



State of Colorado

Office of Alternate Defense Counsel

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October 12, 2006

Senator Jack Taylor, Chairperson
Legislative Audit Committee
200 East 14th Avenue
Denver, Colorado 80203

Dear Senator Taylor:

The following is a status report from the audit that was conducted of our agency in February, 2006,

- I. **Recommendation 1: Strengthen attorney selection by (a) requiring completed application forms, (b) conducting interviews with potential hires and reviewing references, license status, and disciplinary history prior to hire, and (c) documenting the results of interviews and background checks.**

STATUS: IMPLEMENTED/IN PROGRESS

Actions taken: Before an attorney can be considered for a contract with the Alternate Defense Counsel, they must thoroughly complete a four page application form. Once this application is received in the office, the process of attorney selection can begin. Since the audit the Alternate Defense Counsel has developed a form for insuring that each of the above items is complied with (See attachment A). As this form indicates, either the director (Lindy Frolich) or the deputy director (Roberta Nieslanik) review each application for admission to the Alternate Defense Counsel list, and insure that the lawyer is in good standing with attorney regulation, and check references. Additionally, one of us personally interviews the applicant, generally in person unless this is prohibited by distance, and then a telephone interview is conducted. We are also developing interview check list to insure uniformity and thoroughness in this interviewing process.

Lindy Frolich ♦ Roberta Nieslanik ♦ Gaylene Wagoner ♦ Wendy Barkey ♦ Kim Walker
Director Deputy Director Budget Analyst Staff Assistant Staff Assistant
Roberta Nieslanik ♦ (970) 261-4244 ♦ Fax (970) 245-8714

- II. **Recommendation 2: Improve contracting and performance monitoring by (a) executing complete contracts, including effective or renewal dates, prior to case assignment or payment, (b) consistently assessing and documenting contracted attorneys' performance during the contract period, and (c) notifying attorneys through a contract provision, of the requirement to comply with performance assessments.**

STATUS: IMPLEMENTED/IN PROGRESS

Actions taken: OADC has developed a data base that indicates the status of each of its attorney's contracts, including the expiration date. Additionally, the office has developed a file for each contracting attorney, and every time any information is obtained (positive or negative) regarding a particular attorney during the contracting period, this information is placed in the attorney's file. As indicated in the response to Recommendation 5, the public web site has been updated to include forms for both compliments and complaints. The director and deputy director are currently in the process of updating the rosters for each of the judicial districts in the state. As part of this process we are in contact with the courts in different jurisdictions, both in person and by telephone, to assess the status of the lawyers in various jurisdictions. The OADC lawyer contract has been updated to include a provision that requires the contracting attorney to comply with performance assessments, and this will therefore be a part of every renewing contact. Finally, many of the OADC contracting attorneys' contracts expire in January, 2007, and the office is beginning the process of contacting each renewing attorney to conduct a performance assessment, that will include an interview with the contractor (either in person or by phone), obtaining feedback from judges and other attorneys, and evaluating all information contained in the contractor's file for the review period. As indicated in Recommendation 1, the attorney's status with attorney regulation will also be determined. We are also developing a form to track evaluation information regarding each attorney.

Factors impacting the implementation of this recommendation: It is anticipated that the process of thoroughly reviewing each attorney prior to renewing any contract will be time-consuming. As part of the budget for Fiscal year 07-08, the OADC is anticipating requesting an additional 0.5 FTE for a lawyer to assist with the evaluation. Without this additional funding the OADC is anticipating that it might have to prioritize some of the contract renewals, and determine which attorneys require a more complete evaluation, and with which attorneys the office can confidently renew contracts without such a thorough evaluation.

- III. **Recommendation 3: Strengthen billing and payment processes by (a) complying with policies requiring documented approval for payments above the maximum allowed, (b) determining why attorneys do not use the online system and making changes, as needed, and (c) offering incentives encouraging attorneys to fully use the electronic system.**

STATUS: IMPLEMENTED/IN PROGRESS

Actions taken: All payments are initially reviewed by Kim Walker, Staff Assistant. During this process, every single request for payment that is over

the maximum allowed is set aside, and the documentation attached for review by the director or deputy director. If the attorney has given insufficient information for a determination to be made regarding whether to approve payment above the maximum, the attorney is contacted and additional documentation is requested. Only after approval is received by either the director or deputy director is the payment processed in the system.

Ninety-nine percent of our attorneys are using the on line system for payment, and in fact attorneys are not able to bill without using the on line system unless they have received prior approval from the director. There are a handful of attorneys who do one or two cases a year that have been exempted from the on line system, based on a determination that it would be more difficult to spend the time and effort to teach these lawyers how to bill on line, than it is to enter the information for them from a manual bill.

Factors impacting the implementation of this recommendation: We are continuing to evaluate the advantages and disadvantages of our EZ Pay billing system.

- IV. Recommendation 4: Improve processes and accountability by implementing a formal annual performance review of the Alternate Defense Counsel, and determining other areas where oversight can be improved.**

STATUS: IMPLEMENTED

Actions taken: At its annual meeting on September 15, 2006, the Alternate Defense Counsel Commission adopted new Rules of Operation (Attachment B). As these Rules indicate the Commission has committed to conducting an annual review of the Alternate Defense Counsel, with a more expanded review every five years. The Commission also conducted an abbreviated review of the current Alternate Defense Counsel (although it had only been five months since the change in director), so that a determination could be made as to whether the appointment should be made for a five year term. In addition, the Rules set out specific duties to be performed by the commission, to include approval of the final budget submission to the legislature, reviewing complaints and consideration and establishment of long-range goals of the ADC system. The Commission meets on a regular basis, and is actively pursuing its commitment to overseeing the agency. (See Section 5.05 for a complete listing of Additional Commission Duties.)

- V. Recommendation 5: Strengthen accountability for operations by (a) requiring Commissioners to sign annual conflict of interest statements, and (b) posting notice of meetings and implementing a public comment form or link on the Web site.**

STATUS: IMPLEMENTED/IN PROGRESS

Actions taken: In section 2.02 of its Rules of Operation (See Attachment B), the commission has outlined its policy regarding Conflicts of Interest, which includes the requirement that each commission member file a disclosure statement annually regarding any potential conflicts of interest. Signed

Conflict of Interest statements are on file from six commission members. Two others are in process, and the final member was just added to the commission, and a Conflict of Interest statement will be requested from him at the next commission meeting, to be held on November 3, 2006.

Since the audit there have been two meetings of the Alternate Defense Counsel Commission. These meetings were both posted well in advance of the meeting date, on the web site for the Alternate Defense Counsel. Also on the public web site are two forms, one for individuals to file complaints regarding the attorneys that contract with the Alternate Defense Counsel, and one for individuals to pay compliments to Alternate Defense Counsel attorneys.

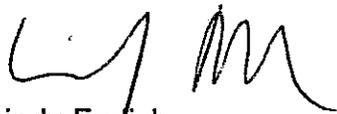
- VI. Recommendation 6: Ensure that the composition of the Commission complies with statutory requirements by assigning a liaison to coordinate the filling of vacancies in a timely manner, including announcing vacancies and proposing statutory change, as needed.**

STATUS: IMPLEMENTED

Action Steps: See letter independently submitted by Justice Alex Martinez.

Please feel free to contact me if you have any further questions regarding the status of our agency.

Respectfully submitted,



Lindy Frolich
Director

Cc: Karon Hoover, Administrative Assistant
200 East 14th Avenue
Denver, CO 80203

THIS SHEET TO BE ATTACHED TO ATTORNEY APPLICATION
Attorney: _____

Section for use by Lindy Frolich or Roberta Nieslanik

Approved to take ADC Cases:

_____ Yes

Checked References

_____ Checked ARC {attached}

Comments: _____

Added to _____ County _____ Judicial District

Informed Court on: _____ via: _____ e-mail _____ fax _____ mail
----- (Date) -----

_____ No

Lindy or Bert sent Letter on: _____
(Date)

 If Yes is marked above- Please give all paperwork to Wendy Barkey

Section to be completed by Wendy Barkey

_____ Application
Contacted Attorney On: _____

_____ Attorney Contract
Contacted Attorney On: _____

_____ W-9
Contacted Attorney On: _____

_____ On-line Account Form
Contacted Attorney On: _____

_____ Sent or Entered on COFRS _____

_____ Entered or Changed on Database _____

_____ Entered or Changed on Excel _____

ATTACHMENT A

ALTERNATE DEFENSE COUNSEL COMMISSION
RULES OF OPERATION
ADOPTED SEPTEMBER 15, 2006

ARTICLE I: PREAMBLE

The mission of the Alternate Defense Counsel system is to ensure competent and cost-effective representation to indigent persons charged with crimes in Colorado when those persons cannot be represented by the Office of Public Defender due to a conflict of interest. The Alternate Defense Counsel Commission shall have the duty to provide indigent persons accused of crimes legal services that are commensurate with those available to non-indigents. The Alternate Defense Counsel Commission oversees this system by virtue of C.R.S. § 21-2-101, et. seq.

ARTICLE II: THE COMMISSION

Section 2.01 Composition and Term of Service. The Alternate Defense Counsel Commission (Commission) shall consist of nine members. The nine members of the Commission are appointed by the Colorado Supreme Court to terms of four years. Members may be appointed for more than one term, and vacancies that occur shall be filled by appointment to the remainder of the unexpired term. Six members shall be attorneys and three shall not be attorneys. At least one member shall be appointed from each of the seven congressional districts. No more than five members shall be of the same political party. No Commission member shall be at any time a judge, prosecutor, public defender, or employee of a law enforcement agency.

Section 2.02 Conflicts Of Interest. Each member of the Commission shall file a disclosure statement annually regarding any potential conflicts of interest. No member of the Commission may accept appointments or contracts from the Alternate Defense Counsel (ADC). Members may contract with lawyers who have been appointed by the ADC and shall disclose that contract.

Section 2.03 Compensation. Members of the Commission shall serve without compensation but shall be reimbursed for actual and reasonable expenses incurred in the performance of their duties.

ARTICLE III: COMMISSION CO-CHAIRS

Section 3.01 Commission Co-chairs. The Commission shall elect Commission Co-chairs to oversee Commission business. The Commission Co-chairs shall serve terms of two years, with one Commission Co-chair being elected each year. The Commission Co-chairs shall preside over Commission meetings.

Section 3.02 Appointing Committees. The Commission Co-chairs may appoint such committees as they deem appropriate, and the reports of such committees shall be included in the minutes of meetings.

ARTICLE IV: COMMISSION MEETINGS

Article 4.01 Regular Meetings. The Commission shall hold regular meetings at least three times per year. The Commission shall meet outside of the Denver metropolitan area at least once a year if possible.

Article 4.02 Special Meetings. The Commission Co-chairs may call a special meeting of the Commission at any time. A special meeting must be called on the written request of any three members of the Commission. At least ten days' notice by mail or telephone of such meeting must be given to the members of the Commission. The notice must state the object of the meeting.

Section 4.03 Annual Meeting. The annual meeting shall be held in September, with the election of Commission Co-chairs occurring at that time.

Section 4.04 Quorum. A majority of the active members of the Commission, when present at any meeting, shall constitute a quorum, and in case there is less than this number, the Commission Co-Chairs may adjourn from time to time until a quorum is present.

Section 4.05 Notice of Meetings. The Commission shall give public notice of its meetings on the Alternate Defense Counsel web page and by such other means as the Commission deems appropriate.

Section 4.06 Conduct of Meetings. Except when the Commission is discussing personnel matters, Commission meetings shall be open to the public, and members of the public who attend shall be given a reasonable opportunity to speak. The Commission shall ensure that a method of receiving public comment is maintained on the Alternate Defense Counsel webpage and in other appropriate forums. Minutes shall be kept of all meetings and shall be preserved with the Judicial Department or in such other manner as the Commission directs. Members may attend by phone or other technological device when necessary.

Section 4.07 Voting. Each active member shall be entitled to one vote in the affairs of the Commission. A member who cannot be present for a vote may leave a proxy vote on a particular issue with another commission member.

ARTICLE V: COMMISSION DUTIES

Section 5.01 Primary Duty. The primary duty of the Commission is to appoint the Alternate Defense Counsel (ADC). The ADC shall be appointed to a term of five years and until a successor is appointed and qualified. The ADC may be re-appointed for one or more subsequent five-year terms.

Section 5.02 ADC Vacancy. A vacancy in the office of the ADC shall be filled by the Commission for the remainder of the unexpired term.

Section 5.03 ADC Evaluation. The Commission shall review the performance of the ADC each year, and shall engage in a formal performance evaluation every five years. The evaluation

shall consider information from the lawyers and others who provide representation, the judges and staffs who preside over ADC cases, opposing counsel, clients, and members of the general public. The Commission Co-chairs may appoint a committee to engage in these reviews and evaluations, which shall be considered and approved by the entire Commission at its annual meeting.

Section 5.04 Discharge of the ADC. The Commission may discharge the ADC for cause. Discharge for cause may be based, among other grounds, upon a failure to carry out the duties of the office, physical or mental disability which interferes with the performance of those duties, misconduct in office, conduct prejudicial to the administration of justice, or violation of the Colorado Rules of Professional Conduct or applicable portions of the relevant American Bar Association Standards Relating to the Provision of Criminal Justice. The decision of the Commission to remove the Alternate Defense Counsel is final and not subject to appeal, review or grievance under the provisions of these rules.

Section 5.05 Additional Commission Duties. The Commission shall advise the ADC on the development and maintenance of competent and cost-effective representation. This function includes, but is not limited to,

- (1) Review of operational policies;
- (2) Approval of any deviations from state personnel rules;
- (3) Review of the salaries paid to ADC employees;
- (4) Review of budgets and budget requests;
- (5) Approval of final budget submissions to the legislature;
- (6) Review of all complaints concerning the ADC, ADC staff and lawyers;
- (7) Participation in and review of audits of the ADC system;
- (8) Ensuring appropriate compliance with audit recommendations;
- (9) Consideration of, and assistance with, legislation affecting the ADC system;
- (10) Assisting the ADC in employing new technologies to improve service;
- (11) Assisting the ADC in developing strategies for lawyer training;
- (12) Reviewing the contracting and compensation procedures employed by the ADC;
- (13) Assisting the ADC in developing strategies for lawyer recruiting;
- (14) Approval of the Deputy ADC; and
- (15) Consideration and establishment of long-range goals of the ADC system.

ARTICLE VI: AMENDMENTS TO RULES

Section 6.01 Rules. These rules may be amended or repealed, in whole or in part, by a majority vote at any duly organized meeting of the Commission.

Adopted effective September 15, 2006

October 10, 2006

Senator Jack Taylor
Chairperson
Legislative Auditor Committee
200 E. 14th Avenue
Denver CO 80203

RE: Audit of the Office of the Alternate Defense Counsel

Dear Senator Taylor:

In response to the letter from Ms. Richardson of October 3, 2006, the following steps were taken by the Supreme Court and the State Court Administrator's Office to comply with recommendation six of the audit report.

A liaison at the State Court Administrator's Office was assigned to provide assistance to the Alternate Defense Counsel. Lindy Frolich meets regularly with the liaison. Assistance to the Alternate Defense Counsel has included help with personnel policies, legal issues surrounding the lease on the new space, assistance with contracting review and computer connections with the court system computer.

The recent opening on the commission for a lawyer member from the 4th congressional district was posted on the web site of the Alternate Defense Counsel as well as the court's web page. Announcements for the vacancy appeared in the Colorado Lawyer, both the web page and the printed magazine. The State Court Administrator's Office issued a press release concerning the vacancy via email that went to more than 200 media outlets, 41 bar association affiliates and over 80 members of the public who have requested copies of such announcements. Although those postings did not generate an application from an eligible person, an eligible person was identified, applied for the vacancy, and was appointed by the Chief Justice on October 3, 2006. All positions on the commission are currently filled.

The State Court Administrator's Office is considering creating a permanent web page link advertising vacancies on commissions, including the ADC commission, as this appears to be beneficial to the branch in coordinating and advertising vacancies.

Based on the recent hearing with the audit committee, I understand the legislation concerning the qualifications for commissioners to serve on the ADC commission will be carried by a member of the Audit Committee. That change should serve to broaden the pool of possible candidates for service on the commission.

Please let me know if you need additional information.

Sincerely

Alex J. Martinez
Justice of the Supreme Court