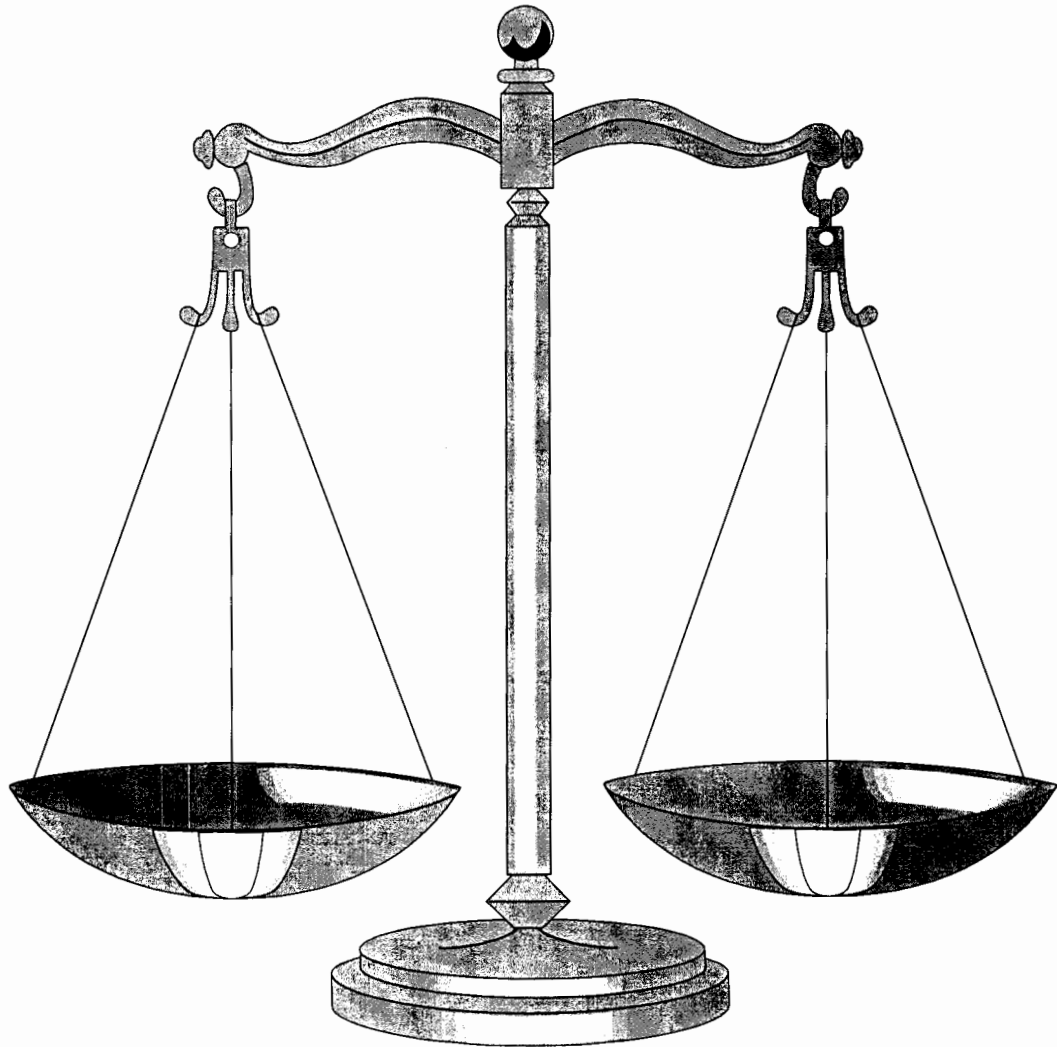


OKLAHOMA

INDIGENT DEFENSE SYSTEM



2013 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



MARY FALLIN
GOVERNOR

MICHAEL C. THOMPSON
CABINET SECRETARY
SAFETY AND SECURITY

JOE P. ROBERTSON
Executive Director

This publication is printed and issued by the Oklahoma Indigent Defense System as authorized by 74 O.S. §§ 3103-3106.1. Twenty (20) copies have been prepared and distributed at a cost of \$39.20. Copies have been deposited with the Publications clearinghouse of the Oklahoma Department of Libraries.

JOE P. ROBERTSON
EXECUTIVE DIRECTOR



MARY FALLIN
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STATE OF OKLAHOMA
OKLAHOMA INDIGENT DEFENSE SYSTEM

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November 15, 2013

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TO THE HONORABLE MARY FALLIN
HONORABLE BRIAN BINGMAN
HONORABLE T.W. SHANNON
HONORABLE TOM COLBERT
HONORABLE DAVID LEWIS

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, 2013, 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 2013 from the Governor and her staff, from the Legislature and from the Judiciary.

As we move forward in 2014, 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,

A handwritten signature in black ink that reads "Joe P. Robertson".

Joe P. Robertson
Executive Director

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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 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 Oklahoma Indigent Defense Act, 22 O.S. § 1355, *et seq.*, which created the agency, sets forth the duties and responsibilities of the agency, the Indigent Defense System Board and the OIDS Executive Director.

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 Homicide 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 43,980 court appointments in Fiscal Year 2013. The numerical breakdown by division is as follows:

| | |
|--------------------------------|---------------|
| NON-CAPITAL TRIAL | |
| <i>Staff</i> | 7,693 |
| <i>County Contracts</i> | 34,729 |
| <i>Conflicts</i> | 745 |
| CAPITAL TRIAL - NORMAN | 31 |
| CAPITAL TRIAL - TULSA | 36 |
| GENERAL APPEALS | 595 |
| HOMICIDE DIRECT APPEALS | 81 |
| CAPITAL POST CONVICTION | 65 |
| EXECUTIVE DIVISION CONFLICTS | |
| <i>Capital Trial Divisions</i> | 4 |
| <i>Capital Post Conviction</i> | 1 |
| TOTAL | <u>43,980</u> |

Given the nature of criminal cases, most 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. 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.

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.

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. Due to the nationwide economic downturn, OIDS, along with the majority of state agencies, received a large reduction in its appropriation Fiscal Year 2010. The agency's appropriation was reduced by \$999,986, or 6% of the previous fiscal year appropriation. This left the agency with an appropriation of \$15,720,785 to start Fiscal Year 2010, which as set forth below, was subsequently reduced even further. In order to make up for the initial budget reduction, the agency eliminated the further assignment of non-capital trial and direct appeal overload cases to private contract attorneys, and separated two staff members from employment in July 2009, as well as eliminating three vacant positions. These actions resulted in a substantial increase in cases assigned to already overburdened staff attorneys.

As statewide revenue collections deteriorated during Fiscal Year 2010, a 5% monthly funding allocation reduction was imposed beginning in August by the Oklahoma Office of State Finance, with that monthly reduction increasing to 10% in December for the remainder of the fiscal year. Total allocation reductions during the fiscal year amounted to \$1,179,064. These forced the agency to implement further cost-cutting measures involving the termination of an additional 11 staff members in December 2009 and instituting employee furloughs.

Recognizing the dire situation facing OIDS due to funding reductions in recent years, House Bill 2301, the general appropriation bill passed by

the Oklahoma Legislature and signed by the Governor, increased the agency's annual appropriation by \$1,000,000 effective July 1, 2013. This funding increase sufficiently addressed the agency's concerns that it would not be able to continue to provide constitutionally-sufficient legal representation to its court-appointed clients.

Two new members were appointed to the Indigent Defense System Board by the Governor during the 2013 fiscal year. Dr. Kathryn LaFortune was appointed to replace Lance Hopkins. Patrick Moore was appointed to replace long-time outgoing board member and Chair Rod Wiemer, effective July 1, 2013. Governor Mary Fallin appointed board member Jake Jones as the new Chair, also effective July 1, 2013.

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 and finance personnel.

OIDS provides legal representation through the services of staff members and by contracting with private attorneys, experts and investigators. At the end of the fiscal year, OIDS employed 101 full-time equivalent staff members at its main offices in Norman and its satellite offices in

Clinton, Guymon, Mangum, Okmulgee and Sapulpa. Three employees providing IT services to the agency were technically transferred to the Oklahoma Office of Management and Enterprise services during the previous fiscal year pursuant to Oklahoma House Bill 1304. They remain under the supervision of and office within the System even though they are no longer identified as agency employees.

In Fiscal Year 2013, the agency entered into 145 new professional services contracts with private attorneys and experts to provide defense services in court-appointed cases, in addition to administering 130 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

presentations on diverse topics as voir dire, Brady violations, search and seizure, DUI and preliminary hearings.

EXECUTIVE CONFLICT CASELOAD

During Fiscal Year 2013, the Executive Division maintained contracts with outside attorneys for representation in a total of five conflict cases.

The year began with two pending district court death penalty cases. Two new cases were opened, while another was closed, resulting in three cases being carried over into Fiscal Year 2014. The Division began Fiscal Year 2013 with one pending capital post conviction case, which remained open during the fiscal year and was carried over into Fiscal Year 2014.

WEBSITE

The agency's website provides information about OIDS, resources for public defenders and others interested in criminal law issues, 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 Oklahoma Court of Criminal Appeals opinions 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 yearly Patrick A. Williams Criminal Defense Institute, held June 27th and 28th in Oklahoma City. It included

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 2013, NCDT received 31,022 new appointments. NCTD's total FY-2013 caseload, which includes cases carried forward from previous fiscal years, equaled 43,167 active cases.

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 four ways:

- (1) flat-rate fiscal year contracts with private attorneys;
- (2) satellite offices with salaried staff attorneys;
- (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; and
- (4) assignment of cases to one roving attorney assigned to Western Oklahoma.

In Fiscal Year 2013, 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. Since Fiscal Year 1998, OIDS has made a concerted effort to ensure that NCTD fiscal-year contracts are adequately staffed by giving weight, during the contracting process, to the number of law firms participating in an offer.
- (2) Staffed Satellite Offices: NCTD operated five satellite offices: Clinton, Mangum, Okmulgee, Sapulpa and Guymon. These offices handled the entire caseload in 19 counties.

The Non-Capital Trial Division ended Fiscal Year 2013 (July 1, 2012- June 30, 2013) with 22 attorneys. During Fiscal Year 2013, a satellite office staff attorney handled an average of 220 felony cases, 32 juvenile cases, 85 misdemeanor cases, and 9 traffic cases, or an average of 346 total cases.

The National Legal Aide and Defender Association (NLADA) has long established standards, endorsed by the Criminal Justice Section of the American Bar Association, that no one attorney shall handle in any given 12 month period more than 150 felony cases, OR more than 200 juvenile cases, OR more than 400 misdemeanor and traffic cases. Further, the NLADA standards assume each respective attorney operates in only ONE courthouse.

Applying the NLADA standards, in Fiscal Year 2013, each NCTD satellite

office staff attorney did the work of 1.85 attorneys. Moreover, each worked in several district courts in multiple counties. In fact, the largest satellite office region covers seven courthouses and 7,544 square miles.

- (3) Conflict/Overload Counsel: Each year conflicts of interests arise in a certain number of county contract and satellite office cases and must be assigned to conflict-free counsel. During Fiscal Year 2013, NCTD assigned 547 conflict cases to contracted conflict counsel. Conflicts arising out of county contracts account for 233 of those cases. Conflicts arising out of satellite offices account for 314 of those cases.

- (4) In FY-2010, NCTD was fortunate to receive federal funding for one roving attorney. On December 1, 2009, NCTD hired an attorney to cover conflict cases and provide overload relief to NCTD attorneys in Western Oklahoma. Although the federal funding expired late in FY-2011, this attorney has remained in her position as the NCTD Western Oklahoma roving conflict attorney. The roving attorney was assigned 35 new cases during FY-2013, many of which were serious felony cases. As FY-2013 ended, this attorney carried 89 open cases in many Western Oklahoma counties.

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 in terms of 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 2013, the Non-Capital Trial Division's satellite offices served the following counties:

Clinton Office

- Beckham
- Custer
- Dewey
- Ellis
- Roger Mills
- Washita
- Woodward

Mangum Office

- Greer
- Harmon
- Kiowa
- Jackson
- Tillman

Okmulgee Office

- Okfuskee
- Okmulgee (2 courthouses)

Sapulpa Office

- Creek (3 courthouses)

Guymon Office

- Beaver
- Cimarron
- Texas
- Harper

Overall Caseload

In Fiscal Year 2013, the Non-Capital Trial Division received a total of 25,673 new county contract cases. County contractors discovered conflicts of interests in 240 of these cases. As a result, 233 of the conflict cases were assigned to contracted conflict counsel. Seven of the conflict cases would have otherwise been assigned to a satellite office for coverage, but were instead assigned to the Western Oklahoma roving attorney. Once the conflict cases were subtracted from all newly assigned cases, the county contractors retained a total of 25,426 new cases in Fiscal Year 2013. The county contractors carried another 9,303 cases into FY-2013 from previous fiscal years. Ultimately, the total FY-2013 county contract workload equaled 34,729 cases.

The Non-Capital Trial Division satellite offices reported a total of 342 conflict of interest cases. Three hundred fourteen of these cases were assigned to contracted conflict counsel. Twenty-eight cases were assigned to the Western Oklahoma roving attorney. With conflict cases subtracted from all newly assigned cases, the satellite offices handled 4,979 new cases in Fiscal Year 2013. The satellite offices carried another 2,625 cases into FY-2013 from previous fiscal years. Ultimately, the total FY-2013 satellite office workload totaled 7,604 cases.

The number of new NCTD cases, whether assigned to county contractors, satellite attorneys, conflict counsel or the Western Oklahoma roving

attorney, totaled 31,022.

The 43,167 cases handled by the Non-Capital Trial Division during Fiscal Year 2013 represents a moderate increase from the Fiscal Year 2012 workload. The overall NCTD workload has increased 11% since Fiscal Year 2009.

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

CAPITAL TRIAL DIVISION NORMAN OFFICE

The Capital Trial Division – Norman 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.

TRIAL CASELOAD

The Capital Trial Division – Norman began Fiscal Year 2013 with 22 pending cases carried over from Fiscal Year 2012. The Division received new appointments in nine cases during Fiscal Year 2013. By the end of the fiscal year,

12 of those cases were concluded and closed; the remaining 19 cases were carried over into Fiscal Year 2014. The total number of cases managed by the Division in Fiscal Year 2013 was 31 cases.

In an effort to meet the overall agency mission of providing the highest quality of representation to indigent defendants, using the most cost-effective and efficient means possible, the Division continued to accept appointments for non-capital clients charged with murder in the first degree. The Division continues to regularly maintain close contact with both the Capital Trial Division – Tulsa and Non-Capital Trial Division to ensure all indigent defendants facing first-degree murder charges receive representation quickly, and to efficiently resolve any conflict issues arising in multiple-defendant cases.

FISCAL YEAR 2013 RESULTS

Jury and Non-Jury Trials

Result of four cases tried in Fiscal Year 2013:

- ◇ 1 jury trial resulting in a death sentence
- ◇ 1 not guilty by reason of insanity was given by the judge, (the client in this case was accused of killing his mother and family dog, with the case remaining open as the client is currently in the Oklahoma Forensic Center in Vinita, Oklahoma)
- ◇ 1 trial resulted in a mistrial due to a hung jury, with the case reset to August, 2013

Guilty Pleas

The Division represented six clients during Fiscal year 2013 who chose to resolve their cases by entering guilty pleas. The results of those pleas are as follows:

- ◇ 3 First Degree Murder – Life Without Parole sentences
- ◇ 1 First Degree Murder (Alford Plea)
- ◇ 1 Second Degree Murder- one sentence of 30 years
- ◇ 1 Manslaughter I – one sentence of 20 years

Additionally, the Division handled one-year sentence reviews on two cases that were closed the previous fiscal years. In one case, the client had been charged with Murder I, Burglary I, Conspiracy to Commit Burglary I, Robbery Committed by Two or More Persons (two counts) and Child Neglect. The Division negotiated dismissals for the Murder I, Burglary I, Conspiracy to Commit Burglary I and Child Neglect. The remaining two counts of Robbery Committed by Two or More Persons were reduced to Robbery II with a sentence of ten years for one and five years for the other to run concurrently. At the one-year review, the Division was able to secure modifications with the sentences suspended and the client released from custody. In the other case, the client pled to Murder 1 and Burglary I and received a sentence of Life Without the Possibility of Parole. At the two-year review, the Division was able to secure a modification and the sentence was reduced to Life.

Misc. Disposal

- ◇ 1 Returned to Non-Capital Trial Division
- ◇ 2 Conflicts
- ◇ 1 Dismissal of Murder charge (A&B on Correctional Officer and Possession of Firearm AFCF. With a sentence of six years and all but two suspended after completing RID program)
- ◇ 1 Overflow case

FINAL RESULTS OF CASES CONCLUDED

| Result | No. of Cases |
|---|--------------|
| Death | 1 |
| Life Without Parole | 3 |
| Life With Parole (Alford Plea) | 1 |
| Murder II- number of years | 1 |
| Manslaughter | 1 |
| Conflict | 2 |
| Returned to Non-Capital Division | 1 |
| Overflow case | 1 |
| A&B on Correctional Officer and Possession of Firearm AFCF-number | |

| | |
|-----------|----|
| of years. | 1 |
| Total | 12 |

***CAPITAL TRIAL DIVISION
TULSA***

The Capital Trial Division - Tulsa has the primary responsibility for defending capital and non-capital first degree murder cases in 29 counties in the Eastern-Northeastern area of the State. The Division is further assigned to conflict capital and non-capital first degree murder cases in the remaining counties served by OIDS.

CASELOAD

Fiscal Year 2013 began with a carryover of 26 pending cases from the previous fiscal year. The Division opened 10 new cases during the fiscal year, bringing the total caseload for the year to 36 cases. The Division concluded 18 cases, carrying over 18 cases into Fiscal Year 2014.

RESULTS

There were no death penalties imposed against any Division clients during the fiscal year - the eighth year in a row. The Division experienced great success in negotiating good pleas on behalf of its clients. One example was a client's plea of guilty to the lesser charge of Accessory After the Fact and sentenced to 10 years with all suspended. In a number of cases the clients' first degree murder charge was reduced to manslaughter. These are a few examples of a number of exceptional results obtained for Division clients due to a thorough investigation and persuasive presentation of the circumstances of these cases to the juries, the court and the prosecution. These results are due to the dedication, commitment and hard work of Division attorneys, investigators and support staff.

Jury and Bench Trials

Result of case tried in 2013

- 1 First Degree Murder trial resulting in a conviction and sentence of life with parole

Guilty Pleas

The Division represented 16 clients during Fiscal year 2013 where cases were resolved by a plea. The results of those pleas are as follows:

- 5 First Degree Murder – Life Without Parole sentences
- 1 First Degree Murder – Life With Parole sentence
- 6 Manslaughter I
- 4 Accessory to Murder After the Fact

FINAL RESULTS OF CASES CONCLUDED

| Result | No. of Cases |
|------------------------------------|--------------|
| Death Sentences | 0 |
| Life Without Parole | 5 |
| Life With Parole | 2 |
| Manslaughter I | 6 |
| Accessory to Murder After the Fact | 4 |
| Conflict of Interest | 1 |
| Total | 18 |

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.

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 and Tulsa Counties 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, and adequate funding is available, the agency enters into contracts with private attorneys on a case-by-case basis to represent Division clients on appeal. If the 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. However, with the recent economic downturn and reductions in the agency's appropriations, the Division's ability to assign contract overload appeals to private counsel has been severely curtailed.

The General Appeals Division began FY-2013 with 274 open cases in various stages of appeal before the Court of Criminal Appeals, and received appointments in 321 additional cases during the fiscal year. The Division closed 274 cases, ending the fiscal year with 321 open cases to be carried into Fiscal Year 2014. During the course of the fiscal year, the Division handled 595 cases.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 227 clients during Fiscal Year 2013. Division attorneys appeared for seven oral arguments before the Court of Criminal Appeals in fast track cases and filed 30 reply briefs and two petitions for rehearing.

The Division closed 274 cases during the year. Of most of the cases closed, 195 were closed because a final decision was reached by the Court of Criminal Appeals. In 28 of those cases, relief was obtained on behalf of the client. Other cases were

closed for various reasons. Nine cases were closed by the Division when they were transferred within the agency to the OIDS Capital Direct Appeals or Capital Post-Conviction Divisions for briefing. General Appeals received two cases from the OIDS Capital Direct Appeals Division for briefing that were both first-degree murder cases, one juvenile and one as a conflict. Thirty-seven 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; 22 cases were closed because the System was not properly appointed to handle it; and three cases were closed because outside counsel was retained by the client. Additionally, eight appeals were closed due to consolidation with other cases.

Three hundred twenty-one new cases were received from 56 of the State's 77 counties. Almost 15% of the incoming caseload, or 49 cases, arose from Oklahoma and Tulsa counties, and the three first-degree murder cases received from across the state arose from those two counties. One of the first-degree murder cases was received twice, once prior to a Motion for New Trial, and again after that motion was heard and denied. In 224 of the cases received in FY-2013, counsel at trial level was court-appointed, and 97 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 | 195 | 71 |
| Dismissed for Lack of Jurisdiction (Dismissed at Client's request) | 37 | 14 |
| OIDS not properly appointed/appeal out of time | 22 | 8 |
| Outside Counsel Retained by Client | 3 | 1 |

| | | |
|---------------------------------|-----|------|
| Transferred to another Division | 9 | 3 |
| Other (Consolidated) | 8 | 3 |
| Total | 274 | 100% |

ANALYSIS OF CASES RECEIVED

Types of Appeals Lodged

| | | |
|---|-----------|----------|
| Direct Appeals (Felony & Misdemeanors) | 149 | 47 |
| Revocation/Accelerations | 113 | 35 |
| Guilty Plea Appeals | 46 | 14 |
| Other (Juvenile) | <u>13</u> | <u>4</u> |
| Total | 321 | 100% |

Types of Crimes Appealed

| | | |
|------------------|-----------|----------|
| Violent Offenses | 89 | 28 |
| Sex Offenses | 71 | 22 |
| Drug Offenses | 99 | 31 |
| Property Crimes | 37 | 11 |
| Other | <u>25</u> | <u>8</u> |
| Total | 321 | 100% |

CAPITAL (Death Penalty) APPEALS

Although traditionally the Homicide Direct Appeals Division’s primary responsibility was to represent capital defendants in their direct appeal, the Division is also now responsible for the representation of indigent defendants who have been convicted of any form of homicide in Oklahoma District Courts in their appeals to the Oklahoma Court of Criminal Appeals. This includes defendants who have been convicted at jury trials, bench trials, and after entering pleas of guilty. A 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.

The Homicide Direct Appeals Division is subject to appointment by the district courts in 75 counties and in Oklahoma and Tulsa Counties 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.

***HOMICIDE DIRECT APPEALS
DIVISION***

CASELOAD

The Homicide Direct Appeals Division began Fiscal Year 2013 with three pending capital cases and 52 cases in which the client was convicted of some form of homicide. During the fiscal year, 25 new non-capital homicide cases and one capital case was opened. By the end of the year, two capital cases and 38 non-capital cases were closed, leaving the Division with 41 active cases, two of these being capital, and 39 non-capital homicide cases.

STATEWIDE DISTRIBUTION

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

COUNTY

| | |
|-----------|-----|
| Cleveland | 25% |
| McClain | 25% |
| Grady | 25% |
| Comanche | 25% |

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

COUNTY

| | |
|--------------|-----|
| Adair | 3% |
| Atoka | 3% |
| Beckham | 1% |
| Carter | 3% |
| Cleveland | 2% |
| Comanche | 5% |
| Garfield | 6% |
| Grady | 3% |
| Jackson | 2% |
| Kiowa | 1% |
| LeFlore | 1% |
| Lincoln | 1% |
| Logan | 1% |
| McCurtain | 3% |
| Mayes | 1% |
| Muskogee | 5% |
| Okfuskee | 1% |
| Oklahoma | 25% |
| Okmulgee | 2% |
| Osage | 1% |
| Ottawa | 1% |
| Payne | 1% |
| Pontotoc | 1% |
| Pottawatomie | 1% |
| Pushmataha | 1% |
| Seminole | 1% |
| Sequoyah | 2% |
| Stephens | 1% |
| Tulsa | 15% |
| Wagoner | 3% |
| Washington | 3% |

DISPOSITION OF CASES

Thirty-one non-capital homicide cases were affirmed by the Oklahoma Court of Criminal Appeals and were subsequently closed during Fiscal Year 2013. One non-capital revocation case was reversed and remanded with instructions to vacate and another revocation case was reversed and remanded with instructions to dismiss. Two capital cases were closed during Fiscal Year 2013, after being affirmed by the Court of Criminal Appeals and denied certiorari by

the United States Supreme Court.

*CAPITAL POST
CONVICTION DIVISION*

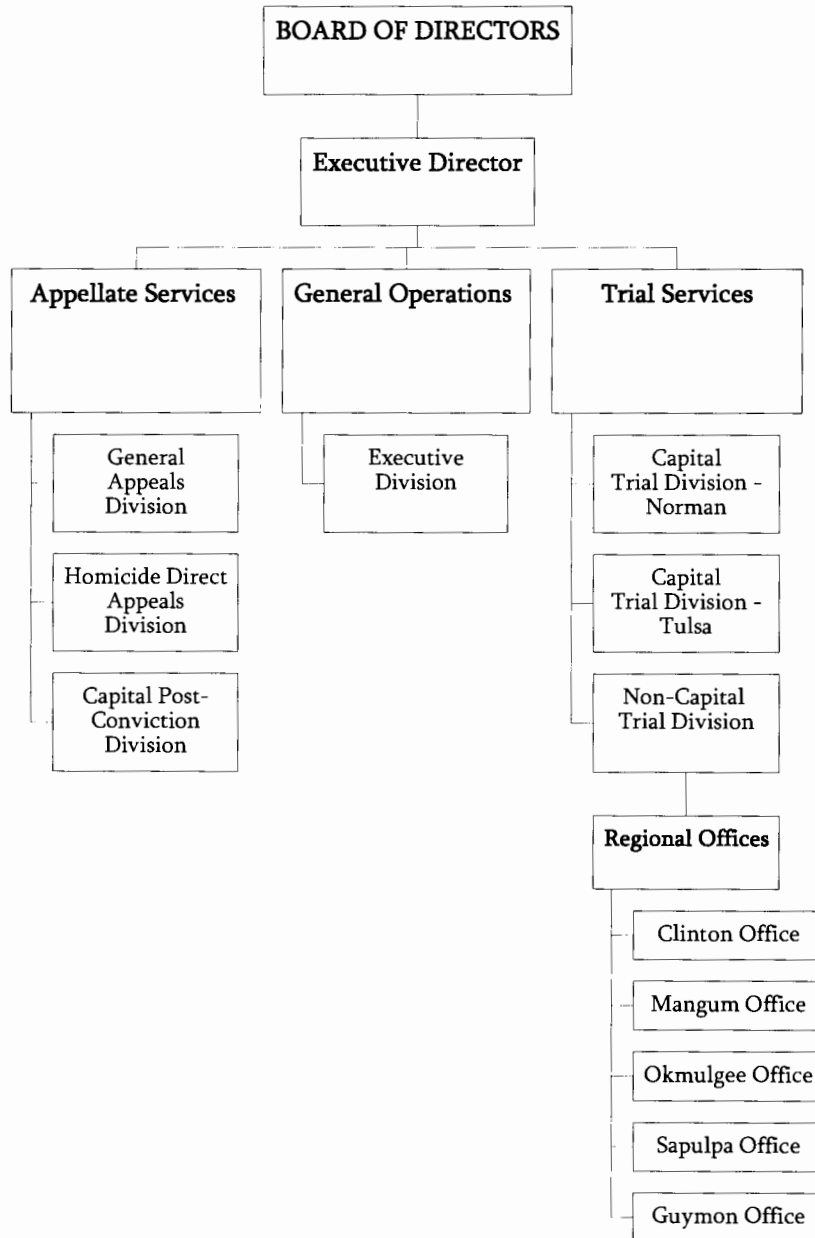
The primary mission of the Division continues to be representing capital cases. This representation involves the investigation, preparation, and filing of an original application for post conviction relief and related motions. The Division strives to provide a thorough review of each case to ensure the clients have the best chance of obtaining relief when the cases move from state court into the federal system. The Division has recently been handling conflict and overflow cases from the General Appeals Division and the Homicide Direct Appeals Division. In addition, when workload allows, the Division has been available to serve as co-counsel in overflow or conflict non-capital homicide cases from the capital trial divisions.

The Capital Post Conviction Division began Fiscal Year 2013 with 41 cases, representing 12 capital cases and 29 non-capital cases. During Fiscal Year 2013, the Division accepted one capital post-conviction and 23 non-capital cases.

During Fiscal Year 2013, seven capital cases were closed. Five of those cases were transferred to federal habeas counsel after relief was denied by the Oklahoma Court of Criminal Appeals, one case was closed after the client was executed, and one case was closed after the client died of natural causes while being housed on death row. In addition, 27 non-capital appeal cases were closed during Fiscal Year 2013. As a result, the Division opened Fiscal Year 2014 with a total of 31 cases, comprised of 6 capital post conviction cases and 25 non-capital direct appeal cases.

Due to budget constraints, the Division has lost three FTE appellate defense counsel positions since FY 2009, the last position in August 2011.

Oklahoma Indigent Defense System Organization Chart



OKLAHOMA INDIGENT DEFENSE SYSTEM
Non-Capital Trial Division
Actual FY-2013 Workload
July 1, 2012 through June 30, 2013

SUMMARY OF ALL CATEGORIES OF APPOINTMENTS

| TYPE OF APPOINTMENT | | FEL | JUV | MISD | TRAF | WL | YO | ALL |
|--|---------------------------|---------------|--------------|---------------|------------|-----------|-----------|---------------|
| FY-2013 Contract <i>LESS</i> Conflicts and Viol Cases | | 16,553 | 1,525 | 6,986 | 323 | 7 | 32 | 25,426 |
| Plus Contract Carry-Over from Prior Fiscal Years | | 5,976 | 767 | 2,405 | 139 | 6 | 10 | 9,303 |
| Total Contract Workload | | 22,529 | 2,292 | 9,391 | 462 | 13 | 42 | 34,729 |
| | | | | | | | | |
| 2013 Satellite Office <i>LESS</i> Conflicts and Viol Cases | | 3,287 | 280 | 1,265 | 142 | 1 | 4 | 4,979 |
| Plus Satellite Office Carry-Over from Prior Fiscal Years | | 1,548 | 429 | 594 | 52 | 1 | 1 | 2,625 |
| Total Satellite Office Workload | | 4,835 | 709 | 1,859 | 194 | 2 | 5 | 7,604 |
| | | | | | | | | |
| FY-2013 Conflicts | Contracts | 188 | 11 | 32 | 9 | 0 | 0 | 240 |
| | Satellite Offices | 257 | 38 | 40 | 5 | 0 | 2 | 342 |
| Conflicts Carryover from Prior Fiscal Years | Contract Counties | 59 | 4 | 19 | 0 | 0 | 0 | 82 |
| | Satellite Office Counties | 59 | 8 | 12 | 0 | 0 | 2 | 81 |
| FY-2013 Viol Cases | | 30 | 0 | 5 | 0 | 0 | 0 | 35 |
| Viol Case Carryover from Prior Fiscal Years | | 44 | 1 | 9 | 0 | 0 | 0 | 54 |
| Total Conflicts and Viol Cases Workload | | 637 | 62 | 117 | 14 | 0 | 4 | 834 |
| | | | | | | | | |
| TOTAL FY-2013 NCT Workload | | 28,001 | 3,063 | 11,367 | 670 | 15 | 51 | 43,167 |