

OKLAHOMA

INDIGENT DEFENSE SYSTEM



2023 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



J. KEVIN STITT
GOVERNOR

TRICIA EVEREST
SECRETARY OF PUBLIC SAFETY

CHARLES TIM LAUGHLIN
Executive Director

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CHARLES TIMOTHY LAUGHLIN
EXECUTIVE DIRECTOR



J. KEVIN STITT
GOVERNOR

STATE OF OKLAHOMA
OKLAHOMA INDIGENT DEFENSE SYSTEM
September 15, 2023

BOARD MEMBERS

JAKE JONES III, ESQ., CHAIR
4801 Gaillardia Parkway
Suite 200
Oklahoma City, OK 73142

KENNETH E. WRIGHT III, ESQ.
P.O. Box 487
Jay, OK 74346

ROBERT R. REDWINE, ESQ.
Ryan Whaley, PLLC
400 North Walnut Avenue
Oklahoma City, OK 73104

TOMMY ADLER, ESQ.
Adler Markoff & Associates
9211 Lake Hefner Pkwy
Oklahoma City, OK 73120

TO THE HONORABLE J. KEVIN STITT
HONORABLE GREG TREAT
HONORABLE CHARLES MCCALL
HONORABLE M. JOHN KANE IV
HONORABLE SCOTT ROWLAND

Enclosed is a report concerning the duties, activities, and accomplishments of the Oklahoma Indigent Defense System for the fiscal year ending June 30, 2023, 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 the agency received during Fiscal Year 2023 from the Governor and his staff, from the Legislature, and from the Judiciary.

As we move forward in 2024, we thank the attorneys, investigators, administrators, support staff, and expert service providers for their commitment to our mission and their unwavering dedication to our clients. We also thank the private attorneys who serve our clients as OIDS contractors. It is only through the efforts of all these individuals that the right to counsel and the interests of justice are protected.

Sincerely,

A handwritten signature in cursive script that reads "Charles Tim Laughlin".

Charles "Tim" Laughlin
Executive Director

◆ Board Members

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Adler Markoff & Associates
9211 Lake Hefner Pkwy
Oklahoma City, OK 73120

KENNETH E. WRIGHT III, ESQ.
P.O. Box 487
Jay, OK 74346

Past Board Members

(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 most 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 is governed by a five-person Board. Each member is appointed by the Governor, with the advice and consent of the Oklahoma Senate, for a five-year term. 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 consists of the General Appeals Division, the Homicide Direct Appeals Division, and the Capital Post-Conviction Division.

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 criminal cases in 75 of Oklahoma's 77 counties, and in all 77 counties at the appellate level. During Fiscal Year 2023, OIDS contracted with private Oklahoma-licensed attorneys to handle 100% of the indigent non-capital trial caseload in 46 counties. In 29 counties, staff attorneys handled most of the indigent caseload. Private attorneys handle most the System's conflict 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 represented a total of 52,507 court appointments in Fiscal Year 2023. The numerical breakdown by division is as follows:

NON-CAPITAL TRIAL	
<i>Staff</i>	14,213
<i>County Contracts</i>	37,111
<i>Conflicts</i>	531
CAPITAL TRIAL – NORMAN	18
CAPITAL TRIAL – TULSA	12
GENERAL APPEALS	482
HOMICIDE DIRECT APPEALS	91
CAPITAL POST CONVICTION	49
EXECUTIVE DIVISION CONFLICTS	0
<i>TOTAL</i>	<u>52,507</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.

Sixty Years Later, the Oklahoma Indigent Defense System Keeps Gideon's Promise.

The United States Supreme Court's decision in *Gideon v. Wainwright*, 372 U.S. 355 (1963), turned 60 years old in fiscal year 2023. In this case a unanimous court held that states are required to provide legal counsel to indigent defendants charged with felonies. In 1967, the Supreme Court held that states had an obligation to provide counsel to indigent juvenile defendants. Finally, in 1972, in *Argersinger v. Hamlin*, 407 U.S. 25 (1972), the Supreme Court held that states are obliged to provide counsel to indigents charged with misdemeanors.

The implied promise of the Gideon decision and its progeny is a promise from our nation and our states collectively to each person in this country. The cases articulate our nation's and our state's promise that no person's freedom should be placed in jeopardy of criminal prosecution without the necessary benefit of a lawyer committed to that person's legal defense and advocacy.

United States Supreme Court Justice Hugo Black put it this way, "[L]awyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards

designed to assure fair trial before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accuser without a lawyer to assist him."

In the greater part of Oklahoma, the Oklahoma Indigent Defense System is charged with keeping Gideon's promise. (We share this honor with the Oklahoma and Tulsa County Public Defenders.) Every employee of the Oklahoma Indigent Defense System plays a vital role in enabling the agency to serve our clients.

In Fiscal Year 2023 the people who work for and contract with the Oklahoma Indigent Defense System defended the constitutional rights of indigent Oklahomans with skill, dedication, and honor. In doing so, they defended everyone's constitutional rights and kept Gideon's promise.

◆ 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.

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 and expert service providers. At the end of the fiscal year, OIDS employed 145 full-time equivalent staff members at its main offices in Norman and its satellite offices in Altus, Clinton, Enid, Guymon, Lawton, Norman, Okmulgee, Sapulpa, and Woodward. (In early FY-2024, the agency opened an office in El Reno to serve Canadian County and added Cotton, Jefferson, Garvin, and McClain Counties existing satellite office coverage areas.)

In Fiscal Year 2023, the agency entered 150 new professional services contracts with private attorneys and expert service providers to furnish defense services in court-appointed cases, in addition to administering 40 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.

The Executive Division also administers professional training opportunities for our attorneys and support staff. FY-2023 saw the continuation of significant increases in attorney and support staff training opportunities. The Executive Division dedicates a great deal of effort to facilitating agency employees' participation in valuable training programs resulting in a more competent and confident agency work force.

SUMMARY OF EXECUTIVE DIRECTOR DUTIES

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
- ◆ Provide for expert and investigator services

General Operations Program Accomplishments

The successes of the trial and appellate divisions would not be possible without the outstanding service of the agency's General Operations Program which includes the Executive and Finance Divisions. In addition to performing vital administrative functions, these dedicated professionals are instrumental in the agency's responsible stewardship of agency funds.

The agency's Finance and Executive Divisions are masters of logistics and administration. As the legal landscape continues to evolve for our trial and appellate attorneys and support staff, our Finance and Executive Divisions work hard to ensure agency staff have the necessary tools to provide excellent service.

Deputy Executive Director Angela Cole-Cockings expertly marshals the agency's administrative staff. In FY-2023 the agency continued to make significant improvements in our finance, procurement, and technological functions. Ms. Cole-Cockings worked closely with our Chief Finance Officer, Brandy Bahm to improve the agency's solid fiscal management.

Purchasing Officer Christa Szabo demonstrated exceptional tenacity and creativity through out FY-2023. Ms. Szabo worked diligently to help the agency secure and maintain leases for new, relocated, and existing offices. Ms. Szabo also continue her mission to ensure fiscal responsibility by expertly utilizing surplus opportunities. Ms. Szabo is a true problem solver.

Personnel Manager Whitney Fleming and Personnel Specialist Jalaina Arvin dedicated exemplary effort to the agency's personnel needs including recruiting, onboarding, benefits management, and the arrangement of continuing education opportunities.

In FY-2023 Information Systems Network Manager Felisa Billy and Information Systems Application Manager T.J. Peterson significantly

improved the work lives of the agency's attorneys, investigators, and support staff by implementing significant technological improvements.

The outstanding efforts of the entire General Operations Program, in conjunction with the efforts of the Non-Capital Trial Division, resulted in the July 1, 2023, establishment of a new trial office in El Reno which will serve Canadian County in FY-2014 and beyond.

In FY-2023 the Executive Division continued to develop the Executive Director's Internship Program. This program offered up to 12 law students the opportunity to work with skilled attorneys on trial and appellate cases. (The program was expanded to 18 positions in early FY-2024.) The internship program developed into a valuable recruiting tool as many interns sought employment with the agency upon graduation. The efforts of the entire General Operations Program contributed to the success of this program in FY-2023.

Finally, the Executive Division began a client services program in FY-2023. Karen Walker-Dodge was hired to organize and manage a program through which the agency would improve the disposition of many of our clients' criminal cases by facilitating the provision of social services to meet our clients' needs. The program identifies clients whose case dispositions are most likely to be improved with the provision of services. The program evaluates the clients' needs including mental health/substance abuse treatment, housing, educational, vocational assistance, child/adult care challenges, etc. Ms. Walker-Dodge built a sound framework for the program in the latter part of FY-2023. In early FY-2024 Ms. Walker-Dodge began supervision of the agency's first Resource Navigator, Kaleda Ruck. Although this program is in its early stages, Ms. Walker-Dodge's and Ms. Ruck's efforts have significantly improved the circumstances of many agency clients.

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 <https://oklahoma.gov/oids.html>.

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 2023, NCTD received 31,216 new appointments. NCTD's total FY-2023 caseload, which includes cases carried forward from previous fiscal years, equaled 51,855 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 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.

In Fiscal Year 2023, the Division's caseload was handled as follows:

- 1) Flat-rate Fiscal Year Contracts: In 46 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 nine satellite offices: Clinton, Enid, Woodward, Guymon, Lawton, Mangum (now Altus), Norman (Cleveland County), Okmulgee and Sapulpa. These offices handled the entire caseload in 29 counties.

The Non-Capital Trial Division ended Fiscal Year 2023 (July 1, 2022 – June 30, 2023) with 40 attorneys. During Fiscal Year 2023, a satellite office staff attorney handled an average of 207 felony and youthful offender cases, 26 juvenile cases, and 130 misdemeanor, traffic and wildlife cases, or an average of 363 total cases.

The National Legal Aid 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 2023, each NCTD satellite office staff attorney did the work of two attorneys. Moreover, most attorneys worked in several district courts in multiple counties.

Currently, three (3) satellite offices cover five counties each (Enid, Clinton, and Altus), two (2) offices cover four-county areas (Guymon and Woodward), two (2) offices cover two counties each (Okmulgee and Lawton), and two (2) offices cover a single county (Norman and Sapulpa); however, the Sapulpa office covers two (2) separate courthouses within Creek County.

- 3) Conflict Counsel: Each year conflicts of interest arise in a certain number of county contract and satellite office cases and must be assigned to conflict-free counsel. During Fiscal Year 2023, NCTD assigned 311 conflict cases to contracted conflict counsel. Conflicts arising out of county contracts account for 143 of those cases. Conflicts arising out of satellite offices account for 168 of those cases.
- 4) In FY-2010, NCTD received 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, the agency has maintained this position. The roving attorney is assigned complicated cases. This attorney participates with assigned counsel in trial strategy formulation, pre-trial litigation, and trial advocacy. The roving attorney was assigned 33 new cases during FY-2023, most of which were serious and complicated felony cases. As FY-2023 ended, the roving attorneys carried 20

open cases in counties throughout Oklahoma.

Kiowa
Jackson
Tillman

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 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.

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 staff 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 (\$120/hour for in-court legal services; \$100/hour for out-of-court legal services) under Section 1355.8(D)(6) of the Indigent Defense Act.

In Fiscal Year 2023, the Non-Capital Trial Division's satellite offices served the following counties:

NORMAN OFFICE

Cleveland

(Garvin and McClain added in FY-2024)

ALTUS OFFICE (FORMERLY MANGUM)

Greer
Harmon

CLINTON OFFICE

Beckham
Custer
Ellis
Roger Mills
Washita

ENID OFFICE

Alfalfa
Blaine
Garfield
Grant
Kingfisher

GUYMON OFFICE

Beaver
Cimarron
Texas
Harper

LAWTON OFFICE

Comanche
Stephens

(Cotton and Jefferson added in FY-2024)

OKMULGEE OFFICE

Okfuskee
Okmulgee

SAPULPA OFFICE

Creek (2 Courthouses)

WOODWARD OFFICE

Dewey
Major
Woods
Woodward

OVERALL CASELOAD

In Fiscal Year 2023, the Non-Capital Trial Division received a total of 20,563 new county

contract cases. County contractors discovered conflicts of interests in 143 of these cases. As a result, 120 of the conflict cases were assigned to contracted conflict counsel. Twenty-three of the conflict cases would have otherwise been assigned to a satellite office for coverage but were instead assigned to the roving attorneys. Once the conflict and roving attorney's cases were subtracted from all newly assigned cases, the county contractors retained a total of 20,400 new cases in Fiscal Year 2023. The county contractors carried another 16,711 cases into FY-2023 from previous fiscal years. Ultimately, the total FY-2023 county contract workload equaled 37,111 cases.

The Non-Capital Trial Division satellite offices reported a total of 168 conflict of interest cases. 158 of these cases were assigned to contracted conflict counsel. Ten cases were assigned to the roving attorney. With conflict and roving attorney cases subtracted from all newly assigned cases, the satellite offices handled 10,505 new cases in Fiscal Year 2023. The satellite offices carried another 3,708 cases into FY-2023 from previous fiscal years. Ultimately, the total FY-2023 satellite office workload totaled 14,213 cases.

The number of new NCTD cases, whether assigned to county contractors, satellite attorneys, conflict counsel or the roving attorneys, totaled 31,430.

The 51,855 cases handled by the Non-Capital Trial Division during Fiscal Year 2023 represent a caseload increase of 2% compared to the number of cases handled in FY-2022.

The Fiscal Year 2023 NCTD caseload represents a 10.53% decrease since Fiscal Year 2016 (57,318 cases). However, the FY-2022 NCTD caseload also represents a 26.2% increase since FY-2011 in which the total NCTD caseloads was 41,083.

Non-Capital Trial Division Accomplishments

The Non-Capital Trial Division (NCTD) provides judicially determined indigent people trial-level representation in District Court felony, misdemeanor, traffic, wildlife, and juvenile delinquency cases. NCTD provides criminal defense representation through regional satellite offices, fiscal year county contracts, conflict contracts, and staff roving attorneys. Staff attorneys and contracted attorneys alike vigorously defended their clients' constitutional rights throughout FY-2023. NCTD's successes are too numerous to list; however, examples of success from two satellite offices illustrate the way in which the division is seeing success from newer and more experienced attorneys.

The agency established a Non-Capital Trial Division satellite office in Lawton on July 1, 2021 to serve Comanche and Stephens Counties. The Lawton office continued serve these counties through FY-2023 and added service to Cotton and Jefferson Counties at the beginning of FY-2024. The Lawton office, headed by Deputy Division Chief Debbie Maddox, is composed of newer and more experienced litigators. Ms. Maddox and her team place a premium on fostering mentorship relationships among the staff. This approach resulted in a string of jury trial wins in FY-2023. Newer lawyers Clay Shepperson and Chance Rabon secured not-guilty verdicts in their first felony jury trials. Journeyman litigator Larry Monard secured not guilty verdicts in a series of serious felony jury trials including a first-degree murder trial.

NCTD's Sapulpa satellite office, led by Deputy Division Chief James Dennis, also secured multiple victories. Sapulpa office defense counsel Keith Patterson secured a not guilty verdict in a serious felony jury trial as recently as June 2023. Throughout FY-2023, Mr. Dennis, Mr. Patterson, and Eugene Wink vigorously defended their clients resulting in numerous dismissals and charges amended to lesser offenses.

CAPITAL (DEATH PENALTY) TRIAL REPRESENTATION

The OIDS Capital Trial Divisions are assigned the task of representing indigent defendants in cases in which the State seeks the death penalty. The two Divisions combined represent clients throughout the State except for 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.

CAPITAL TRIAL NORMAN DIVISION

The Capital Trial Norman Division (CTND) 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 Tulsa Division (CTTD.)

In Fiscal Year 2023 the Capital Trial Norman Division carried over 13 cases from previous fiscal years; and opened an additional six cases during Fiscal Year 2023, bringing the total number of cases represented to 19. (Of those 19 cases, one was a client's trailing misdemeanor case.)

FISCAL YEAR 2023 RESULTS

Jury and Non-Jury Trials

- ◇ No Jury trials resulting in Death Penalty.

CTND resolved one case at jury trial. The death penalty trial resulted in a conviction of two counts of first-degree murder and related crimes; however, CTND successfully persuaded the jury to not impose death sentences. The client was sentenced to Life Without Parole on the murder convictions and various prison terms for the additional convictions.

Guilty Pleas or Dismissals

The Division represented four additional clients during Fiscal Year 2023 whose cases were resolved by guilty pleas. The results of these cases area as follows:

- ◇ 4 Guilty Pleas to First Degree Murder and other charges resulting in a maximum sentence of Life Without the Possibility of Parole. (+ 1, client's trailing misdemeanor case was also resolved.)
- ◇ 1 Guilty Plea to a lesser degree of homicide resulting in a maximum sentence of 25 years in prison.
- ◇ 1 Not Guilty by Reason of Mental Illness finding resulting in civil mental health commitment.

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 Tulsa Division and the 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. The results set forth below reflect the outstanding work by the Division's attorneys, investigators, and support staff.

Results of Cases Concluded

Result	No. Of Cases
Death	0
Life Without Parole (Following Plea)	4
Life Without Parole (Jury Trial)	1
Pled to a Lesser Charge	1
Determined to be NGRMI	1

CAPITAL TRIAL TULSA DIVISION

The Capital Trial Tulsa Division (CTTD) has the primary responsibility for defending capital and non-capital first degree murder cases in 29 counties in the Eastern half 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

The Capital Trial Tulsa Division (CTTD) began Fiscal Year 2023 with a carryover of eight murder cases and one non-murder case pending from previous fiscal years. The Division opened five new murder cases and two non-murder cases during the fiscal year, bringing the total caseload for the year to 13 murder and three non-murder cases. The Division concluded three murder cases, carrying over eight cases into Fiscal Year 2024.

OVERVIEW

The Capital Trial Tulsa Division (CTTD) continues to work diligently to provide excellent representation to indigent capital defendants in accordance with the ABA Guidelines for Effective Representation in Death Penalty Cases. CTTD's mission is to pursue life-saving outcomes for their clients at every stage of the proceedings. CTTD utilizes expert services to explain human behavior in context and thoroughly investigate the life

stories of their clients to present a comprehensive portrait of troubled people. CTTD's efforts have largely proved successful, with no death sentences from that division in many years.

Fiscal Year 2023 Results

Resolved Murder Case 1 – This was a first-degree murder case from 2010. The client unable to be restored to mental competence. She was placed in the care of the Office of Public Guardian.

Resolved Murder Case 2 – In this first-degree murder case the state dismissed the charges prior to trial.

Resolved Case 3 – This first-degree murder case began as a Death Penalty Case. The State dismissed the Bill of Particulars in support of death penalty sentencing prior to trial. CTTD defeated the first-degree Murder charge at trial. The client was convicted of second-degree manslaughter and sentenced to a term of incarceration equal to the time he had already spent in jail.

Closed/Transferred	No. Of Cases
Jury Trial – Not Guilty (Convicted of Lesser Charge)	1
Charge Dismissed	1
Determined to be Incompetent	1
Transferred to Another Division (3 Murder Cases and 1 Non-Murder)	4

Capital Trial Accomplishments

The Oklahoma Indigent Defense System has two capital trial divisions: Capital Trial Norman (CTND) and Capital Trial Tulsa (CTTD). The capital trial divisions' primary responsibility is the defense of first-degree murder cases in

which the State seeks the death penalty. When the divisions' workloads allow, they will take on the representation of clients in particularly complex non-death penalty first degree murder cases.

Effective capital trial litigation requires the extraordinary efforts of skilled attorneys, investigators, and support staff. The trial team must prepare their cases on multiple tracks at once. They must prepare to defend against the charges. They must prepare to defend against the alleged death penalty aggravating factors. They must prepare to tell their client's story in the sentencing phase of trial through mitigation and expert witnesses. They must know how each preparation track works together in their client's defense. Throughout this complex process, capital defense counsel must also persistently advocate for a negotiated resolution to the case. Capital litigation professionals know that the occasional jury trial win notwithstanding, most death penalty cases are best resolved prior to trial.

During Fiscal Year 2023, the Capital Trial Norman Division (CTND) illustrated exemplary performance in all the above-mentioned aspects of capital litigation. Led by Division Chief Mitch Solomon, the team's hard work led to the resolution of four life-saving guilty plea dispositions in which their clients were sentenced to life in prison without the possibility of parole rather than death. In another case, CTND's client entered a guilty plea to a lesser degree of homicide and received a sentence of 25 years in prison.

In capital litigation, some cases must be resolved at jury trial. In FY-2023, this was the case for the CTND's team as well. In case involving multiple charges including two counts of first-degree murder, the State was not receptive to resolving the case short of sentences of death. Capital defense counsel Shea Watts, Raven

Sealy, and Alex Richards, assisted by investigators, Dale Anderson, Erin Moore, Tina Pinedo, Jason Satwalekar, and paralegal Megan Moser, applied all their skill and energy to every preparation track on behalf of their client. Although their client was convicted of two counts of first-degree murder, the jury spared him the death penalty, sentencing him to two life-without-parole sentences. In short, CTND's excellent efforts spared their client's life. Ms. Watts' efforts in this case earned her the Oklahoma Criminal Defense Lawyers Association's (OCDLA) Clarence Darrow Award for Outstanding Trial Advocacy. The OCDLA awarded the entire Norman Capital Trial Division the organization's President's Award for their outstanding advocacy throughout the year.

In FY-2023, the Capital Trial Tulsa Division (CTTD) demonstrated their commitment to providing their clients skilled advocacy. In a tragic case involving a child death, the State initially sought death penalty punishment. Guided by Division Chief Gretchen Moseley, Defense Counsel Velia Lopez and Gregg Graves successfully negotiated a dismissal of the Bill of Particulars in support of death sentencing. The case was ultimately resolved at jury trial. The State sought a first-degree murder conviction and a sentence of life without the possibility of parole. Ms. Lopez and her team masterfully defended their client throughout the trial. The jury returned a verdict of guilty to second degree manslaughter rather than first-degree murder. CTTD's client was sentenced to a term that amounted to the time he had served in jail awaiting trial. Ms. Lopez and her team walked their client, who at one time had been facing a death sentence, out of the courthouse.

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. If the Division is unable to accept court appointments because of a conflict of interest arising from a prior court appointment, the case will be transferred to another division within the appellate program to provide representation.

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.

The General Appeals Division began FY-2023 with 244 open cases in various stages of appeal before the Court of Criminal Appeals and received appointments in 238 additional cases during the fiscal year. The Division closed 224 cases, ending the fiscal year with 258 open cases to be carried into Fiscal Year 2023. During the fiscal year, the Division handled 482 cases.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 184 clients during FY-2023. Supplemental Briefs following remanded proceedings were filed in two cases. In addition, Division attorneys appeared for three oral arguments before the Court of

Criminal Appeals in juvenile and state appeal cases. Attorneys filed 35 reply briefs, and two petitions for rehearing.

The Division closed 224 cases during the year, most due to the Court of Criminal Appeals reaching a final decision in the case. Most of the cases, 160, were closed because a final decision was reached by the Court of Criminal Appeals, with 136 of those decisions affirming the trial court. Relief was granted to the client by the appellate court in 24 decisions.

Two cases were reversed and remanded with instructions for new trial on all or some counts. The Court granted certiorari in three cases including two where the plea was ordered withdrawn and one where a new hearing was granted. Two cases had counts dismissed on double punishment grounds. Six cases resulted in sentence modifications including the court vacating unauthorized fines or fees, correction of sentences to run concurrent rather than consecutive, and orders relating to credit for time served. Three cases obtained substantial sentencing relief.

Fifteen cases were dismissed by the Court of Criminal Appeals for lack of jurisdiction because the cases were not timely initiated by trial counsel, or the matter lacked an appealable order. Another eleven cases were dismissed by the Court at the client's request after consultation with counsel, and eleven cases were dismissed as moot. Three cases were rejected by the Division because the appointment was invalid. Six appeals were closed by consolidation with other cases. Seven cases were transferred to another agency division. Three cases were contracted to outside counsel. Two cases were closed because the agency was not properly appointed, and another two were closed because outside counsel was retained.

The 238 new cases were received from 51 of the State's 77 counties. The largest number of

appeals received were lodged from Comanche, Muskogee, and Tulsa counties.

ANALYSIS OF CASES RECEIVED

<i>Types of Appeals Lodged</i>	<i># of Cases %</i>	
Direct Appeals (Felony and Misdemeanors)	93	39
Revocation/Acceleration/Termination	107	45
Guilty Plea Appeals	32	13
Non-Capital Post-Conviction	2	1
State Appeals	3	1
Juvenile (Adjudication, YO, Certifications)	1	1
Total	238	100%

<i>Types of Direct Appeals</i>	<i># of Cases %</i>	
Violent Offenses	35	38
Sex Offenses	33	35
Drug Offenses	11	12
Property Crimes	4	4
Other (i.e., DUI, escape, SORA, FA, or unknown)	10	11
Total	93	100%

Cases Received by County
FY-2023

Adair	1	Kay	4	Roger Mills	1
Atoka	1	Kiowa	1	Rogers	3
Beaver	1	Latimer	1	Seminole	1
Beckham	3	Lincoln	3	Stephens	12
Blaine	1	Logan	3	Texas	4
Caddo	3	Mayes	5	Tillman	1
Canadian	3	McClain	1	Tulsa	16
Carter	4	McCurtain	1	Wagoner	1
Cleveland	1	Muskogee	16	Washington	7
Cleveland	8	Nowata	1	Washita	1
Comanche	20	Okfuskee	4	Woodward	5
Creek	1	Oklahoma	13		
Custer	10	Okmulgee	12		
Delaware	4	Osage	5		
Garfield	11	Ottawa	2		
Garvin	2	Pawnee	1		
Greer	4	Payne	6		
Harmon	2	Pittsburg	3		
Hughes	1	Pontotoc	2		
Jackson	15	Pottawatomie	6	TOTAL	238

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 (CPCD) is assigned to represent all death-sentenced defendants in post-conviction proceedings. By statute, the Oklahoma Indigent Defense System 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 assigned to CPCD.

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 2023 with six pending capital cases, 46 cases in which the client was convicted of some form of homicide or other non-capital felony case. During the fiscal year, no capital cases, and 38 non-capital homicide or other non-capital felony case were opened. One revocation in a homicide case was opened. By the end of the year, one capital case, and 43 non-capital cases, leaving the Division with 47 active cases, consisting of six capital cases and 41 non-capital cases.

STATEWIDE DISTRIBUTION

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

<i>County</i>	
Canadian	1
Cleveland	1
Oklahoma	1
Pottawatomie	1
Tulsa	1

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

County

Canadian	3	Okmulgee	1
Choctaw	1	Osage	2
Cleveland	1	Pittsburg	1
Comanche	5	Pottawatomie	1
Hughes	1	Seminole	1
Jackson	1	Stephens	2
Logan	1	Tulsa	5
Marshall	1	Washington	1
Mayes	1		
McClain	1		
Muskogee	1		
Oklahoma	8		
McIntosh	1		
McCurtain	3		
Muskogee	2		

DISPOSITION OF CASES

During Fiscal Year 2023, one capital case was closed because private counsel was retained to handle the direct appeal. Four non-capital cases were closed after the United States Supreme Court denied State-requested petitions for certiorari on issues related to *McGirt v. Oklahoma*. One non-capital case was reversed for new trial and one pending non-capital homicide case was closed after it was reversed and dismissed based on *McGirt*. Eight non-capital homicide cases were closed and transferred to the Capital Post-Conviction Division. Fifteen additional cases were closed by decision of the Court of Criminal Appeals. One appeal was dismissed by the Court for lack of jurisdiction based on failure of trial counsel to properly perfect the appeal. Three cases were closed after the clients elected to dismiss their appeals. Five non-capital homicide cases were contracted to private counsel. Finally, two cases were closed due to client’s death while the appeal was pending.

CAPITAL POST-CONVICTION DIVISION

The primary mission of the Division continues to be representing clients in 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. In addition, the Division also handles conflict and overflow cases from the General Appeals Division and the Homicide Direct Appeals Division. 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 2023 with 37 active cases, including seven capital post-conviction cases and 30 non-capital direct appeal cases. During Fiscal Year 2023, the Division accepted no new capital post-conviction cases and 12 non-capital direct appeal cases. The Division closed no capital post-conviction cases. The Division closed 14 non-capital direct appeal cases after decisions from the Oklahoma Court of Criminal Appeals, and four additional cases following the United States Supreme Court denial of certiorari sought by the state in *McGirt* related litigations. As a result, the Division ended Fiscal Year 2023 with a total of 31 cases, including seven capital post-conviction cases and 24 non-capital direct appeal cases.

Appellate Program Accomplishments

The Oklahoma Indigent Defense System’s appellate divisions evaluate criminal trials and dispositive hearings for errors and present propositions of error for the Oklahoma Court of Criminal Appeals’ consideration in direct appeals and capital post-conviction applications. The valuable contributions of the attorneys,

investigators, and support staff assigned to these divisions ensure that careful consideration is given to the preservation and protection of our statutory and constitutional rights. Each well-drafted brief and well-presented oral argument is a success in that the attorneys who present these pleadings and arguments confront the Court with colorable legal issues and give voice to their client's right to meaningful review of their lower court proceedings.

The appellate divisions serve a critical justice system function by ensuring the legitimacy of the trial process through appellate advocacy and review. In addition to the appellate divisions' systemic value, OIDS appellate attorneys and support staff achieved meaningful relief for many of their FY-2023 clients. The following are examples of the Appellate Program's FY-2013 accomplishments.

Cindy Danner, Chief of the General Appeals Division, reports that appellate defense counsel Ricki Walterscheid vindicated the right to counsel in *Burnham v. State*, 2023 OK CR 6, resulting in a new trial for Mr. Burnham who had been convicted without counsel and sentenced to 15 years in prison.

Ms. Danner also successfully challenged the use of improper propensity rebuttal evidence in *Perez v. State*, 2023 OK CR 1, resulting in the reversal of a 20-year sentence for resentencing.

In *Jackson v. State*, 2022 OK CR 29, decided November 10, 2022, appellate defense counsel Nicollette Brandt successfully challenged a revocation action where the client's 20-year suspended sentence was revoked in full because Oklahoma statute only allows a maximum revocation of six months for the technical violations that were proven.

In *Zeiset v State*, F-2021-636, briefed by Nicollette Brandt, one count was remanded for new trial because the jury was not properly instructed on the elements of the offense.

Appellate defense counsel Ariel Parry, the 2023 recipient of the Oklahoma Criminal Defense Lawyer's Association Thurgood Marshall Award for Appellate Advocacy, obtained substantial victories in state certiorari cases. In *Hill v. State*, C-2021-504 (decided Feb. 9, 2023), the Court granted certiorari ordering that the client be allowed to withdraw pleas that were entered based on statute of limitations violations on several the counts. In *Joice v. State*, C-2021-1273 (decided May 18, 2023), Ms. Parry was successful in convincing the appellate court that a new hearing on a motion to withdraw plea of guilty was required.

In *State v. Dustin Daukei-Cole*, SR-2022-250 (decided April 20, 2023), Ariel Parry was successful in thwarting the State's challenge to the statute limiting revocations in cases of simple possession of CDS to one year (Section 991(b)(G) as amended after State question 784).

Appellate defense counsel MaryAnn Grover, in *Davis v. State*, C-2022-229, successfully obtained a grant of certiorari enabling her client to withdraw guilty pleas because the client was not accurately informed of the crime's range of punishment.

Chad Johnson was successful in maintaining a District Court ruling suppressing evidence in *State v. Rhynard*, S- 2022-41 (decided December 15, 2022).

In *Vaughn v. State*, F-2020-291, Jeremy Stillwell obtained a remand for resentencing because the imposed sentence of life without parole was not authorized under the facts.

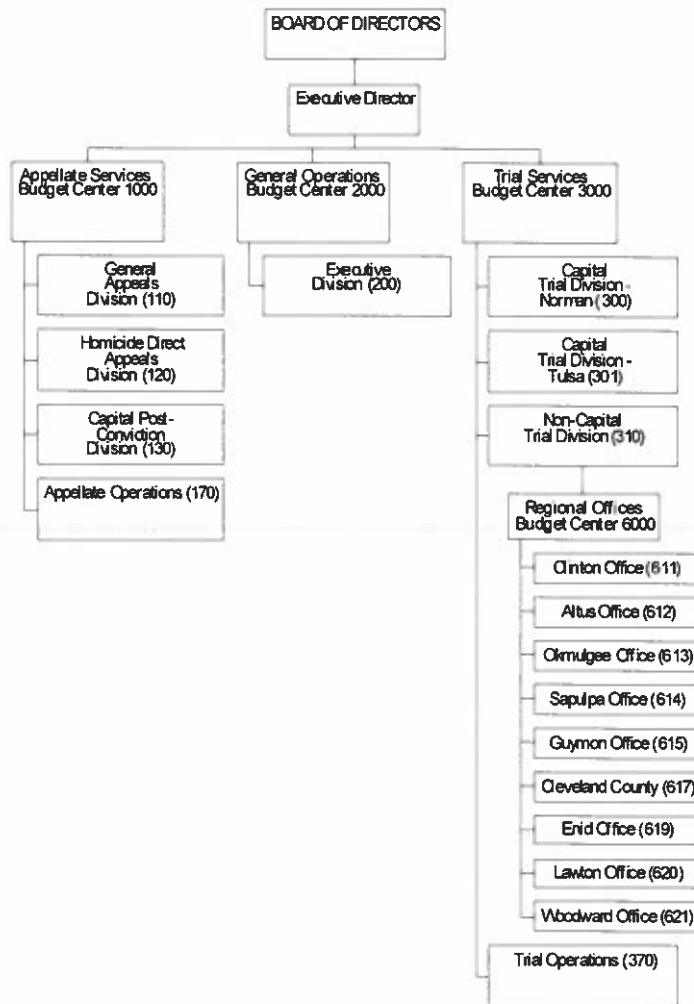
Stephen Babcock, Nicollette Brandt, Kim Heinze, Chad Johnson, Sierra Holling, Mark Hoover and Cindy Danner all won victories regarding fines, fees, matters of credit for time served and corrections of sentencing documents, including correction of sentences ordered to be run concurrently rather than consecutively.

Jacy Chafin Sullivan of the Homicide Direct Appeals Division won a published reversal for a new trial in the first-degree murder case of Anthony Rangel, who was convicted of felony murder with the underlying felony being distribution of drugs. A new trial was granted in *Rangel v. State*, 2023 OK CR 3 (decided March 9, 2023) because, while the evidence was insufficient to prove the theory the conviction was based upon, the jury did not make findings regarding the State's alternative theory of felony murder based upon an alleged robbery with a dangerous weapon.

Conclusion: Promises Yet to Keep.

The promise of *Gideon v. Wainwright* and its progeny requires an ongoing commitment to the constitutional principles upon which it is based and an ongoing commitment to the individuals to whom it was made. The Oklahoma Indigent Defense System is resolved to keeping *Gideon's* promise through dedicated service to the constitutions of the United States and the State of Oklahoma and, most importantly, to our clients.

Oklahoma Indigent Defense System ORGANIZATIONAL CHART



OKLAHOMA INDIGENT DEFENSE SYSTEM
Non-Capital Trial Division Actual
FY-2023 Workload
July 1, 2022, through June 30, 2023

SUMMARY OF ALL CATEGORIES OF APPOINTMENTS

TYPE OF APPOINTMENT		FEL	JUV	MISD	TRAF	WL	YO	ALL
FY-2023 Contract <i>LESS</i> Conflicts and Rover Cases		11,350	836	7,812	356	10	36	20,400
Plus Contract Carry-Over from Prior Fiscal Years		12,172	593	3,698	210	11	27	16,711
Total Contract Workload		23,522	1,429	11,510	566	21	63	37,111
2023 Satellite Office <i>LESS</i> Conflicts and Rover Cases		5,653	532	4,033	272	1	14	10,505
Plus Satellite Office Carry-Over from Prior Fiscal Years		2,431	56	1,146	52	0	23	3,708
Total Satellite Office Workload		8,084	588	5,179	324	1	37	14,213
FY-2023 Conflicts	Contracts	110	6	26	0	0	1	143
	Satellite Offices	138	6	22	1	0	1	168
Conflicts Carryover from Prior Fiscal Years	Contract Counties	44	0	11	0	0	0	55
	Satellite Office Counties	93	1	31	0	0	1	126
FY-2023 Rover Cases	Contract Counties	19	0	4	0	0	0	23
	Satellite Office Counties	8	1	1	0	0	0	10
Rover Cases Carryover from Prior Fiscal Years		6	0	0	0	0	0	6
Total Conflicts and Rover Cases Workload		418	14	95	1	0	3	531
TOTAL FY-2023 NCT Workload		32,024	2,031	16,784	891	22	103	51,855