	200 - 250
Mental Health	200 - 250
Other Trial Cases	200 - 250
Capital Appeals	3 - 5
Non-Capital Felony Appeals	40 - 50

The U.S. Department of Health and Human Services (DHHS) recommends that states should also set caseload standards for child welfare (CINC) cases, as “[n]o standards or training or professional devotion to duty will produce optimal results if caseloads are too high.” Commentary to DHHS guidelines states, “Depending on the level of support, the complexity of the case, and whether or not a lawyer’s full-time interest is in child welfare cases, the caseload cap for a staff lawyer should be set at *100 children*” (emphasis added).<sup>64</sup> Again, to our knowledge, this standard refers to annual, assigned cases and is not an open caseload.

While the NAC standards – now over 30 years old – and Louisiana indigent defense standards can be helpful guideposts when assessing actual caseloads, they are seriously limited in two ways. First, the standards can only serve as rough “guesstimates” as they are not tied to any empirical data and do not take into consideration the practices of a particular jurisdiction which can significantly affect an attorney’s workload and the number of cases s/he is able to handle. For instance, the following practice variables can affect the amount of time and effort required of an indigent defense attorney: the charging and plea offer practices of the prosecutor; habitual offender and other mandatory sentencing laws; how far and how often an attorney is required to travel; how many clients are in custody; the efficiency of the court’s docket – that is, whether the attorney spends significant time waiting in court; and the level of client contact required and conducted; and rules of court procedure (e.g., time limits for filing motions). The NAC itself recognized such limitations to national standards.<sup>65</sup> Second, the standards are of limited use for attorneys who provide representation in more than one case type.

Recognizing these limitations, a number of states and counties have developed public defender caseload standards that are specifically tailored to their jurisdiction’s practice. The Spangenberg Group has conducted studies to develop weighted caseload standards for public defender and contract attorney programs in five states and four counties.<sup>66</sup> A table with caseload

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<sup>64</sup> Jennifer L. Renne, *Legal Ethics in Child Welfare Cases*, ABA Center on Children and the Law (2004), citing U.S. Department of Health and Human Services, Administration for Children and Families, *Standards for Legal Representation of Children, Parents and the Child Welfare Agency*, Commentary to Guideline #3.

<sup>65</sup> Commentary to NAC Standard 13.12 acknowledges difficulties in developing the standards, such as the differences among local jurisdictions, even in the same type of case – “[f]or example, juvenile, mental health, and traffic cases embrace a right of jury trial in some States and not in others” - and the geographic area covered by an office which would affect travel time. The Commission accepted the standards “with the caveat that particular local conditions - such as travel time – may mean that lower limits are essential to adequate provision of defense services in any specific jurisdiction.”

<sup>66</sup> The case-weighting model employed by TSG requires public defenders or contract attorneys to keep detailed time records of their work over a given period of time, typically ranging from ten to thirteen weeks, on specially designed time sheets. The time records provide a means by which caseload (the number of cases handled) can be translated into workload (the amount of effort, measured in units of time, for the lawyer to complete work on the caseload). The ability to weight cases allows thorough consideration of not just the raw number of cases assigned to a criminal justice agency annually, but also the

standards from 14 states and one city can be found at [Appendix C](#). The standards address the maximum number of cases that a full-time lawyer should be appointed to in a 12-month period. In addition, with regard to child welfare or CINC cases, we know of at least two states that have caseload standards for attorneys providing representation in child welfare cases. In California, the maximum caseload per full-time attorney is 141 clients (although they are still working to comply with this standard). In Washington, the Washington Defender Association developed an annual maximum caseload per attorney of 60 clients. Again, the standards refer to the number of appointments, not open cases.

Workload standards, when properly applied, are best used to measure the performance of an office or of a group of attorneys and not any individual attorney, and to justify staffing and budget needs. Even if sufficient information existed to assess the current workload of different types of attorneys within the office (e.g., capital, felony, misdemeanor, juvenile), the wide variance of work required to dispose of different types of cases as well as the different amount of work required to dispose of different cases of the same type make it problematic to assess an individual attorney's performance by numbers alone, especially in the more serious case types.

IDO's Chief Counsel has also recognized the limitation of existing caseload standards. In 2005, he correctly states in a memo to IDB that there are "no caseload limits for our tiered allocation scheme, and none exist elsewhere." The Chief Counsel proposed the following aspirational guidelines for his office in terms of open or pending cases per attorney, by attorney type:

- Capital attorneys: 15-20 cases (including 1-3 cases with notice to seek death)
- Senior attorneys: 30-50 cases (including 10-15 cases facing automatic life)
- Section attorneys: 180-230 moderate to light felonies

While we believe the Chief Counsel should be commended for attempting to create these guidelines for IDO, we feel that, as pending cases, the suggested caseload guidelines for IDO attorneys are too high.

### **Caseload/Workload Assessment**

At the outset of this study, the Indigent Defender Board expressed a desire for the creation of acceptable caseload ranges for IDO. Below we provide a caseload range for the staff attorneys with the caveats that such caseload ranges are not empirically based, represent averages only, and are dependent upon the quality of existing data that is produced under certain systemic conditions that we find need to be improved (as discussed). The caseload ranges provided are based on: existing data, our assessment of Caddo Parish workload factors, comparison with results from empirical case-weighting studies in other jurisdictions, and our professional experience and judgment. However, as discussed below, we are unable to provide caseload

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severity of various case types handled by the program. In the broadest context, weights can be given to the total annual caseload of a defender organization to compare to the next year's anticipated volume of cases. Assuming that accurate records are kept of attorney time expended in each case during the study period, the development of workload standards and the determination of staffing needs for the projected caseload can be accomplished with some assurance of precision. (Such a study was not performed in this case due to the unknown factor of IDO data and a concern for the current level of representation that IDO is able to provide.)

ranges for the other IDO attorneys because we do not have sufficient data for those attorneys from which to develop a range such as the one developed for staff attorneys.

### The Data

In considering IDO caseloads, we first analyzed the Caddo Parish data for IDO. In addition to the issues discussed above under “Case Management System and Data,” the data system is limited in that it does not provide accurate and complete data on the type of work being performed on each case type or on the amount of time attorneys are spending on their cases. Having said this, we have attached to this report in Appendix B, the following tables displaying IDO data, by individual attorneys: 2005 appointments; 2005 dispositions; 2006 appointments, through September 1 and annualized; 2006 dispositions, through September 1 and annualized; pending caseload as of October 1, 2006; and juvenile appointments from October 2005 through September 2006.<sup>67</sup> In order to perform these analyses, we combined appointment and case closing date information from the IDO with case type and case disposition information from the District Attorney’s Office, using the docket number common to both systems. This way, we were able to perform a more complete analysis than by using either of these data sets alone. As explained below, we used these data to assess practice factors and to develop caseload ranges.

### Practice Factors

One cannot assess the workload of the attorneys from the data alone. One must consider the practice factors in the jurisdiction in which the attorneys practice that affect workload, or the amount of time and effort required to handle their caseload.

In Caddo Parish, a number of practice factors such as those discussed throughout this report, and further discussed below, result in high caseloads, especially for staff attorneys and even more so for juvenile attorneys. The table displaying juvenile appointments was the most startling to us. The number of appointments for the individual juvenile attorneys are among the highest we have seen: 498, including 136 felony cases and 277 misdemeanor cases; 645, including 119 felony cases and 495 misdemeanor cases; and 234, including 219 CINC cases.<sup>68</sup> These numbers are more troublesome in light of the fact that two of the attorneys are “part-time” and the full-time attorney has a private practice. Although we were told that the delinquency data include those cases that are assigned and disposed of the same day at the appearance to answer docket, we were unable to determine how many of these appointments constitute those same-day plea cases, since the juvenile data does not include dates of disposition. However, we would be concerned if a high volume of delinquency cases, especially those involving felony and serious misdemeanor charges, were being disposed of without the necessary client contact and investigation taking place; but we were simply unable to assess this from the existing data. The CINC caseload is also very high for one attorney to handle, even if that attorney were designated

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<sup>67</sup> We used these dates because of the timing of our visit and because of the availability of information from the District Attorney’s Office which we used to supplement the IDO data.

<sup>68</sup> According to the data, CINC case numbers reflect the number of child *clients* as opposed to docket numbers; for example, one CINC filing may involve multiple children or siblings needing representation.

full-time, which the CINC attorney is not. While the CINC attorney is retired from private practice and is therefore able to work full-time, he is compensated on a part-time basis.

In assessing IDO workload, we were faced with considering a number of factors surrounding the accepted norm of practice in Caddo Parish and at IDO that, as previously described, affect the number of cases the attorneys are able to handle. We considered factors such as the local trial rate, the level of client contact, the operations of the court, and motion and plea practices. In reviewing Caddo Parish data from IDO and the DA, we determined that in 2005, out of 2,928 case dispositions, 37 resulted in a trial (jury or bench), which creates a low trial rate of 1.3%. If narcotics or drug cases are excluded – as these cases reportedly often result in very favorable pleas – the 2005 trial rate is 1.6%. In 2006, out of 1,914 dispositions through October 1, 2006, 19, or 1.5%, resulted in a trial. If drug cases are excluded, the trial rate increases to 2.0%. (See Tables 6-A and 6-B in Appendix B). The Supreme Court of Louisiana reported 64 criminal jury trials in Caddo Parish in 2005, out of a total of 7,716 criminal filings,<sup>69</sup> which results in an extremely low trial rate of 0.8%. In our experience across the country, we have found that most jurisdictions have a trial rate of 3% - 5%. In addition, in the 75 largest counties in the country in 2002, 4% of felony defendants' cases went to trial.<sup>70</sup>

During our site work, we learned that it is not uncommon for a felony case to be disposed of by a plea early in a case, such as at the preliminary examination hearing, even prior to IDO receiving any discovery material. The data displayed in Table 5-D in Appendix B seems to support this statement, as it shows that in 2006 (through September), 16% of felony cases were disposed of within 30 days, and another 28% of the felony cases were disposed of within 60 days, for a total of 44% of the cases disposed of within 60 days. Again, if drug cases are excluded, then this total percentage drops to 39%. However, because attorneys are under a duty to recommend a plea to a client “unless appropriate investigation and study of the case has been completed,”<sup>71</sup> attorneys relay the offer to the client but are unable to provide advice to them regarding the plea.<sup>72</sup> We are unable to say from the available data whether such pleas occur because they result in favorable dispositions for the client. However, if a defendant remains in custody at the preliminary examination, which is 30-60 days after the jail clearance docket, and a guilty plea would result in release, there is a good chance that that defendant will plead, even without his/her attorney having fully examined the case.

As discussed above, the level of client contact at IDO appears to be somewhat lacking. That is, attorneys – especially staff attorneys who have the highest caseloads – are having a

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<sup>69</sup> *Annual Report 2005 of the Judicial Council of the Supreme Court of Louisiana*, Statistical Data (p. 36). Note that this data is not limited to indigent criminal cases.

<sup>70</sup> U.S. Department of Justice, Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties, 2002*, Table 23 (including 3% convicted at trial and 1% acquitted).

<sup>71</sup> Caddo Parish Public Defender Office Attorney Desk Reference, Performance Standard 5.1(B), also found in Louisiana Standards on Indigent Defense, Chapter 6.

<sup>72</sup> In a 2005 memo from the Chief Counsel, all staff attorneys were reminded of their “duty to ensure that [a client’s plea decision] is a well informed one.” This memo stated that all IDO attorneys are required to ensure that the client understands the advantages and disadvantages of taking a case to trial, including possible verdicts, availability of defenses and probability of success. Attorneys are also required to ensure that the client understands the statutory penalty for the crimes charged and “any other ancillary costs, obligations and ramifications which may apply to him or her... ”

difficult time following the 10-day rule for visiting in-custody clients, and out-of-custody clients are not met outside the court unless the client initiates the meeting. Similarly, bail motions are reportedly rarely filed and argued prior to the preliminary examination date, which is over one month after the jail clearance docket.<sup>73</sup> These problems are not surprising given the caseloads of the attorneys. Another explanation given for the lack of bail arguments now being made is the installation of the video-conferencing system in which defendants remain at the jail and attend the jail clearance docket via video, while the ID attorney remains in the courtroom. Since this system began several years ago, the ID attorney has been unable to communicate with defendants at jail clearance. We were told that prior to the video system, however, ID attorneys would be able to get bail facts from defendants at the jail clearance docket and argue bail once IDO is appointed; in addition, the same day as the jail clearance docket, ID attorneys would be able to conduct initial interviews with the new in-custody clients at the courthouse. We recommend that IDO consider placing the ID attorneys at the jail with the defendants for the jail clearance docket and that IDO take the steps necessary to be heard on bond reduction motions prior to preliminary examinations.<sup>74</sup>

A number of systemic norms in Caddo Parish may serve to delay the provision of attorney services. Especially for in-custody defendants, the combination of the following factors appear to provide systemic incentive for defendants to plead without regard to the merits of a case if it would result in release from jail: the preliminary examination is not scheduled for 30-60 days after the jail clearance docket; IDO attorneys do not always receive discovery prior to the preliminary examination date; and, as mentioned above, IDO attorneys rarely file bail reduction motions prior to the PE hearing. We do not fault this problem on individual attorneys, but rather on the established system that operates in a manner that allows it to handle such a high volume of criminal cases. However, with additional IDO resources, IDO should work with the courts and prosecutors to challenge the current system to ensure that attorneys are able to receive and review discovery, have meaningful attorney-client meetings, and have bail motions heard prior to entering pleas.

IDO staff attorneys spend a considerable number of days in court which decreases the amount of time attorneys have available to perform work outside of court. Most staff attorneys are in court four full mornings a week, plus a couple of afternoons a week. Further, as reported by a few ID attorneys and as observed in court, many ID attorneys spend a considerable amount of their time in court waiting to handle their cases.

Similarly, all three juvenile attorneys are required to spend significant time in court. The juvenile delinquency attorneys - one of whom is part-time and one who is designated full-time

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<sup>73</sup> Caddo Parish Public Defender Attorney Desk Reference, Performance Standard 2.4, requires “prompt action to protect the accused,” including consideration of motions for pretrial release. This standard is also found in Louisiana Standards on Indigent Defense, Chapter 6. But see footnote 73 for IDO’s updated procedure.

<sup>74</sup> Prior to finalizing this report, we were informed that while IDO proposed placing its attorneys at the jail during jail clearance, the judges did not want the jail clearance dockets to be slowed down by this. IDO then instituted a new procedure to help ensure that clients are met within 72 hours of appointment. The two staff attorneys assigned to the jail clearance docket for the week are now required to meet with all newly-appointed IDO clients on Mondays and Wednesdays for initial interviews that involve a discussion of their basic rights and facts related to pre-trial release. Attorneys from the drug section are required to do the same on Fridays. These interviews result in a written form that is given to a secretary for preparation of a bond reduction motion where appropriate.



but who also has a private practice – spend five days in court one week, and three days in court the next week; some of these days are full in-court days. The “part-time” CINC attorney is in court five full days a week. As earlier mentioned, the practice factors in juvenile court are similar to those in district court, including lack of client contact, representation for pleas at appearance to answer dockets, and lack of investigation.

### Estimating Caseload Ranges and Staffing Needs

#### 1. *Staff Attorneys*

In assessing staff attorney caseloads, we began with Table 1-A of Appendix B which provides an entire year of data on the number of appointments for each IDO attorney. Although 11 staff attorneys received felony appointments in 2005, because we are working with averages, we remove four attorneys that are clearly the outliers, two of whom did not clearly handle a full-time caseload for the entire year (Brown at 43, and Kelly at 65) and two of whom worked in the drug section and handled far more cases than other attorneys (Barkemeyer at 426, and Lockard at 398). The total number of cases handled by the remaining seven staff attorneys for the year was 2,252, for an average of 322 felony appointments per staff attorney.

In order to determine the average number of hours being spent by the staff attorneys, we needed to determine the attorneys’ “billable hours,” or the average number of hours available to them to perform work on cases during the course of a work year in Caddo Parish, factoring in holidays and vacation time. In our case-weighting studies, we use this billable hour figure with the number of attorney hours spent per disposition (determined from the empirical data) to determine workload.

$\frac{\text{Total Available Attorney Hours Per Year}}{\text{Attorney Hours Per Dispositions}} = \text{Workload}$
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In this case, without the empirical data, we begin with the average workload of 322, and divide that into the annual billable hours, to determine the average number of hours spent by the staff attorneys. For Caddo Parish, we have chosen a billable hour figure of 1,800 hours, which is slightly higher than the figure we have calculated in our case-weighting studies. If staff attorneys have 1,800 hours available to them in a year, and they are handling on average 322 felony cases, then they are spending on average 5.6 hours per case.

Next, we consider the practice factors discussed above. In order to address the systemic deficiencies and to increase the level of representation being provided in areas such as client contact, motion practice and trial practice, the attorneys need additional time. Given our experience and our knowledge of the Caddo Parish practices, we estimate that the staff attorneys should spend *on average* 3-4 additional hours per case on tasks such as client contact, motion practice and trial practice. This would result in between 8.6 and 9.6 hours per case, or rounding these figures off, an average total of 9-10 hours per case. Dividing these per-case hours into 1,800 annual billable hours, the annual caseload range for the **staff attorneys** becomes: **180 – 200 cases**.

For staff attorney felony cases, which are generally all felonies except armed robbery, rape, kidnapping and non-capital murder (handled by the senior attorneys), we were able to compare the recommended number of hours per case with the average number of hours spent by public defenders in other jurisdictions for similar case types. In doing so, we found that the recommended 9-10 hours that results from the recommended caseload range falls within a range similar to other jurisdictions. From our prior case-weighting studies, empirical data showed the following average number of hours per felony case, excluding capital, homicide and the most serious felony case types: 15 hours in King County (Seattle), Washington; 11.5 hours in Pima County (Tucson), Arizona; 11 hours in Tennessee; and 8.5 hours in Maricopa County (Phoenix), Arizona. Of course, as with the use of national standards, comparison to these other jurisdictions is necessarily limited due to large variations in the penalties and practices of each jurisdiction. Despite this caveat, the time-based empirical studies that we have performed over the years have resulted in a generally small range of hours per case among the different jurisdictions. It is further relevant to note that the recommended caseload range for staff attorneys happens to fall within the LIDAB caseload standard range of 150-200.

Next, we apply the staff attorney caseload range of 180-200 felony appointments per year to the 2005 data of 2,252 appointments. Dividing the number of appointments by 180 cases per attorney, the resulting staffing need to handle such appointments is approximately 12 staff attorney positions. Dividing the number of appointments by 200 cases per attorney, the resulting staffing need is 11 staff attorney positions. Thus, where only seven staff attorneys handled 2,252 appointments in 2005, **IDO is in need of 4-5 additional staff attorneys** in order for attorneys to handle the recommended caseload range.

## 2. *Senior Attorneys*

In looking at senior attorney caseloads, we were limited to IDO data for only four senior attorneys. This did not provide a sufficient amount of data to create a reliable average caseload and average hours per case for the senior attorneys. We were therefore unable to follow the same methodology as we did for the staff attorneys, and we were unable to create similar caseload ranges for the senior IDO attorneys.

We are also unable to provide specific case-weighting results from other jurisdictions for any comparison purposes, for two reasons. First, the serious case types such as those handled by the senior attorneys often do not result in enough dispositions during the case-weighting study to produce statistically sound average hours per disposition. Second, the case-weighting studies have not resulted in average hours per disposition for specific case types that we can say are equitable to the case types handled by the Caddo Parish senior attorneys.

What we *can* say is that, based on over 25 years of experience in assessing public defender programs and our knowledge of Caddo Parish practices and IDO, it is our professional opinion that IDO is in much greater need of staff attorneys than senior attorneys. However, given the practice factors and the serious need for greater mentoring and supervision, we recommend the addition of one senior attorney floater position.

### 3. *Juvenile Attorneys*

Due to the limited data set of only two delinquency attorneys and one CINC attorney, as with the senior attorneys, we were unable to estimate delinquency and CINC caseload ranges based on sufficient and reliable data.

As indicated earlier in this report, at the time of our site work we found some major systemic deficiencies in juvenile court were in need of attention, including a serious lack of client contact, lack of investigation and lack of legal research and motion practice. In our professional opinion, based on our experience and the limited data set - revealing annual delinquency caseloads (felony and misdemeanor) of 413 for a full-time position, 614 for a part-time position and a CINC caseload of 219 for a part-time position - juvenile caseloads are extremely high.

While we are unable to follow the methodology used above with regard to staff attorney caseloads, we are able to provide the average number of hours per juvenile delinquency case that resulted from our prior case-weighting studies in other jurisdictions. Many of our case-weighting studies have resulted in an average time-per-disposition for all delinquency cases combined, from minor misdemeanors to serious felonies; and unlike the cases handled by IDO senior attorneys, those handled by delinquency attorneys are more apparently equitable to delinquency cases in other jurisdictions. Therefore, for informational purposes, we provide the following average hours per disposition resulting from our empirical workload studies, for all juvenile delinquency cases combined (e.g., felony, misdemeanor and other): 8.75 hours in King County, Washington; 8 hours in Maricopa County, Arizona; 7 hours in Pima County, Arizona; 7 hours in Colorado; and 6 hours in Tennessee. We are unable to provide any such equitable hours-per-disposition based on our quantitative studies for CINC cases.

As earlier mentioned, we understand that IDO is to be receiving 2.5 additional FTE positions to handle delinquency cases for a total of four full-time delinquency attorneys, an addition 0.5 FTE to handle CINC cases for a total of one full-time CINC attorney (assuming 0.5 full-time equivalent positions for the part-time positions), and one senior supervising juvenile attorney. We are extremely encouraged by this additional staffing, although we recommend that another full-time CINC attorney position be added, for a total of two full-time CINC attorneys.

### 4. *Capital Attorneys*

We are unable to produce a caseload range for the capital attorneys based on existing data, and we are unaware of any quantitatively-based caseload standards for capital cases. When we conduct empirical case-weighting studies, the lack of data prevents us from producing quantitative caseload standards. The small number of capital cases and case dispositions does not produce a sufficient amount of data to produce statistically sound caseload standards. However, other public defender programs have set guidelines of in the range of 2-5 capital cases per attorney per year. Colorado, Florida and Tennessee have developed annual quantitative maximum caseload standards (based on appointments) for their public defenders handling capital cases. In Colorado, the standard is 2-3 capital cases per attorney. In Florida, the standard is three capital felonies per attorney; capital felonies include first degree murder and capital sexual

battery cases. In Tennessee, the standard is a maximum of 5 capital cases per attorney. Other jurisdictions with capital caseload standards are Oregon and Maricopa County, Arizona. In Oregon, a public defender should handle no more than 2-3 capital cases at any one time. In Maricopa County, Arizona, each capital case must be handled by two attorneys, and each attorney should handle no more than 3-5 capital cases at any one time.

## Case Overload

In our professional judgment, the problematic practices that we found exist as a result of systemic procedures and IDO's burden of handling too many cases rather than a lack of effort on the part of the attorneys. We believe that most ID attorneys are dedicated to their work and are performing as best they can, given their caseloads and limited resources, including a lack of training and experience for many attorneys.

IDO does not have any procedure in place for handling overload. That is, if the office is assigned too many cases, there is no procedure for shutting off the courts or declining additional cases. Instead, cases may be shifted within the office; staff attorney cases may shift to senior attorneys and senior attorney cases may shift to capital attorneys. Given the caseload and funding history of IDO, it is clear that IDO has grown accustomed to handling high caseloads, and we believe that it has adapted to doing so with practices such as those described above. Prior to the addition of new attorney positions a few years ago, attorneys' caseloads were significantly higher than they are now. One attorney candidly said that when they have too many cases, they simply have to "fly by the seat of [their] pants;" clients are not visited and research is not adequately performed. Regrettably, this manner of coping with case overload is not uncommon among public defenders across the country who constantly struggle with under-funding and high caseloads.

However, existing standards suggest the need for more. In Louisiana, Standards on Indigent Defense and the Caddo Parish Public Defender Attorney Desk Reference which follows these standards, state: "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..."<sup>75</sup> The 2006 Louisiana Performance Standards also state that defense counsel has a duty to not accept, or to withdraw from, a case and to inform the Public Defender and the courts when workload prevents counsel from meeting performance standards.<sup>76</sup> Louisiana law also supports case overload procedures for Louisiana public defenders: "The chief defender may in the event of conflicts of interest, *inadequate personnel* or for any other reason approved by the board request that the court appoint counsel to represent indigent defendants..." (emphasis added).<sup>77</sup>

In addition, the ABA has numerous standards that require the problem of case overload to be addressed. Principle 5 of the Ten Principles, for instance, requires a defender's workload to be "controlled to permit the rendering of quality representation." More recently, the ABA issued

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<sup>75</sup> Louisiana Standards on Indigent Defense, Standard 1.2(E).

<sup>76</sup> Louisiana Performance Standards, Standards 1.C (A), (E).

<sup>77</sup> La. RS 15: §145(B)(2)(b).

a formal ethics opinion that addresses the ethical responsibilities of indigent defense lawyers and supervisors “when the lawyers’ workloads prevent them from providing competent and diligent representation to all their clients.”<sup>78</sup> Like the Louisiana standards, these actions include monitoring caseloads and moving to withdraw when necessary.

The practice factors discussed throughout this report and in this section result in systemic deficiencies that, coupled with our knowledge of caseloads in other jurisdictions and our experience, lead us to the conclusion that more time should be spent on cases. This may be difficult to achieve given the burden of factors that are beyond the control of either the Caddo Parish Indigent Defender Board or IDO – namely, indigent defense caseloads and the lack of guaranteed and predictable indigent defense funding. While we do not suggest that IDO attorneys are failing to provide effective assistance of counsel under the law,<sup>79</sup> we believe that more can and should be done to attempt to meet the ABA and Louisiana performance standards cited throughout this report.

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<sup>78</sup> ABA Standing Committee on Ethics and Professional Responsibility, *Formal Opinion 06-441, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation* (May 13, 2006).

<sup>79</sup> See *Strickland v. Washington*, 466 U.S. 668 (1984).

## CHAPTER 4: OTHER ISSUES

### Indigent Defender Board

The Caddo Parish Indigent Defender Board (IDB) is the oversight entity of the Caddo Parish Indigent Defender Office and of the Indigent Defender Fund. The seven members are appointed by the judges of the First Judicial District (Caddo Parish) following recommendations from several local bar associations<sup>80</sup> to one-year terms.<sup>81</sup> Four of the current board members have been on the board for three years, two for one year, and one for many years. With the exception of one member, all are lawyers, although they do not concentrate in the area of criminal law.

Previously, IDB members were appointed to three-year staggered terms. However, several years ago, a serious conflict arose between IDB and the judges. IDB members had voted to eliminate the conflicts panel and no longer compensate attorneys for handling the cases in which IDO had a conflict. As a result, the court had to appoint non-volunteer private attorneys who were required to provide *pro bono* representation in conflict cases. The court disagreed with the action of IDB and had been put in a difficult position with making mandatory, uncompensated appointments. In response to the situation, the judges – who by state statute can establish the rules regarding the appointment of board members<sup>82</sup> - chose to exert greater control over IDB membership by changing the terms of appointment to one year. In further effort to avoid future conflicts, the court also chose to appoint more IDB members who do not focus their practice in criminal law.

IDB members are volunteer members who meet approximately once a month. IDB has no staff, and IDO's Chief Counsel and Office Manager handle the day-to-day administration of the system and of the Indigent Defender Fund.

In meeting with IDB, we found that the members are sincerely concerned about the Caddo Parish indigent defense system and want to help improve the system, while remaining very cognizant of IDF spending. The Board is an active body that meets regularly and requests and reviews regular reports from the Chief Counsel. We understand that the Board is concerned about the caseloads of IDO and of individual attorneys, and that they periodically review and question the Chief Counsel on IDO caseload reports. However, the extent of IDB's oversight is necessarily limited by the inability to independently assess many of the needs of IDO.

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<sup>80</sup> These include the Shreveport and Black Lawyers Bar Associations; we were also told that the Caddo Parish and Republican Bar Associations are included in this list.

<sup>81</sup> In 2004, a former IDB member filed a lawsuit in response to the failure of the Caddo Parish District Court judges to appoint three board members who were nominated by the Shreveport Bar Association. *Henry Walker v. State of Louisiana*, First Judicial District Court, Caddo Parish, Louisiana, No. 481,701-B (filed Jan. 2, 2004). Although Louisiana statute (R.S. 15:14) requires the court to appoint IDB members who have been nominated by the local bar association, the judges appointed three members who had not been so nominated. The suit is reportedly still pending.

<sup>82</sup> See La. R.S. 14:144(D).

We commend the Board for being active in its oversight role, for being careful with the Indigent Defender Fund, and for truly wishing to improve indigent defense representation in Caddo Parish. Further, they clearly recognized the need for an independent assessment of IDO in seeking us to conduct this study on their behalf. It is our hope that after this study is complete, the Board will better understand the needs of IDO in assessing the allocation of additional resources.

## **Indigent Defender Fund**

IDO is funded entirely by the Indigent Defender Fund (IDF). IDF is maintained by the parish and consists of 17 separate revenue sources (plus one miscellaneous account).<sup>83</sup> Although IDB does not control IDF revenues, it has the ultimate authority over IDF expenditures which must be approved by the Board.

Each year, IDO's Chief Counsel and Office Manager prepare an initial budget for the Board to review.<sup>84</sup> IDB approves the final budget that is then submitted to the Caddo Parish Commission's Director of Finance. The parish receives the IDF revenues from the various revenue sources (see below), and the Director of Finance enters them into one of the 18 individual line items into the parish's accounting system from which IDO receives the IDF disbursements.

With IDF monies kept by the parish in individual revenue accounts, IDO has only petty cash available to it. IDO's Office Manager and the Director of Finance communicate on a weekly basis regarding the fund, which has 30 separate line items for expenditures. Because IDO sends weekly vouchers for payment of expenses to the Director of Finance who determines to which line item the payment should be debited. Personnel salaries are also paid on a monthly basis out of IDF by the parish. Although the annual budget is submitted to the Caddo Parish Commission, only IDB has actual authority over the budget.

IDF revenues, as well as expenditures, fluctuate monthly and are reported each month by line item. As earlier mentioned, IDF is primarily funded by the \$35 fee that must be paid by all persons convicted of any state or local violation.<sup>85</sup> In addition, a partial reimbursement or attorney fee is frequently ordered by the court to be paid by IDO clients at the close of their case.<sup>86</sup> In felony cases, this fee can be up to \$500; in misdemeanor cases, the fee can be up to \$300. These fees are collected at the Caddo Parish District Court, Juvenile Court, City Court, and the Vivian Court, and each court constitutes its own revenue source. Of the 18 revenue sources, the largest by far is City Court, with annual revenue in 2005 of \$945,901. The District Court has been the third largest source of revenue, with 2005 annual revenue of \$227,226. Another source of revenue is the \$40 application fee for out-of-custody defendants applying for

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<sup>83</sup> Louisiana's parishes are no longer required by law to contribute to funding their indigent defense programs, and Caddo Parish no longer contributes parish funds in support of the Indigent Defender Office.

<sup>84</sup> Note that a 2005 CPA audit of the Indigent Defender Office found "no material weaknesses or reportable conditions."

<sup>85</sup> La. R.S. 15:146. (In 2005 legislative session, Senate Bill No. 323 changed the per-case fee to be paid to district indigent defender boards from between \$17.50 and \$35.00 to a \$35.00 set fee.)

<sup>86</sup> La. R.S. 15:148.

IDO representation.<sup>87</sup> In 2005, \$53,128 was collected in application fees. In addition, defendants on probation pay a \$20 monthly fee that goes to the IDF.<sup>88</sup> In 2005, probation fees provided \$104,403 in annual revenue.

The second largest source of revenue for the IDF is the annual contribution from the Louisiana Indigent Defender Assistance Board (LIDAB), with 2005 annual revenue of \$330,147. In 2005, the state, through LIDAB distributions, provided approximately \$10 million to the parishes for indigent defense, as compared to nearly \$25 million spent by the parishes. These state funds are distributed by LIDAB according to the parish's felony caseload, felony trials, and amount of local funds available for indigent defense - that is, the more funds a parish has available to it, the less the parish will receive from LIDAB.

In 2005, the annual indigent defense expenditures were the highest in recent history at nearly two million dollars. However, IDF has also had significant excess monies since 2003, and by far has had the greatest excess in 2006. Each month, the total revenues are matched with the total expenditures resulting in either an excess or deficiency of revenues over expenditures. An investment account and a cash balance account are maintained as part of IDF and are reported on a monthly basis. The latest IDF report we received shows that as of the end of September 2006, IDF had an excess of revenues over expenditures of \$153,069. The month-end cash balance was \$183,009 and month-end investments were \$658,542, making a total surplus of \$811,611. This is a significantly high surplus and one that we feel should be used towards salaries, staffing and other IDO improvements.

### **Contract Attorneys**

While not a focus of this study, we generally reviewed the Caddo Parish contract attorney panels during our site work through discussions with the Chief Counsel and several contract attorneys. Currently, IDO's Chief Counsel oversees three panels of five attorneys each: a misdemeanor panel in Shreveport City Court; a misdemeanor panel in District Court; and a non-capital felony panel in District Court.

The Chief Counsel decides who receives a contract after interviewing the attorneys. The contract attorneys with whom we spoke all had criminal law experience prior to receiving a contract. The attorneys' contract work is part-time, although one attorney has both a misdemeanor and a felony contract in the drug section, and he estimated his contract work to be 80 percent of his practice.

All IDO contracts require attorneys to provide representation to an unlimited number of defendants for a flat annual fee, paid in equal monthly installments. Felony contracts provide for \$30,000 in annual compensation, and misdemeanor contracts provide for \$6,000 in annual compensation. The Chief Counsel reported to have experienced trouble finding attorneys to agree to the misdemeanor contract at a previous rate of \$4,000, and although he sought an increase to \$8,000, the Board approved an increase to \$6,000. In addition to the annual compensation, an informal policy exists in Caddo Parish in which IDO contractors are to be

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<sup>87</sup> La. R.S. 15:147(A)(1)(f).

<sup>88</sup> This probation fee is reportedly a way to help collect the partial reimbursement fee.



assigned curator cases by the judges for which they receive \$150 per case.<sup>89</sup> However, we received mixed reviews as to the implementation of this policy by the court; we were told that some attorneys who do not have an IDO contract receive some of the curator cases, and some contract attorneys feel that they should receive more of them.

We were told that, over time, attorneys on the felony contract have a difficult time justifying the time commitment as it relates to the compensation. For instance, when a felony case is going to trial, the attorney must sacrifice a significant amount of time away from his or her private practice to prepare and conduct the trial for which no additional compensation is received. In addition, the more serious cases the contract attorney receives, the greater the likelihood that more cases will go to trial. One attorney reported that attorneys generally remain on the felony contract for no more than five years because of the low compensation which does not account for the workload. At the same time, although this attorney enjoys ID work, he did not seek to become a staff attorney because of the low IDO salaries.

Attorneys on the misdemeanor contracts handle very large caseloads, and we are concerned over the number of cases that plead at arraignment. However, in addition to the lower penalty, most misdemeanor cases are resolved at arraignment. In fact, most work performed by the misdemeanor contract attorneys appears to occur in the courtroom. One attorney was unable to estimate misdemeanor caseload since the cases are normally resolved so quickly, but estimated to handle between 50 and 60 misdemeanor cases at arraignment sessions, which occur twice a month. Using the estimate of 55 cases twice a month, this attorney handles approximately 1,320 misdemeanor cases in a year. Last year, three of this attorney's cases went to trial, which is a trial rate of 0.2%. Similarly, another misdemeanor attorney reported to handle approximately 60 cases at each arraignment session – which takes place once or twice a month - of which approximately 50 plead that day. The rest are set for trial, but may be dismissed or later plead.

We should note that, although the contracts require the attorneys to keep caseload records and to submit such records to the Board, contract data does not exist appear to exist in any data base, or at least those that we were shown and reviewed. For this reason, we are unable to assess any actual data concerning the caseloads of the contractors.

The concern that we have regarding attorney-client contact with ID staff also exists for the contract attorneys. A felony attorney tries to see in-custody clients within two weeks, but does not try to meet with out-of-custody clients. In addition, the misdemeanor attorneys handle and dispose of so many cases in one court session, that there can be little to no time for meaningful attorney-client contact. Most sentences are in a range predetermined by the court, and one attorney reported to give these ranges to clients who decide to plead - as most do that day; if the client does not appear to have a good reason for not pleading, the attorney tells them why they should plead. We also observed one defendant tell the court that he did not have an attorney, although his contract attorney was standing next to him. This attorney reported that there is usually no need to visit the jail or meet with clients outside of court and that no investigations are performed in misdemeanor cases.

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<sup>89</sup> A curator case arises when a party in a civil case cannot be located, and the court must assign an attorney to send the party a certified letter in an attempt to locate the party.

Finally, the Caddo Parish contracts with panel attorneys provisions recommended by the Louisiana Standards on Indigent Defense regarding: “allowable workloads for individual attorneys, and measures to address excessive workloads...;” “minimum levels of experience and specific qualification standards...;” and “supervision, evaluation, training and professional development”<sup>90</sup>.

## **Indigency Determinations**

Louisiana statute sets forth a number of guidelines for proceedings to determine indigency.<sup>91</sup> The court must make a preliminary inquiry and determination of indigency prior to or at the arraignment stage and must follow a the general uniform definition of “indigent” and other guidelines for the screening process. By statute, a person is indigent if he or she “is unable, without substantial financial hardship to himself or to his dependents, to obtain competent, qualified legal representation on his own. ‘Substantial financial hardship’ is presumptively determined to include all defendants who receive public assistance” or who are “currently serving a sentence” or “housed in a mental health facility.”<sup>92</sup> Defendants who do not meet this presumptive threshold are to be “subjected to a more rigorous screening process” to determine whether a substantial hardship exists for them.<sup>93</sup> If a defendant is found to presumptively qualify by the court, the defendant must then apply to the indigent defender office or to the appointed attorney; at this time, additional inquiry is to be made into the defendant’s financial status.<sup>94</sup>

In Caddo Parish, the court makes an initial determination of indigency at the defendant’s first appearance. If the defendant is in custody, the inquiry by the court to make this initial determination is quite brief. Although we were told that different judges ask different questions to make the initial determination, we observed two jail clearance dockets in which the inquiry by the court consisted of asking the defendant if he or she had a lawyer and could afford one. If the answers were no, the court made the initial appointment to IDO. If the defendant remains in custody after the initial appointment, the IDO appointment is continued, and further inquiry into the defendant’s financial status does not normally occur.

If the defendant is out of custody at first appearance, he or she must go to IDO after initial appointment by the court, at which time the defendant is given a written application form that seeks information on employment, income and monthly expenses. No financial records are required, and no verification is performed. In several criminal sections, staff investigators escort the misdemeanor defendants from court to IDO for the application process. In City Court, the misdemeanor contract attorneys make the determinations in court. IDO staff make a determination of indigency following formal guidelines that the Chief Counsel issued in the form of a memo to all staff and contract counsel (who may also determine indigency in court). In November 2006, the Chief Counsel issued the 2006 revised standards for determining indigency.

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<sup>90</sup> Standard 1-3.2 (E), (F), (K).

<sup>91</sup> La. R.S. 15:147.

<sup>92</sup> La. R.S. 15:147(A)(1)(b).

<sup>93</sup> La. R.S. 15:147(A)(1)(c).

<sup>94</sup> La. R.S. 15:147(A)(1)(d).

Generally, a person is presumed indigent if his or her income is below 200% of the Federal Poverty Guidelines.<sup>95</sup>

As previously mentioned, defendants applying for counsel must pay a \$40 application fee. The fee is to be paid at the time of application or within seven days.<sup>96</sup> This fee can be waived or reduced<sup>97</sup> and is generally not required of in-custody defendants. In addition, defendants who are found to be quasi-indigent, or capable of paying part of the cost of attorney fees, must sign an agreement to partially reimburse IDO.

We were told that, although infrequent, a defendant may be sent to jail for nonpayment of IDO fees. If any such incarceration is occurring, it is a serious cause for concern unless preceded by a hearing on a defendant's ability to pay; otherwise, any incarceration would appear to violate the requirements of federal law.<sup>98</sup>

We received several complaints about defendants abusing the system by falsely claiming indigence in order to avoid paying for a private attorney. Two persons reported that a practice exists in Caddo Parish in which some defendants claim indigence so that an ID attorney will prepare their case for trial at little to no cost; then they will later hire a private attorney to handle the trial. Several attorneys believe that some of their clients are able to afford private counsel. One reported to have represented clients making a salary of \$60,000 a year or more. We were also told that occasionally, when IDO determines that a defendant is not indigent and asks to be relieved from the case, the court will simply order the defendant to pay more in partial reimbursement. However, one judge noted that few motions to withdraw for lack of indigency are filed by IDO.

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<sup>95</sup> In 2006, this income level is \$19,600 for a single person and \$40,000 for a family of four.

<sup>96</sup> See Rules for Louisiana District Courts, First Judicial District Court, Parish of Caddo, Rule 15.2(3).

<sup>97</sup> La. R.S. 15:147(A)(1)(f).

<sup>98</sup> In *Bearden v. Georgia*, 461 U.S. 660 (1983), the United States Supreme Court held that when a defendant is facing imprisonment for failure to pay a fine or restitution, the court "must inquire into the reasons for the failure to pay." Thus, there must be a hearing on the defendant's ability to pay. The Supreme Court held, "Only if alternative measures are not adequate to meet the State's interests in punishment and deterrence may the court imprison a probationer who has made sufficient bona fide efforts to pay. ... [Otherwise] such a deprivation [of liberty] would be contrary to the fundamental fairness required by the Fourteenth Amendment." *Id.* at 672-3.

## **CHAPTER 5: FINDINGS AND RECOMMENDATIONS**

### **IDO**

1. The Indigent Defender Office generally has a positive reputation in the Caddo Parish criminal justice community. Overall, it is a well-respected office that is performing well given its resources and the system in which it operates. Further, in comparison to the indigent defense providers in other Louisiana parishes that we have either visited or learned about through reviewing reports or other available information, Caddo Parish IDO appears to be among the better indigent defense programs.
2. IDO's Chief Counsel has a reputation in the legal community as being a skilled litigator and good leader. However, because the Chief Counsel is handling so many serious cases, he has less time to run the office and perform other duties such as training and supervision. The Chief Counsel's caseload should be reduced so that he may concentrate more on the administration of the office and effectuating positive reform for IDO and in the Caddo Parish criminal justice system as a whole.
3. IDO should be commended for its comprehensive personnel manual and written attorney performance standards. This material provides an excellent resource for all staff and can serve as the starting point for performance evaluations. Further, such material is frequently not available in public defender offices, including those with greater resources than IDO.
4. IDO lacks any formal in-house attorney training or supervision. Such training and supervision is especially critical for new attorneys, many of whom begin the job with substantial felony caseloads but without criminal litigation experience. New attorneys should be eased into the job gradually, should not begin with large felony caseloads, and should receive formal training and supervision. IDO needs a senior attorney with a reduced caseload who can devote time and effort to establishing a formal training program for the office and to oversee mentoring and supervision (see staffing recommendations below). All attorneys should receive formal training that includes the collateral consequences of criminal convictions.
5. The office does not currently have a formal process for conducting evaluations of its staff. However, we were told that the office is planning for evaluations in the future, and we recommend that these plans continue to go forward, as all staff should be formally evaluated at least on an annual basis.
6. In addition to the current system of assigning cases between staff attorneys in the same criminal section according to even or odd docket numbers, we recommend that an attorney supervisor periodically review the attorneys' pending caseloads in order to better allocate the cases between staff attorneys.

7. IDO should strive to improve the level of attorney-client contact. While IDO has a clear 10-day rule for meeting clients in custody, due to systemic factors such as caseloads and court time, attorneys are struggling to comply. In addition, IDO should make an effort to meet with out-of-custody clients by at least attempting to contact them. For out-of-custody adult clients and for juvenile clients, the contact is largely occurring in court prior to hearings; the onus is on the client to initiate any contact other than this. Especially in juvenile court, attorneys should be more proactive in initiating client contact.
8. IDO support staff are generally a professional and well-organized team with a positive attitude, which is considerable in light of their low salaries. In addition, the long-time Office Manager is a particularly valuable member of the IDO team. Although the number of support staff as compared to attorneys is slightly higher than most offices, given the high volume of cases being handled by the office and by the individual attorneys, we feel that the current ratio is appropriate. Further, due to the case volumes and the additional time-consuming duties of the IDO support staff that are not present in most public defender offices (e.g., collecting fees and attending court sessions), we recommend one additional floating secretary to assist with opening cases, support the other secretaries, provide coverage in the event of absences, and perform other administrative duties as needed.
9. Improving IDO compensation is essential to attracting and retaining quality personnel. IDO attorneys and staff, most of whom have not received any raises since 2001, are considerably under-funded but are dedicated to their work and deserving of raises. Further, their counterparts in the District Attorney's Office are making significantly more, as are most public defenders in other southern states (including Georgia, North Carolina, Tennessee and West Virginia). While one-time supplements were approved in 2004 and 2005 when the Indigent Defender Fund had excess year-end funds (after at least several years of experiencing a deficit), the time has come to implement raises. We recommend that all IDO attorneys and top administrative staff receive a 15% raise from their current salaries. We recommend that the staff investigators receive a slightly lower increase of 10% in order to keep the starting attorney salary slightly higher than the investigators' salaries (reflecting the attorneys' higher level of education, case responsibilities and workload). We further recommend that the secretaries' starting salary be raised by 25% and the remaining secretaries should receive a 15% raise. The estimated cost of the recommended salary increases is \$188,499.
10. The burden for the systemic deficiencies discussed in this report should not rest on the shoulders of individual IDO personnel who are doing their best in a difficult system.
11. IDO's downtown office space is currently sufficient to meet IDO's needs. However, the needs of the juvenile division are not being met at the juvenile court. Each attorney should have a desk with a computer and a telephone and available space for confidential meetings with clients. Given the amount of time even the part-time attorneys are spending in juvenile court, they should have sufficient access to computers, telephones,

and research tools. In addition, the office currently lacks sufficient space for storing attorney files and lacks its own fax and copier machine.

### **IDO in Juvenile Court**

12. We were very pleased to hear during the drafting of this report that IDO is to be receiving significant additional staffing in juvenile court, including additions of one senior supervising attorney, 2.5 delinquency attorney positions, 0.5 CINC attorney positions, one full-time secretary, and two full-time investigators. During this study, our observations of IDO in juvenile court were that the caseloads were too high and the staffing seriously inadequate. Client contact outside of court and investigations are nearly non-existent. We expect that the additional juvenile positions will greatly help to ease caseloads and improve juvenile representation. Further, while we previously recommended strongly that sufficient space be secured to house the full-time staff that is needed, it is our understanding that sufficient office space will be provided.
13. Currently, IDO conflict cases in delinquency and in CINC are represented by private attorneys who are not compensated for their work. Such representation is necessary and is a responsibility of the Caddo Parish indigent defense system. Formal conflict panels should be created and compensated from the Indigent Defender Fund for both delinquency and CINC cases. (Note that we were informed that IDO will soon be representing parents, not children, in CINC cases. In such event, IDO may need more than two full-time CINC attorneys; in addition, conflict parents' representation will be provided for by the state.)

### **Data Management**

14. A number of problems exist in IDO's data system. For instance, relevant data fields need to be entered consistently and additional data fields should be created to track the disposition (e.g., trial, plea, dismissal) and outcome (e.g., guilty, not guilty, diversion) rather than tracking this information in the activities section of the system. Fortunately, we believe that many of the problems will be solved with the implementation of the new LIDAB data system, although immediate improvements could help to smooth the transition to the LIDAB system. In addition, all IDO staff who input data should receive training to help ensure the accuracy and consistency of the data entry.
15. We strongly recommend that the case management system be adjusted to enable it to store all information on the defendants' reimbursement contracts which is currently stored in three locations: the case management system stores the original amount of the contract, data is entered in QuickBooks to generate statements, and a Word document is used to keep a tally of contract payments made. Once in place, this data can be linked to the LIDAB system to continue to perform these functions.
16. The current case management system and the LIDAB system both contain data elements that allow for automated document generation so that users could open a word processing template and generate the document using data already in the case management system.

One or more support staff should be trained in Microsoft Office applications, such as the Excel program, which would allow staff to generate reports and tabulate data on a regular basis without relying on outside sources to interpret information in the case management system.

### **Caseload/Workload**

17. In assessing IDO workload, we found that data limitations, coupled with the practice factors discussed throughout the report, result in systemic deficiencies that would render the creation of specific caseload standards at this point both inaccurate and unwise, as they would serve to institutionalize the current system and its deficiencies.
18. In our judgment, a number of systemic factors which appear to be the acceptable practice norm in Caddo Parish, serve to impede IDO representation. For instance, a number of these norms may serve to delay the provision of attorney services, such as late preliminary examination dates (30-60 days) without prior bail hearings; some delay in IDO attorneys receiving discovery; and delay in some ID attorneys meeting with clients. Data in 2006 shows that 16% of IDO felonies are disposed of within 30 days, and an additional 28% are disposed of within 60 days, for a total of 44% (39% if drug cases are excluded) that are likely pleading at or around the PE date. Similarly, the local trial rate of 1.3% (or 1.6% if drug cases are excluded) is low. We do not fault the systemic problems on individual attorneys, but rather on an established system that operates in a manner that allows it to handle a large volume of criminal cases.
19. ID attorneys are required to spend a significant amount of time in court; some of this time is unproductive waiting time due to court operations. As a result, attorneys have less time to perform out-of-court work such as meeting with clients and preparing their cases.
20. With additional IDO resources, IDO should work with the courts and prosecutors to challenge the current system to ensure that attorneys are able to receive and review discovery, have meaningful attorney-client meetings, and file bail motions prior to entering pleas. We recommend that IDO consider placing the ID attorneys with the defendants at the jail for the jail clearance docket and that IDO take the steps necessary to be heard on bond reduction motions prior to preliminary examinations.
21. In order to address these and other systemic issues, Caddo Parish should consider creating a criminal justice coordinating committee, consisting of IDO, the District Attorney's Office, the courts, the jail, and other interested criminal justice entities. Representatives from each entity should meet and discuss ways in which the criminal justice system can be improved.
22. In our professional judgment, the problematic practices that we found exist as a result of IDO's burden of handling too many cases over a long period of time rather than a lack of effort on the part of the attorneys. We believe that most ID attorneys are dedicated to their work and are performing as best as they can, given their caseloads and limited resources, including a lack of training and experience for many attorneys.

23. IDO should establish written policy and procedure for handling case overload. That is, when IDO determines that it has been assigned too many cases, a procedure should be in place for assigning cases to attorneys outside of the office.
24. Until such time as the systemic deficiencies that prevent the attorneys from providing full and timely representation are addressed, it is premature to provide caseload standards, either based on the current practices or on the currently-available empirical data. Instead, more attorneys and staff are needed to reduce caseloads and allow attorneys to spend more time on cases and to challenge these systemic norms.

### **Staffing Needs**

25. With regard to additional staffing, we recommend the following, in general order of importance:
  - a. A new senior attorney position should be added and designated as a training director who should immediately create a formal in-house training program with a focus on training staff attorneys. The training director should have a significantly reduced caseload in order to focus on needed training, mentoring and supervision.
  - b. While we are extremely pleased with the additional attorney and non-attorney staffing to be added in juvenile court, we recommend one additional attorney position to handle CINC cases.
  - c. Using 2005 IDO caseload data, a modified case-weighting formula and our knowledge of Caddo Parish practice factors, we estimated an annual caseload range per staff attorney of 180-200 cases or appointments. In order to meet this standard (using 2005 staff attorney appointments), IDO would need an additional 4-5 staff attorney positions. These additional positions are needed to reduce current staff attorney caseloads and allow attorneys additional time to receive needed training, meet with clients more quickly and more often, prepare cases and litigate. Significant training and fewer cases should allow the staff attorneys to improve the overall quality of their representation.
  - d. A new senior attorney floater position should be added in order for senior attorneys' caseloads to be reduced to allow senior attorneys to perform more work on their cases and to supervise and mentor staff attys. This senior floater or the training director should also be designated as the attorney in charge of filing impact litigation when necessary to challenge Caddo Parish criminal justice system norms when such norms negatively affect the rights of IDO clients.
  - e. IDO is in need of two full-time social workers, one for the downtown office who would focus his/her work on capital cases, but would also assist on non-capital felony cases, and one for the juvenile office to assist on both delinquency and CINC cases.



- f. One floater secretary should be added, and it is our understanding that this has already been approved.

Using salary estimates, and assuming 4 additional staff attorney positions, the above staffing recommendations would cost an estimated \$344,250 (not including those additional positions that have already been approved.) The total estimated cost can be broken down as follows:

1 senior attorney/training director @ \$52,000	=	\$52,000
1 full-time CINC attorney @ \$35,650	=	\$35,650
4 staff attorneys @ \$35,650	=	\$142,600
1 senior attorney (floater) @ \$48,000	=	\$48,000
<u>2 social workers @ \$33,000</u>	=	<u>\$66,000</u>
		\$344,250

- 26. We also recommend that all attorney positions be full-time positions without any outside private practice.

**IDB, IDF**

27. Indigent Defender Board (IDB) members sincerely want to help improve the Caddo Parish indigent defense system but are also very cognizant of IDF spending. We commend the Board for being active in its oversight role, for being careful with the Indigent Defender Fund, and for truly wishing to improve indigent defense representation in Caddo Parish. It is our hope that after this study is complete, the Board will feel comfortable in approving additional resources of which IDO is in need.

28. As of September 30, 2006, the Indigent Defender Fund’s (IDF) month-end cash balance was \$183,009 and month-end investments were \$658,542, making a total surplus of \$811,611. This is a significantly high surplus that should be used immediately towards salaries and additional staffing. While we understand the desire to keep a balanced budget, we strongly recommend that the surplus funds be used while available, not only because they are needed, but also because LIDAB funds to Caddo Parish will be reduced should such a surplus not be spent. We believe it makes good sense to spend available funds now both to improve IDO and the representation received by Caddo Parish indigent defendants, and to ensure that Caddo Parish receives a greater share of LIDAB funds. As earlier mentioned, we estimate that the recommended salary increases would cost \$188,499 and the additional staffing would cost \$344,250; this totals \$532,749, which would still leave a surplus of \$278,862.

29. Overall, IDO attorneys and staff are performing well under the current systemic conditions. For reasons earlier mentioned, we strongly recommend that the Board first approve IDO raises and then approve the additional staff. We believe that both recommendations can be implemented with the large amount of IDF surplus funds.

## **Contract Attorneys**

30. Data on contract cases does not currently appear to exist in any data base. We strongly recommend that this data be tracked, and it is our understanding that this will occur under the new LIDAB data system.
31. While the contract attorney system was not a focus of our study, we reviewed it generally. The concern that we have regarding attorney-client contact with ID staff also exists for the contract attorneys. In addition, with regard to the misdemeanor contracts, we are concerned about the lack of investigations and the volume of cases that the attorneys appear to be handling and quickly pleading.
32. The Caddo Parish contracts with panel attorneys should have provisions regarding individual attorney caseloads, excessive caseloads measures, minimum levels of experience, performance standards, supervision, evaluation, training and professional development.

## **Indigency**

33. We received several complaints regarding abuses of ineligible defendants receiving IDO services. While we were unable to verify these reports, we did note that the initial indigency screening process performed by the court is very brief and that all in-custody defendants appear to be presumed indigent. We believe this initial screening process could be improved by the creation of more thorough and uniform guidelines and procedures for all judges.
34. Significant IDO time and resources are spent in processing applications for counsel, making indigency determinations, and collecting application and reimbursement fees. IDO staffing should reflect these additional duties. In most jurisdictions, these tasks are performed either by the courts or by an independent pre-trial services agency. If such an agency existed, we would recommend that some verification be performed, but IDO is simply unable to perform such procedures with its current staffing.