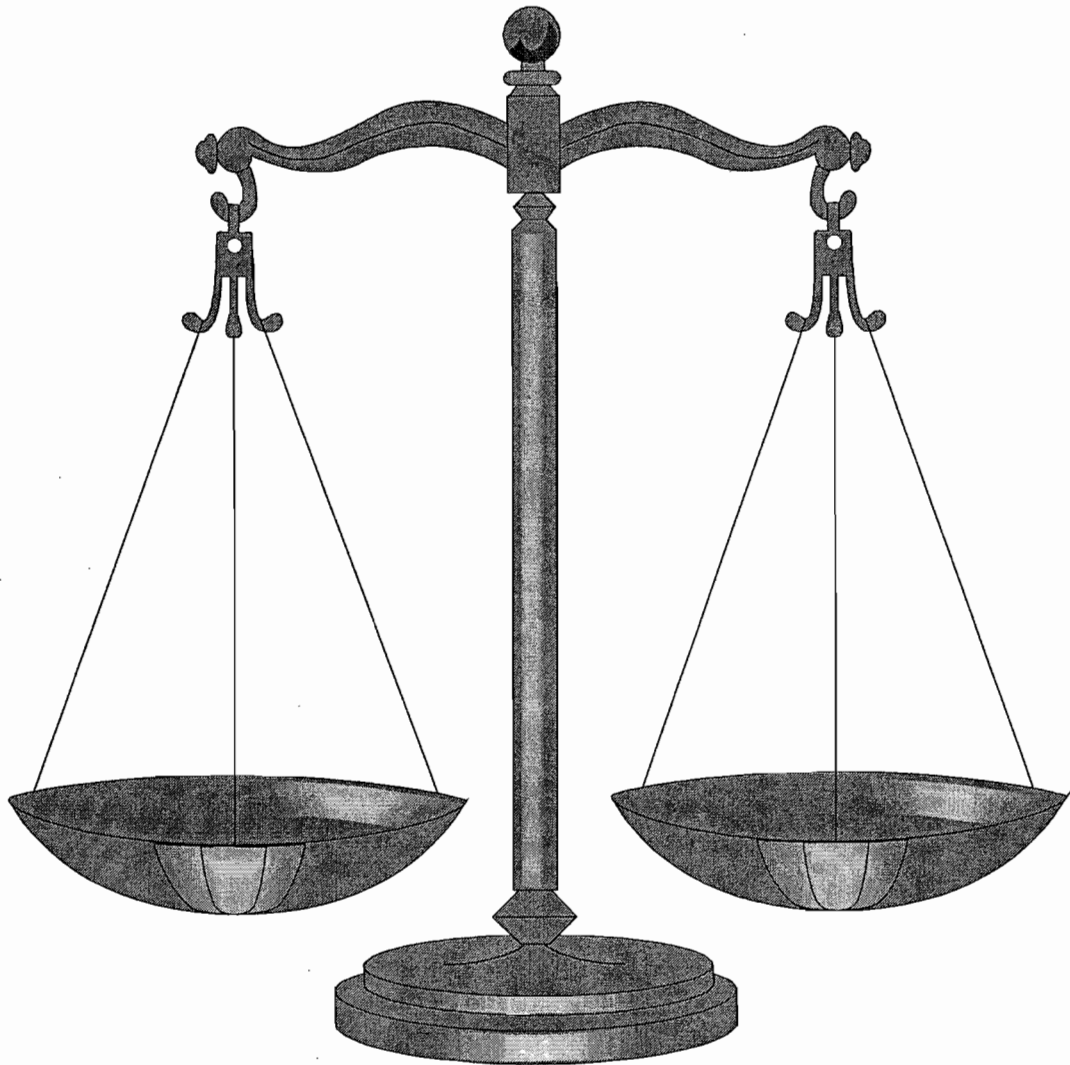


OKLAHOMA

INDIGENT DEFENSE SYSTEM



2008 Annual Report

... to provide indigents with legal representation comparable to that obtainable by those who can afford counsel and to do so in the most cost-effective manner possible.

Oklahoma

Indigent Defense System



BRAD HENRY
GOVERNOR

KEVIN WARD
CABINET SECRETARY
SAFETY AND SECURITY

JAMES D. BEDNAR
Executive Director

This publication is printed and issued by the Oklahoma Indigent Defense System as authorized by 74 O.S. 2001, §§ 3103-3106.1. Forty-Five (45) copies have been prepared and distributed at a cost of \$61.65. Copies have been deposited with the Publications Clearinghouse of the Oklahoma Department of Libraries.



BRAD HENRY
GOVERNOR

STATE OF OKLAHOMA
OKLAHOMA INDIGENT DEFENSE SYSTEM

JAMES D. BEDNAR
EXECUTIVE DIRECTOR

BOARD MEMBERS

ROD WIEMER, ESQ., Chair
McCulloch Bldg., Suite 200
114 North Grand
Okmulgee, OK 74447

September 19, 2008

JAKE JONES III, ESQ.,
Vice-Chair
Kirk and Chaney
101 Park Avenue, Suite 800
Oklahoma City, OK 73102

TO THE HONORABLE BRAD HENRY
HONORABLE MIKE MORGAN
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HONORABLE CHRIS BENGE
HONORABLE JAMES WINCHESTER
HONORABLE GARY LUMPKIN

DON G. POPE, ESQ.
702 Wall St., Ste 200
Norman, OK 73069

RANDOLPH S. MEACHAM, ESQ.
525 S. 30th Street
P.O. Box 1236
Clinton, OK 73601-1236

DENNIS N. SHOOK, ESQ.
15768 S. 29th East Avenue
Coweta, OK 74429

It is our privilege to submit a report concerning the duties, activities and accomplishments of the Oklahoma Indigent Defense System for the fiscal year ending June 30, 2008, in accordance with 22 O.S. § 1355.3(B) and 22 O.S. § 1355.4(C)(14).

The Oklahoma Indigent Defense System is grateful for the support that it received during Fiscal Year 2008 from the Governor and his staff, from the Legislature, and from the Judiciary.

As we move forward in 2009, we would like to recognize all of the attorneys, investigators, administrators, secretaries and experts for their commitment to our mission and their unwavering dedication to our clients. We also wish to acknowledge the work and dedication of the private attorneys who serve generously as OIDS contractors. It is only through the efforts of all of these individuals that the right to counsel flourishes in Oklahoma and the interests of justice are protected.

Sincerely,

Rod Wiemer, Esq.
Chair

Jake Jones, Esq.
Vice-Chair

Don G. Pope, Esq.

Randolph S. Meacham, Esq.

Dennis N. Shook, Esq.

◆ Board Members

ROD WIEMER, CHAIR
McCulloch Bldg. Suite 200
114 North Grand
Okmulgee, OK 74447
Term Ending July 1, 2013

DON G. POPE, ESQ.
702 Wall St., Ste 200
Norman, OK 73069
Term Ending July 1, 2012

JAKE JONES, III, ESQ., VICE
CHAIR
Kirk and Chaney
101 Park Avenue, Suite 800
Oklahoma City, OK 73102
Term Ending July 1, 2010

RANDOLPH S. MEACHAM, ESQ.
525 S. 30th Street
Clinton, OK 73601-1236
Term Ending July 1, 2009

DENNIS N. SHOOK, ESQ.
15768 S. 29th East Avenue
Coweta, OK 74429
Term Ending July 1, 2011

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(In Alphabetical Order)

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Chapter 1

◆ Introduction

The mission of the Oklahoma Indigent Defense System is to provide indigents with legal representation comparable to that obtainable by those who can afford counsel and to do so in the most cost effective manner possible.

OIDS fulfills the majority of the State's obligations under the Oklahoma and United States Constitutions to provide legal representation to certain Oklahoma citizens who are charged with criminal offenses.

OIDS was created after the Oklahoma Supreme Court decided *State v. Lynch*, 1990 OK 82, 796 P.2d 1150. The Supreme Court held that Oklahoma's method of compensating private attorneys in court-appointed criminal cases at the trial level was unconstitutional under the State Constitution.

In response to *Lynch*, the Oklahoma Legislature undertook sweeping reform of the State's delivery of criminal defense services. Legislative action resulted in the Indigent Defense Act which created OIDS as a new state agency under 22 O.S. §§ 1355 *et seq.*, effective July 1, 1991. The Act instituted major changes in the funding and delivery of defense services at trial and on appeal.

Before passage of the Indigent Defense Act, criminal appeals in court-appointed cases were

the responsibility of the Oklahoma Appellate Public Defender System (APD). The APD began in 1979 as a federally-funded project at the Oklahoma Center for Criminal Justice and by 1988 had evolved into a small state agency that represented indigents on appeal in state court and, in death penalty cases, in federal court.

The APD became a part of OIDS under the Indigent Defense Act in 1991 and continued its representation of indigents on appeal. The Act also created a division within OIDS to represent indigents at trial who were charged with capital murder offenses and directed OIDS to begin accepting court appointments to provide legal representation in non-capital cases in 75 counties beginning July 1, 1992, its second year of operation.

The System's responsibilities are defined by the Indigent Defense Act and have changed with statutory amendments over the 17-year history of the agency. The agency's fundamental duty is to provide trial, appellate and capital post-conviction criminal defense services to persons who have been judicially determined to be entitled to legal counsel at State expense. The agency consists of three program areas: the General Operations Program, the Trial Program and the Appellate Program. The Trial Program consists of the Non-Capital Trial Division and two capital trial divisions: Capital Trial Norman

and Capital Trial Tulsa. The Appellate Program contains the General Appeals Division, the Capital Direct Appeals Division and the Capital Post-Conviction Division. These programs and divisions are discussed in more detail throughout this report.

OIDS represented a total of 39,334 court appointments in Fiscal Year 2008 in all divisions of the agency. The breakdown by division is as follows:

| | |
|-----------------------------------|---------------|
| NON-CAPITAL TRIAL | |
| <i>Staff</i> | 6,467 |
| <i>County Contracts</i> | 30,014 |
| <i>Conflicts</i> | 462 |
| <i>Overload</i> | 1,596 |
| CAPITAL TRIAL - NORMAN | 37 |
| CAPITAL TRIAL - TULSA | 37 |
| GENERAL APPEALS | 596 |
| CAPITAL DIRECT APPEALS | 70 |
| CAPITAL POST CONVICTION | 39 |
| EXECUTIVE DIVISION CONFLICTS | |
| <i>Capital Trial Divisions</i> | 4 |
| <i>Non-Capital Direct Appeals</i> | 6 |
| <i>Capital Direct Appeals</i> | 1 |
| <i>Capital Post Conviction</i> | 5 |
| TOTAL | <u>39,334</u> |

Given the nature of criminal cases, most cases span more than one fiscal year. In complex cases, such as death penalty cases, OIDS may represent a client for three or more years. Accordingly, the total number of cases handled during a fiscal year includes appointments pending from the prior fiscal year in addition to the current year court appointments.

OIDS is appointed by the trial and appellate courts of Oklahoma after an indigence determination is made by the court. OIDS is subject to appointment to provide trial

representation in non-capital criminal cases in 75 of Oklahoma's 77 counties.

OIDS contracts with private Oklahoma-licensed attorneys to handle 100% of the indigent non-capital trial caseload in 56 counties. In 19 counties, staff attorneys handle the majority of the indigent caseload, with overload cases handled by private contract counsel. Private attorneys handle the majority of the System's conflict cases and all overload cases.

In death penalty cases and non-capital appeals, attorneys employed by OIDS are assigned the case after OIDS has been appointed by a district court or the Oklahoma Court of Criminal Appeals.

FUNDING

At the time of its creation in 1991, OIDS received federal funding as a federal resource center responsible for providing state and federal post-conviction and habeas representation in death penalty cases. This funding ended in October 1995, when Congress closed all of the federal resource centers in the country. OIDS was forced to seek state appropriations to replace the federal funds that had been used for state post-conviction representation.

During its 17- year history, OIDS repeatedly has been forced to seek supplemental appropriations from the Legislature. The first, received in early 1992, averted a shutdown of the agency soon after it was created. The original funding mechanism, a \$13.00 increase in statutory court costs on traffic tickets issued by the Oklahoma Highway Patrol, did not generate enough revenue for OIDS to meet its payroll.

OIDS funding for Fiscal Year 1993, through direct appropriations, included an additional \$6 million to finance the cost of contracting with private attorneys around the State to initiate the agency's statewide defender services in non-

capital trial cases in 75 counties.

In Fiscal Year 1994, the Legislature reduced the agency's appropriation by \$1 million based on a prediction that the difference in prior and current-year appropriations would be made up by revolving fund collections of OIDS share of fees assessed against criminal defendants.

In Fiscal Year 1995, OIDS received no additional appropriated funds except for a state pay plan. Revolving fund income fell drastically, from \$1.5 million in Fiscal Year 1992 to \$94,079 in Fiscal Year 1995. In Fiscal Year 1996, the System's appropriations were reduced by 2.5%, followed by the loss of all federal funding in October 1995. OIDS requested a Fiscal Year 1996 supplemental appropriation of \$1.4 million, but only received \$240,000.

In Fiscal Year 1997, OIDS again suffered a funding crisis. The effect of the previous fiscal year's funding losses was compounded by the veto of an appropriation of \$919,155 for Fiscal Year 1997. These funding losses resulted in OIDS being fiscally unable to award annual contracts to the private attorney providers for non-capital trial representation. OIDS was forced to assign cases to private attorney providers on a case-by-case basis at hourly rates. The result was significantly higher costs to the agency. In March 1997, OIDS received a supplemental appropriation in the amount of \$2.1 million to fund the non-capital trial representation costs.

In Fiscal Year 1998, OIDS received \$566,000 in additional appropriations to annualize the previous year's supplemental appropriation. After five years of service, the previous Executive Director submitted his resignation to the agency's governing Board on August 8, 1997. The Board selected the current Executive Director, who assumed his duties on December 1, 1997. With the change in agency management, an intensive review of all of OIDS programs began. Many deficiencies in OIDS

delivery of services were identified.

For Fiscal Year 1999, OIDS received \$652,521 in additional appropriations to address some of the identified deficiencies. This additional funding was used to pay for mandatory state pay raises and increased benefit costs, a much needed new telephone system, increased staffing in the Executive Division, and costs associated with the opening of satellite offices by the Board to represent the non-capital trial clients in those counties where acceptable contracts with private attorney providers could not be obtained. The additional staffing was added to address identified deficiencies in the agency's ability to track and report financial and caseload data, to provide data processing support, and to improve the agency's ability to comply with state and federal law.

By the fall of 1998, the Executive Director recognized that OIDS would not be able to meet its Fiscal Year 1999 obligations because of the continued effect of the non-capital trial representation crisis in Fiscal Year 1997. Management projected a \$1.3 million shortfall in funds needed for Fiscal Year 1999 professional services for both the Trial and Appellate Programs, including funds for private-attorney expenses, experts, and investigators in both capital and non-capital cases. A supplemental appropriation in that amount was obtained in the spring of 1999.

The Fiscal Year 1999 supplemental appropriation was subsequently added to the agency's appropriation base beginning with Fiscal Year 2000. This annualized appropriation enabled the agency to continue to contract with and pay its conflict and overload attorneys, expert witnesses, investigators and translators. For Fiscal Year 2002, the agency's initial base appropriation amount was \$16,042,393. However, beginning in January 2002, a state-wide revenue shortfall resulted in across-the-board allocation reductions by the Oklahoma Office of State Finance. Allocation reductions

totalled \$607,354 in Fiscal Year 2002, leaving OIDS with an actual appropriation in the amount of \$15,435,039 by the end of the year.

During May 2002, the Executive Director developed a plan to ensure better and more cost-effective expert services were provided to agency clients. He created two separate areas within the Executive Division to address all of OIDS client needs for forensic and psychological services. The Chief of Forensic Services, a DNA Expert, and the Chief of Psychological Services, an attorney/psychologist, assists the Executive Director in determining what services are appropriate for each individual client. These two OIDS professionals meet with attorneys and experts, and either perform the requested testing or evaluation for the client, or make recommendations to the Executive Director as to the appropriate expert to be used. This process enables the agency to be more effective and utilize tax dollars more efficiently.

The System's initial base appropriation amount for Fiscal Year 2003 was reduced by \$802,120. Beginning in September 2002, the continuing statewide revenue shortfall resulted in new allocation reductions, totaling \$1,196,361 through the remainder of the fiscal year.

To address funding reductions, OIDS initially implemented a furlough plan beginning July 2002. The furlough plan provided that all agency employees would be furloughed a maximum of two days without pay per pay period. The plan continued until September 2002.

The rapidly deteriorating budget picture forced OIDS to take further drastic measures. It adopted a reduction-in-force plan, which eliminated 27 positions, including 10 attorney positions, effective December 31, 2002. While the reduction-in-force hindered the agency's ability to effectively represent its clients, the lack of adequate funding left it with no viable

alternatives.

Another critical measure taken by OIDS was to decline to enter into private conflict counsel contracts, where agency attorneys or county contract attorneys were unable to provide representation due to a conflict of interest. The agency filed motions to vacate agency appointments in conflict cases arising throughout the state, on the basis that unencumbered funds did not exist to pay for conflict counsel, and to enter into such contracts would violate the State Constitution, as well as the Central Purchasing Act and the Oklahoma Criminal Code. The District Court of Kay County denied two such motions filed in two separate criminal cases, prompting the agency to seek a writ of prohibition against the district court in the Oklahoma Supreme Court. Upon refusal of the Oklahoma Supreme Court to assume original jurisdiction, the district court issued contempt citations against the Executive Director directing him to show cause why he should not be held in contempt for refusing to provide conflict counsel. The contempt citations prompted the Executive Director to file a petition for writ of prohibition in the Oklahoma Court of Criminal Appeals.

On November 26, 2002, the Court of Criminal Appeals issued its order in *Bednar v. District Court of Kay County*, 2002 OK CR 41, 60 P.3d 1. The court first held that contempt proceedings were not properly before the court, as other adequate remedies existed. However, the court stated that the issues presented in the case were complex and involved multiple conflicting constitutional and statutory provisions, such as the prohibition from entering into a contract if unencumbered funds are unavailable. The court further stated that the case raised important separation of powers questions and potential conflicts in jurisdiction between it and the Oklahoma Supreme Court. More importantly, the court affirmed the *State's* ultimate responsibility to provide counsel,

regardless of whether counsel is furnished and paid by OIDS, the court fund or the general fund. Therefore, the court ordered the district court to provide counsel at State expense by December 6, 2002, or the defendants in the underlying criminal cases would be released.

As a result, the Governor-Elect, the Senate President Pro Tempore Designate, the Speaker of the House, and the Chief Justice and Vice-Chief Justice of the Oklahoma Supreme Court entered into an agreement providing that the court fund would guarantee payment for conflict counsel representation until the Legislature provided supplemental funding. The agreement became effective December 5, 2002. OIDS was then able to enter into contracts with private conflict counsel to provide representation to its clients. In May 2003, OIDS received a \$600,000 supplemental appropriation for the purpose of payment for conflict counsel. After the end of the fiscal year, OIDS received \$174,123 in additional allocations as a result of better than expected state-wide collections.

An increasing caseload, coupled with a reduced staff due to the fiscal year 2003 reduction-in-force, left the agency with caseload numbers per staff attorney greatly exceeding the maximum set by national standards. In response, the Legislature passed a supplemental appropriation during fiscal year 2005 in the amount of \$1,000,000 to enable the agency to contract with private attorneys to reduce the burgeoning caseload in the appellate and noncapital trial Divisions.

A substantial increase in the cost of flat-rate fiscal year contracts with private attorneys for the upcoming fiscal year prompted the Legislature to increase the agency's 2007 appropriation by \$280,000. The agency's appropriation for the new fiscal year beginning July 1, 2008 is \$16,734,008.

OIDS is funded by the Oklahoma Legislature through appropriations from the State's general

revenue fund. OIDS also receives a varied and unpredictable amount of funds from the costs of representation assessed against a criminal defendant in certain cases. These assessments, authorized by Section 1355.14 of the Indigent Defense Act, if collected, are deposited in the Indigent Defense System Revolving Fund. The agency would note that each year, about half of its entire budget finds its way into the Oklahoma economy through expenditures to private firms and individuals for professional and support services.

Chapter 2

◆ General Operations Program

EXECUTIVE DIVISION

The Executive Division is charged with the responsibility of managing and operating the agency and implementing the Indigent Defense Act. By statute, the Executive Director is selected by and serves at the pleasure of the agency's governing Board. The five members on the Board are appointed by the Governor with the advice and consent of the Senate.

To aid the Executive Director in the implementation of the Indigent Defense Act and agency operations, the Executive Division is staffed with administrative, finance and computer operations personnel.

OIDS provides legal representation through the services of staff members and by contracting with private attorneys, experts and investigators. OIDS employed 128 full-time staff members at its main offices in Norman and its satellite offices in Sapulpa, Okmulgee, Mangum and Clinton.

In Fiscal Year 2008, the agency entered into 253 new professional services contracts with private attorneys, experts and investigators to provide defense services in court-appointed cases, in addition to administering 116 contracts carried over

from the previous fiscal year. The Executive Division services these contracts in addition to providing support services to its staff attorneys and investigators.

Statutory Duties

- ◆ Budget
- ◆ Claims
- ◆ Contracts with private attorneys
- ◆ Improve State's criminal justice system
- ◆ Training for attorneys
- ◆ Defense representation
- ◆ Employ necessary personnel
- ◆ Set rates for attorneys who accept court appointments
- ◆ Set maximum caseloads
- ◆ Advise OIDS Board
- ◆ Conferences and training seminars
- ◆ Provide personnel to serve in advisory capacity to criminal defense attorneys
- ◆ Recommend legislation
- ◆ Track costs
- ◆ Adopt policies & procedures
- ◆ Support efforts to recoup costs of representation
- ◆ Provide for expert and investigator services

WEBSITE

The System's website provides information about the agency, resources for public defenders and others interested in criminal law issues, and answers to most frequently asked questions and notices of training opportunities. The website can be accessed at www.oids.ok.gov. The website contains many links, including those for legal research, unpublished Court of Criminal Appeals opinions issued since July 2000, and official agency forms used by OIDS contractors, experts and investigators.

TRAINING PROGRAM

The Indigent Defense Act requires OIDS to provide training for its staff members and private attorneys who are under contract with OIDS to accept court appointments.

OIDS co-sponsored the Patrick A. Williams Criminal Defense Institute held June 26-27, 2008 in Tulsa. It included presentations on such diverse topics as criminal discovery procedures, motion practice, jury selection, guilty pleas and sex offender laws.

EXECUTIVE CONFLICT CASELOAD

During Fiscal Year 2008, the Executive Division contracted with outside attorneys for representation on a total of nine new cases.

The year began with four pending district court death penalty cases. One case was transferred to the Capital Trial-Tulsa Division and one was concluded, leaving two cases carried over into Fiscal Year 2009.

The Executive Division started Fiscal Year 2008 with no pending capital direct appeal cases, receiving one during the fiscal year.

Two non-capital appeal cases were pending at the beginning of the fiscal year, with the Division receiving four new conflict appointments. Three cases were concluded with a total of three carried into Fiscal Year 2009.

The Executive Division began Fiscal Year 2008 with one pending capital post conviction case. Four new appointments were received and three cases were closed during this period of time. Two cases were carried into Fiscal Year 2009.

Chapter 3

◆ Trial Program

The Trial Program consists of three Divisions which provide legal representation to agency clients who have been judicially determined to be unable to afford counsel to defend against criminal charges brought by the State in district court. OIDS is appointed by the district courts to represent these defendants.

The right to counsel at State expense was established by the United States Supreme Court in *Gideon v. Wainwright*, 371 U.S. 335 (1963). The right to expert assistance at State expense was established by the United States Supreme Court in *Ake v. Oklahoma*, 470 U.S. 68 (1985).

Non-Capital Trial Division

The Non-Capital Trial Division (NCTD) is responsible for defending indigent criminal defendants charged with offenses punishable by incarceration. Cases range from traffic offenses filed in state court to non-capital first degree murder. NCTD's area of responsibility spans 75 counties, with Oklahoma and Tulsa Counties being excluded. Thus, NCTD represents the agency's largest group of clients. In Fiscal Year 2008, new appointments equaled 27,736.

Delivery of Non-Capital Trial Legal Services

In accordance with the Indigent Defense Act, NCTD provides legal representation in the 75 counties for which it is responsible in three ways:

- (1) flat-rate fiscal year contracts with private attorneys;
- (2) satellite offices with salaried staff attorneys; and
- (3) assignment of conflict and over-load cases to private attorneys who have agreed to accept such cases at established agency hourly rates, subject to statutory maximums set by the Indigent Defense Act.

In Fiscal Year 2008, the Division's caseload was handled as follows:

- (1) Flat-rate Fiscal Year Contracts: In 56 counties, all NCTD representation was provided via such contracts. In one other county (Blaine), a portion of the Division's representation was provided via contract.
- (2) Staffed Satellite Offices: NCTD operated four satellite offices: Clinton,

Mangum, Okmulgee and Sapulpa. Further, the Panhandle region was handled by one staff attorney without office space. These offices handled the entire caseload in 16 counties and part of the caseload in one other (again, Blaine). The three counties of the Oklahoma Panhandle (Cimarron, Texas and Beaver Counties) were primarily serviced by a single staff attorney working from a mobile office. In Fiscal Year 2008 the Non-Capital Trial Division satellite offices ended the fiscal year with 23 attorneys. The offices also handled 6,467 active cases over the course of the year. Thus, during Fiscal Year 2008, a satellite office staff attorney handled an average of 281 cases – 144 felonies, 32 juvenile cases, 94 misdemeanor cases and 11 traffic cases. According to a formula utilized by the National Legal Aid and Defenders Association, in Fiscal Year 2008 each satellite office attorney did the work of 1.37 attorneys who operate in only one courthouse. All satellite office attorneys handled work in several district courts. The largest satellite office region covered eight courthouses and 8,623 square miles. Over the last three fiscal years, the Non-Capital Trial Division has utilized annual funding designated to provide overload attorneys in the satellite office areas. This funding enabled NCTD to improve the workload per attorney to more acceptable levels. For example, according to the above noted formula, in fiscal year 2004, each satellite attorney did the work of 1.71 attorneys.

- (3) Conflict/Overload Counsel: Since Fiscal Year 1998, OIDS has made a concerted effort to ensure that Non-Capital Trial Division fiscal-year contracts are adequately staffed by giving weight, during the contracting process, to the number of law firms participating in an offer. During Fiscal Year 2008, NCTD assigned 332 conflict cases

to conflict counsel. In addition, 1,014 overload cases were assigned to overload counsel.

Discussion

The OIDS Board awards fiscal-year contracts to private attorneys to provide non-capital trial defense services on a county-by-county basis. In response to the agency's solicitations each year, private attorneys offer to provide criminal defense services in felony, misdemeanor, traffic and (delinquent) juvenile cases in one or more counties for a flat annual rate. The contracting process is volatile, not only in terms of the number of offers, if any, received for any particular county, but also the cost of any contract awarded. As a result, the agency's ability to provide contract coverage in many counties, especially the smaller, more rural ones, is unpredictable. Historically, the agency has spent one-third to one-half of its total budget on these fiscal-year contracts to provide non-capital legal representation.

When the agency is unable to obtain a fiscal-year contract for indigent criminal defense work in a county the Board has two options: (1) establish a satellite office with salaried attorneys to accept the System's appointments in the affected county under Section 1355.9 of the Indigent Defense Act or (2) assign the System's appointments in that county to private attorneys who have agreed to accept cases on a case-by-case basis at established agency rates (\$60/hr. for in-court legal services; \$40/hr. for out-of-court legal services) under Section 1355.8(D)(6) of the Indigent Defense Act.

In Fiscal Year 2008, the Non-Capital Trial Division's satellite offices served the following counties:

Clinton Office

- Custer
- Dewey
- Ellis
- Roger Mills
- Washita
- Woodward
- Blaine (*all of the Division's delinquent juvenile, misdemeanor, and traffic caseload*)
- Harper

Mangum Office

- Beckham
- Greer
- Harmon
- Kiowa
- Jackson
- Tillman

Okmulgee Office

- Okfuskee
- Okmulgee (2 courthouses)

Sapulpa Office

- Creek (3 courthouses)

Panhandle Region (Single Attorney, no office space)

- Cimarron
- Texas
- Beaver

Overall Caseload

In Fiscal Year 2008, the Non-Capital Trial Division received a total of 22,213 new contract cases, of which 270 resulted in conflicts. As a result, 21,943 new cases were handled under the county contracts. OIDS Non-Capital Trial Division satellite offices received 5,523 new cases, of which 62 were conflicts and 1,014 were overload cases. Thus, the satellite offices handled 4,447 new cases in Fiscal Year 2008. Total new cases for the division equaled 27,736. Cleveland County had the highest number of cases (1,542), while Harper County had the fewest (3).

CAPITAL (DEATH PENALTY) TRIAL REPRESENTATION

The OIDS Capital Trial Divisions are assigned the task of representing indigent defendants in cases where the State is seeking the death penalty. The two Divisions combined represent clients throughout the State, with the exception of Oklahoma and Tulsa Counties. Legal services are provided by salaried attorneys and investigators, assisted in some cases by private attorneys under contract to serve as co-counsel and by contracts with expert witnesses.

The Capital Trial Divisions operate as separate law firms for conflict purposes. If one of the Divisions cannot accept a court appointment because of a conflict of interest arising from another court appointment, the case is generally assigned to the other Division. If neither Division can accept the court appointment, OIDS contracts with private counsel to represent the client under the provisions of the Indigent Defense Act, Sections 1355.7 & 1355.13. In September 2007 a pilot program instituted by the Executive Director shifted responsibility for defending selected first degree murder appointments to the Capital Trial Divisions.

The Capital Trial Divisions began Fiscal Year 2007 with 33 pending trial level cases. A total of 74 trial level cases were handled during this time with 27 completed.

CAPITAL TRIAL DIVISION NORMAN OFFICE

The Capital Trial Division – Norman is one of two Divisions within the Oklahoma Indigent Defense System that receives appointments to represent indigent clients in death penalty cases at the trial level. The Division represents defendants in capital cases filed in 46 counties and has primary responsibility for conflicts

arising in the remaining counties regularly serviced by the Capital Trial Division – Tulsa.

Fiscal Year 2008 began with eight attorneys, four investigators, and two full-time support personnel. During the fiscal year one attorney and one investigator position became vacant. The vacant attorney position has not been filled; the vacant investigator position, however, was filled by the end of the fiscal year. The current number of total staff in the Division is 13.

TRIAL CASELOAD

The Capital Trial Division – Norman began Fiscal Year 2008 with 17 pending death penalty cases carried over from Fiscal Year 2007. The Division received new appointments in 20 cases during the fiscal year, bringing the total number of cases managed by the Division in Fiscal Year 2008 to 37 cases. By the end of the fiscal year, 11 of those cases were concluded and closed; the remaining 26 cases were carried over into Fiscal Year 2009. Although the Capital Trial Division – Norman ceased taking on any new conflict case appointments from Oklahoma County in 2003, the Division continues to monitor one remaining inactive Oklahoma County case to which the Division was appointed prior to 2003.

FISCAL YEAR 2008 RESULTS

Jury and Non-Jury Trials

Result of two cases tried in Fiscal Year 2008**:

- ◇ 1 death sentence (jury trial)
- ◇ 1 life without the possibility of parole sentence (non-jury trial)

** One capital case was in the midst of jury trial at the end of Fiscal Year 2008, but did not conclude until after the beginning of Fiscal Year 2009. The result in that case was a verdict of life without parole, and will be reported in the Fiscal year 2009 Annual Report.

Guilty Pleas

The Division represented six clients who resolved their cases by entering guilty pleas. The results of those pleas are as follows:

- ◇ 4 First Degree Murder – Life without parole sentences
- ◇ 2 First Degree Murder – Life with parole sentences

FINAL RESULTS OF CASES CONCLUDED

| Result | No. of cases |
|---|------------------|
| Death Penalty | 1 |
| Life Without Parole | 5 |
| Life with Parole | 2 |
| Death Penalty Dropped- Referred to Non-Cap Trial | 2 |
| Juvenile Court referral | <u>1</u> |
| Total | <u><u>11</u></u> |

CAPITAL TRIAL DIVISION TULSA

The Capital Trial Division - Tulsa has the primary responsibility for defending capital cases in 29 counties in the Eastern Northeastern area of the State. The Division is further assigned to conflict capital cases in the remaining counties served by the Oklahoma Indigent Defense System.

CASELOAD

Fiscal Year 2008 began with a carryover of 16 pending cases from the previous fiscal year. The Capital Trial-Tulsa Division opened 21 new cases during the fiscal year, bringing the total caseload for the year to 37 cases. The Division concluded 16 cases, including three cases which were concluded as Not Guilty by Reason of Insanity. Twenty-one cases were carried over into Fiscal Year 2009.

FINAL RESULTS OF CASES CONCLUDED

| Result | No. of Cases |
|----------------------------------|------------------|
| Death Sentences | 0 |
| Life Without Parole | 1 |
| Not Guilty by Reason of Insanity | 3 |
| Life With Parole | 2 |
| Pled to Lesser Charge | 4 |
| Jury Trial-Lesser Charge | 1 |
| Conflict of Interest | 3 |
| Closed (No Action taken) | 1 |
| Closed-Transferred to CTN | 1 |
| Total | <u>16</u> |

There were no death penalties imposed against any Division clients during the fiscal year. This is the third year in a row in which no death penalties were imposed against clients represented by the Capital Trial Division - Tulsa. The Division conducted three jury trials during the fiscal year, resulting in an acquittal of murder/conviction of manslaughter with a 25 year sentence, a conviction with a sentence of life with parole and a conviction resulting in a sentence of life without parole. The Division had great success in negotiating plea bargains. One client charged with a double homicide had one murder count dismissed and the other one reduced to manslaughter, with a sentence of ten years with four years suspended. One client had his murder charge dismissed, with a plea to an amended charge of accessory to kidnaping, receiving five years with credit for time served. One client had his case reduced to accessory to murder, a non-85% crime, with a sentence of 45 years. Another client had his charge reduced to accessory to murder and was sentenced

to 22 years to run concurrent with other sentences in prior convictions. The Division also had three cases in which the clients were found not guilty by reason of insanity. All of these results are due to a highly talented group of dedicated attorneys, investigators and support staff.

Chapter 4

◆ Appellate Program

The Appellate Program consists of three Divisions which provide legal representation to agency clients who have a right under State law to appeal their convictions and sentences and who have been judicially determined to be unable to afford appellate counsel.

The right to an appeal in a criminal case is guaranteed by Article II, Section 6 of the Oklahoma Constitution, Section 1051 of Title 22 of the Oklahoma Statutes, and, in death penalty cases, Section 701.13 of Title 21 and Section 1089 of Title 22 of the Oklahoma Statutes. The right to counsel at State expense on direct appeal was established under the Federal Constitution by the United States Supreme Court in *Douglas v. California*, 372 U.S. 353 (1963). The right to counsel at State expense in capital post-conviction proceedings is found in Section 1089 of Title 22.

The Appellate Program is appointed to represent clients in accordance with the Indigent Defense Act, Sections 1355 -1369, and the Uniform Post-Conviction Procedure Act, Section 1089 (capital cases) of Title 22 of the Oklahoma Statutes.

GENERAL APPEALS DIVISION (NON-CAPITAL APPEALS)

The General Appeals Division is appointed by

the district courts of Oklahoma to represent clients on direct appeal from the trial court to the Oklahoma Court of Criminal Appeals in cases where the defendant has been sentenced to a term of imprisonment up to life imprisonment without the possibility of parole.

The Division is appointed in 75 counties and in Oklahoma County and Tulsa County when the public defenders have a conflict of interest or where the defendant was represented by retained counsel at trial and is judicially determined to be indigent on appeal. Legal services are provided by salaried attorneys and, under certain circumstances, by a private attorney. The cost of expert assistance and investigative services, if any, are funded in the Division budget. If the General Appeals Division has difficulties meeting court deadlines because of an unusually high number of court appointments, the agency enters into contracts with private attorneys on a case-by-case basis to represent Division clients on appeal.

If the General Appeals Division is unable to accept court appointments because of a conflict of interest arising from a prior court appointment, the agency enters into a contract with a private attorney on a case-by-case basis to represent the client on appeal.

The filing of General Appeals Division cases cannot be delayed because of the decision by the Tenth Circuit Court of Appeals in *Harris v.*

Champion, 15 F.3d 1538 (10th Cir. 1994). The agency was a defendant in the *Harris* class action litigation, brought by agency clients who alleged prejudice from delays in filing their briefs on appeal. The Tenth Circuit held there is a rebuttable presumption of a Due Process violation if a non-capital appeal has not been decided within two years of judgment and sentence, making it mandatory for the appellate attorney to file a brief within the deadlines established by the Court of Criminal Appeals. Due to caseloads greatly exceeding nationally-recognized standards, which were caused in part by an agency-wide reduction-in-force at the beginning of Fiscal Year 2003, the agency received a supplemental appropriation during the last part of Fiscal Year 2005, which was annualized. The Division received a substantial portion of that appropriation to alleviate the Division's caseload.

The General Appeals Division began FY-2008 with 312 open cases in various stages of appeal before the Court of Criminal Appeals, and received appointments in 284 additional cases during the fiscal year. The Division closed 342 cases, ending the fiscal year with 254 open cases to be carried into Fiscal Year 2009. During the course of the fiscal year, the Division handled 596 cases.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 174 clients during FY-2008. Of those, four involved clients convicted of homicide; including one client convicted of first-degree murder. In addition, Division attorneys appeared for seven oral arguments before the Court of Criminal Appeals, filed 22 reply briefs, and filed 6 petitions for rehearing.

The Division closed 342 cases during the year. Most of the cases closed, 165, were closed because a final decision was reached by the Court of Criminal Appeals. In 29 of those cases, relief was obtained on behalf of the client. Other cases were closed for various reasons. One hundred thirteen cases contracted to outside counsel were closed upon completion. Forty-

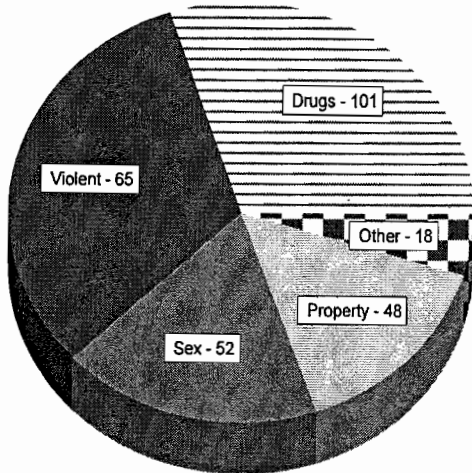
three appeals were closed after the appeal was dismissed, either at the client's request or because the Court of Criminal Appeals lacked jurisdiction to hear them; nine cases were closed because the System was not properly appointed to handle them; and five cases were closed because outside counsel was retained by the client. Additionally, seven appeals were closed due to consolidation with other cases.

New cases were received from 56 of the State's 77 counties. Almost 20% of the incoming caseload, or 57 cases, arose from Oklahoma and Tulsa counties. In 194 of the cases received in FY-2008, counsel at trial level was court-appointed, and 90 cases were handled at trial by privately-retained counsel or by the client pro se.

SUMMARY OF CASES CLOSED

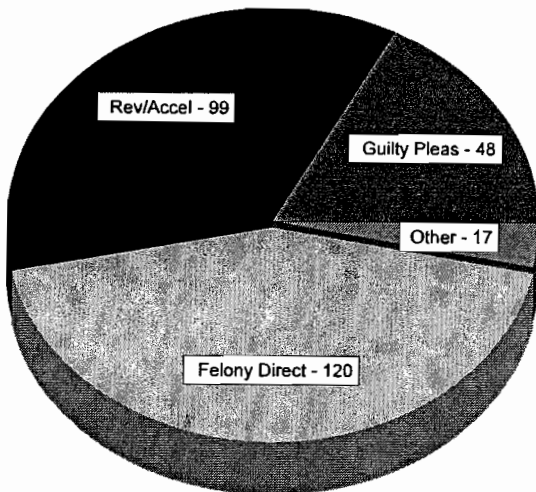
| <u>Reason for Closing</u> | <u># of Cases</u> | <u>%</u> |
|--|--------------------------|---------------------------|
| Decision of Court of Criminal Appeals | 165 | 48 |
| Contracted outside and completed | 113 | 33 |
| Dismissed for Lack of Jurisdiction (Dismissed at Client's request) | 43 | 13 |
| OIDs not properly appointed | 9 | 3 |
| Outside Counsel Retained by Client | 5 | 1 |
| Other (Consolidated) | <u>7</u> | <u>2</u> |
| Total | <u><u>342</u></u> | <u><u>100%</u></u> |

Types of Offenses Appealed



The graph at left demonstrates the types of appeals received by the General Division. Except for juvenile appeals (included in the “other” category), appeals of everything from burglary to First Degree Murder involve opening briefs of up to 50 pages in length. Other appeals involve juvenile and responses to State appeals of adverse rulings.

Types of Appeals



The majority of the convictions in the cases appealed by the General Division are violent crimes, including all degrees of murder and manslaughter, child abuse, assaults, robberies, kidnapping and first degree arson. The subcategory of sexual offenses includes such violent offenses as rape and molestation, as well as related crimes such as failure to register as a sex offender. Drug offenses are the second leading category of offenses appealed

CAPITAL (Death Penalty) APPEALS

The Capital Direct Appeals Division is appointed by the district courts of Oklahoma to represent indigent defendants who have been convicted of murder in the first degree and sentenced to death in Oklahoma District Courts. This includes defendants who have been convicted at jury trials, bench trials, and after entering pleas of guilty. Although the Division's primary responsibility is to represent these defendants in their direct appeal to the Oklahoma Court of Criminal Appeals. Direct appeal in a capital case also includes filing a petition for a writ of certiorari to the United States Supreme Court if the case is affirmed by the Oklahoma Criminal Court of Appeals. Although the Division's primary responsibility is to represent capital defendants in their direct appeal, over the past several years, the Division has also accepted cases transferred from the General Appeals Division for direct appeal clients convicted of any form of homicide.

The Capital Direct Appeals Division is subject to appointment by the district courts in 75 counties and in Oklahoma County and Tulsa County when the public defender has a conflict of interest or where the defendant was represented by retained counsel at trial but is judicially determined to be indigent on appeal.

The Capital Post-Conviction Division is appointed to represent all death-sentenced defendants in post-conviction proceedings. By statute, the Capital Post-Conviction Division must represent all death-sentenced defendants, including those who were represented by the Oklahoma County or Tulsa County public defenders on direct appeal. Legal services are provided by salaried attorneys and investigators.

Since November 1995, post-conviction applications in a death penalty case are filed in the Court of Criminal Appeals while the capital direct appeal case is still pending. Before the statutory changes, post-conviction applications in a death penalty case

were treated like non-capital post-conviction cases and filed in district court after the capital direct appeal case was decided by the Oklahoma Criminal Court of Appeals.

CAPITAL DIRECT APPEALS DIVISION

CASELOAD

The Capital Direct Appeals Division began Fiscal Year 2008 with 14 pending capital cases and 15 cases in which the client was convicted of some form of homicide. During the fiscal year, five new capital case and 36 new non-capital homicide cases were opened. By the end of the year, six capital cases and nine non-capital cases were closed, leaving the Division with 55 active cases, 13 of these being capital, and 42 non-capital homicide cases.

STATEWIDE DISTRIBUTION

The following is a breakdown of the distribution of Division capital cases among the various counties:

COUNTY

| | |
|-----------|-----|
| Oklahoma | 38% |
| Tulsa | 23% |
| Cleveland | 15% |
| Blaine | 8% |
| Custer | 8% |
| Seminole | 8% |

The statewide distribution of the non-capital homicide cases handled by the Division is as follows:

COUNTY

| | |
|----------|-----|
| Tulsa | 27% |
| Oklahoma | 23% |
| Comanche | 8% |

| | |
|-----------|----|
| Osage | 6% |
| Pittsburg | 6% |
| Caddo | 2% |
| Carter | 2% |
| Cherokee | 2% |
| Cleveland | 2% |
| Custer | 2% |
| Grady | 2% |
| Lincoln | 2% |
| Love | 2% |
| Mayes | 2% |
| McClain | 2% |
| McCurtain | 2% |
| Muskogee | 2% |
| Payne | 2% |
| Pontotoc | 2% |
| Woodward | 2% |

DISPOSITION OF CASES

Five non-capital homicide cases were affirmed by the Oklahoma Court of Criminal Appeals and subsequently closed during Fiscal Year 2008. One non-capital guilty plea homicide case was vacated and remanded for further proceedings. Of the six capital cases closed during Fiscal Year 2008, one capital case was reversed and remanded for a new sentencing hearing, and five cases were closed after being affirmed by the Court of Criminal Appeals and denied certiorari by the United States Supreme Court.

***CAPITAL POST
CONVICTION DIVISION***

The primary mission of the Division continues to be representing clients in their original post conviction cases. This representation involves the investigation, preparation and filing of an original application for post conviction relief. The Division strives to provide a thorough review of each case to ensure the clients have the best chance of obtaining relief when the cases move from state court into the federal system.

The Capital Post Conviction Division began Fiscal Year 2008 with 31 cases. The Division was

appointed to eight new cases. Fifteen cases were closed during the year, leaving the Division with 24 cases at the beginning of Fiscal Year 2009. Of the cases which were closed:

- two original post conviction cases were dismissed after the applications had been filed because relief was granted on direct appeal;
- one case was closed after conflict counsel was assigned; and
- 12 cases were transferred to federal habeas counsel after relief was denied by the Oklahoma Court of Criminal Appeals.

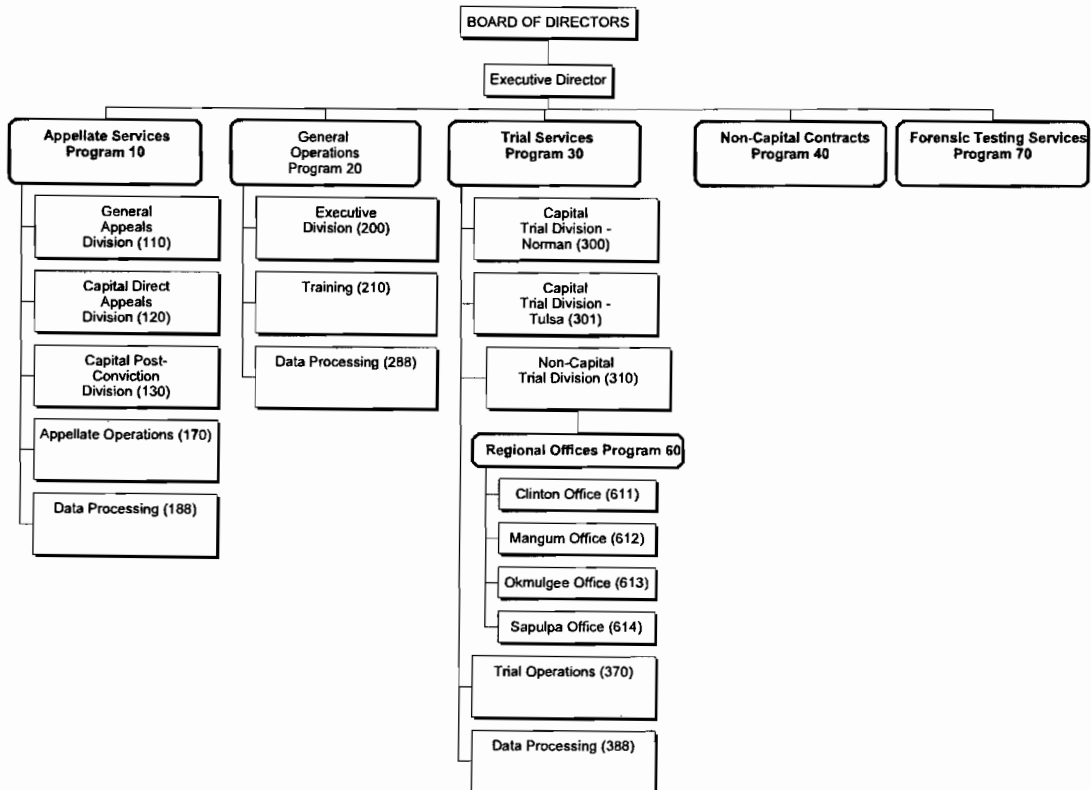
As reported last year, the Division continues to represent Garry Allen in the District Court of Pittsburg County on the issue of competency to be executed. A jury trial was held April 28-May 1, 2008. By a vote of nine to three, the jury found Mr. Allen competent. The court has since granted Mr. Allen’s request for an evidentiary hearing on his Motion for New Trial. The hearing will be scheduled when the court reporter completes transcription of the trial transcripts.

A statute enacted by the Oklahoma Legislature now requires the Court of Criminal Appeals to order a response by the State before relief can be granted in a post conviction case. The Court ordered the Oklahoma Attorney General’s Office to respond to three original applications for post conviction relief in FY 2008. Two of those cases remain pending.

The Division experienced several personnel changes in FY 2008, including the hiring of a new division chief, two appellate defense counsel and two investigators. All new hires filled existing vacancies.

Oklahoma Indigent Defense System

Organization Chart



OKLAHOMA INDIGENT DEFENSE SYSTEM

Non-Capital Trial Division

Actual FY-2008 Workload

July 1, 2007 through June 30, 2008

SUMMARY OF ALL CATEGORIES OF APPOINTMENTS

| TYPE OF APPOINTMENT | | FEL | JUV | MISD | TRAF | WL | YO | ALL |
|--|---------------------------|---------------|--------------|---------------|------------|----------|----------|---------------|
| FY-2008 Contract <i>LESS</i> Conflicts | | 13,733 | 2,032 | 5,770 | 403 | 3 | 2 | 21,943 |
| Plus Contract Carry-Over from Prior Fiscal Years | | 5,266 | 881 | 1,784 | 135 | 3 | 2 | 8,071 |
| Total Contract Workload | | 18,999 | 2,913 | 7,554 | 538 | 6 | 4 | 30,014 |
| | | | | | | | | |
| 2008 Satellite Office <i>LESS</i> Conflicts and Overload Cases | | 2,329 | 375 | 1,573 | 170 | 0 | 0 | 4,447 |
| Plus Satellite Office Carry-Over from Prior Fiscal Years | | 982 | 368 | 589 | 81 | 0 | 0 | 2,020 |
| Total Satellite Office Workload | | 3,311 | 743 | 2,162 | 251 | 0 | 0 | 6,467 |
| | | | | | | | | |
| FY-2008 Conflicts | Contracts | 202 | 14 | 52 | 2 | 0 | 0 | 270 |
| | Satellite Offices | 51 | 3 | 8 | 0 | 0 | 0 | 62 |
| Conflicts Carryover from Prior Fiscal Years | Contract Counties | 86 | 12 | 22 | 0 | 0 | 0 | 120 |
| | Satellite Office Counties | 6 | 4 | 0 | 0 | 0 | 0 | 10 |
| FY-2008 Overload Cases | | 775 | 60 | 170 | 9 | 0 | 0 | 1,014 |
| Overload Cases Carry-Over from Prior Fiscal Years | | 374 | 55 | 133 | 20 | 0 | 0 | 582 |
| Total Conflicts and Overload Cases Workload | | 1,494 | 148 | 385 | 31 | 0 | 0 | 2,058 |
| | | | | | | | | |
| TOTAL FY-2008 NCTD Workload | | 23,804 | 3,804 | 10,101 | 820 | 6 | 4 | 38,539 |