



JUDICIAL BRANCH

**OFFICE OF THE
ALTERNATE DEFENSE COUNSEL**

FISCAL YEAR 2024-2025

July 01, 2024

PERFORMANCE PLAN

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I. Agency Overview

Background

The United States and Colorado Constitutions guarantee every accused person the right to legal representation by counsel in criminal prosecutions. [U.S. Const., amend. VI](#); [Colo. Const., art. II, §16](#). This constitutional right means that counsel will be provided at state expense to individuals who are indigent, in all cases in which incarceration is a possible penalty.

The Office of the Alternate Defense Counsel (OADC) was established pursuant to [C.R.S. § 21-2-101, et seq.](#) as an independent governmental agency of the State of Colorado Judicial Branch. The OADC is funded to provide legal representation to individuals who are indigent in criminal and juvenile delinquency cases in which the Office of the State Public Defender (OSPD) has an ethical conflict of interest. OADC also provides legal representation to individuals charged with violating municipal codes in some municipalities, and in addition, evaluates some municipal courts to ensure their court appointed lawyers are both independent and competent.

Statutory Mandate/Directive

The Office of the Alternate Defense Counsel is mandated by statute to “provide to indigent persons accused of crimes, *legal services that are commensurate with those available to non-indigents*, and conduct the office in accordance with the Colorado Rules of Professional Conduct and with the American Bar Association Standards relating to the administration of criminal justice, the defense function.” [C.R.S. § 21-2-101\(1\)](#) (emphasis added).

Mission Statement

The mission of the Office of the Alternate Defense Counsel (OADC), through the practice of holistic public defense, is to help adults and children who the government has charged with criminal and delinquent offenses. The OADC's holistic practice model fosters ethical, informed, and standard-driven best practices in public defense. The OADC allocates resources in a manner intentionally designed to rebalance the disparate power wielded by the government in the criminal legal system. We advocate for every client's inherent worth and dignity by centering the client's experiences and voice to achieve the best legal outcome.

The OADC is dedicated to zealous, client-centered advocacy rooted in social justice, integrity, and humility. We recognize that we are working within a broken and racist criminal legal system. Public defense advocates play an essential role in challenging bias and disparity within the courtroom, within our offices, and within ourselves. There is a disparate presence of violent policing, overcharging, and harsher sentencing outcomes for Colorado's people of color and other vulnerable populations. The OADC is unwavering in its support of decarceration, the decriminalization of youth, and equity within the criminal legal system.

II. Major Functions of the Agency

Statewide Representation

The OADC contracts with approximately 1,000 private attorneys and other professionals across Colorado to represent adults and youth who are indigent, where the OSPD has an ethical conflict of interest. The OADC contracts with investigators, paralegals, forensic social workers, forensic clinical advocates, legal researchers, case assistants and resource advocates to work alongside attorneys in interdisciplinary defense teams. Experts and other ancillary services are also available to defense teams through the OADC. The Agency is committed to ensuring that contractors have the tools to practice the highest quality holistic representation. Today, in every courtroom in Colorado, there are OADC contract lawyers available to be appointed and to create interdisciplinary teams to represent clients in both delinquency and criminal cases.

Over the past two fiscal years, the OADC has added legal fellowships and an internal Post-Conviction Unit. The legal fellows are generally new attorneys who, through the fellowship experience, add critical diversity to the field, and provide legal services in outlying areas where there are few or no attorney contractors. The newly created Post-Conviction Unit is comprised of 10 staff members (rather than contractors) who provide direct representation in post-conviction matters.

Effective Court Appointed Counsel Teams

The OADC contracts with various defense team members to provide excellent and effective representation to clients. Interdisciplinary defense team members include attorneys, investigators, forensic social workers, forensic clinical advocates, paralegals, legal researchers, case assistants, and resource advocates. The OADC has a thorough application and interview process for ensuring that contractors are able and willing to provide high-quality defense while working in multidisciplinary teams. In addition, the OADC has a variety of practices in place to ensure contractors are fit to keep their contracts. Some contractors operate under a Memorandum of Agreement and the OADC confirms annually that they are actively engaged in our work. Other contractors (attorneys, investigators, forensic social workers, forensic clinical advocates, and resource advocates) are placed on a contract renewal cycle. During the renewal process, these contractors are required to complete a detailed renewal application and interview about their practice. In evaluating contractors during this renewal process, OADC staff consider court observations, feedback from judicial officers and staff, compliance with continuing professional development requirements, written work product, client-centeredness, and overall level of practice.

The OADC also provides robust training for all interdisciplinary defense team members. In 2023, the OADC returned to some in-person training and continues to offer many other trainings virtually. In-person trainings are almost always webcast and recorded to ensure accessibility to those who are outside the metro area, who cannot commute to in-person training, or for those who cannot attend. Additionally, the OADC has an online training portal that all contractors can access, containing “on-demand” sessions that they can watch and claim home study continuing education credits.

Moving forward, most training will be provided to contractors free of charge, thanks to the increased general fund allocation for this training in OADC's FY25 budget.

All OADC contractors also have access to a multitude of legal and other case-related resources in the eLibrary, to legal research and writing assistance, brainstorming roundtables, weekly case law summaries (both written and podcast versions), an expert database, immigration specialists, and to education advocates. The OADC has also developed comprehensive manuals on complex but common subject matters such as COCCA (Colorado Organized Crime Control Act), self-defense, character evidence, restitution claims, sexual offenses, habitual criminal sentencing, proportionality review, and ineffective assistance of counsel claims. The OADC also publishes and regularly updates the Colorado Youth Defense Manual, which was most recently released in June of 2024.

Pursuant to SB18-203, the OADC evaluates municipal courts and court-appointed counsel in certain municipalities through the Municipal Court Program and provides contracted court-appointed counsel and interdisciplinary teams in six municipalities.

The Municipal Court Program ensures that indigent defendants in contracted municipal courts are represented free from any political considerations or private interest, and that such representation is effective, high-quality, ethical, conflict-free, and constitutionally sound. The evaluation process includes interviews with relevant municipal judicial officers, court staff, and court-appointed counsel, court observations of attorneys, and a review of relevant documents. When complete, the evaluation is provided to the municipality. Court-appointed counsel who are evaluated through the Municipal Court Program are also afforded the opportunity to attend OADC trainings and have access to many of the same resources as OADC contractors.

Beginning January 1, 2021, the OADC initiated contracting directly with municipalities to provide court-appointed counsel services pursuant to C.R.S. 21-2-103(1)(c). In Aurora and Denver, OADC provides contract attorneys and teams for cases where the municipal public defender's office has an ethical conflict. In Durango, Northglenn, Thornton, and Westminster, OADC provides similar teams to handle all indigent criminal defense appointments.

Controlling Case Costs

The OADC has several key functions in controlling case costs, which are monitored and reviewed monthly by the Agency.

- **Average cost per case:** Historical analysis, combined with current trends, allows the agency to monitor for isolated anomalies that affect costs and provide forecasts for the upcoming budget request cycle.
- **Cost effective research tools:** The OADC's web-based eLibrary, streamlines case related research, thereby lowering case costs. In 2020, the OADC added enhanced Boolean search commands, culled outdated materials, and added updated and new materials.

- **Team Resources:** The Agency continues to explore innovative ways to improve representation and outcomes while controlling costs by using a variety of team members. Representation that incorporates expertise from several disciplines means that clients benefit from multiple areas of knowledge while making it unnecessary to pay attorney rates for all activities required to adequately represent someone. Examples of other team members' expertise and specialized training include, but are not limited to:
 - assisting with eDiscovery,
 - assisting with cell phone evidence,
 - organizing case files,
 - researching, drafting, and filing motions in certain case types and jurisdictions, and
 - incorporating several areas of expertise, such as the Agency's in-house appellate and post-conviction case initiation process.

Furthermore, the agency continues to grow its forensic social work program, which expands the valuable use of social workers, clinical advocates, and resource advocates, each of whom bring their own expertise to support and improve client outcomes. For example, social workers and clinical advocates are essential to identifying mental health and substance use disorders that may be germane to the defense of the underlying charge and the client. They also provide context and recommendations that often prove invaluable in negotiations and sentencing hearings. Resource advocates are specifically skilled in identifying, locating, and navigating the resources OADC clients need.

III. Performance Measures, Goals & Evaluation of Prior Year Performance

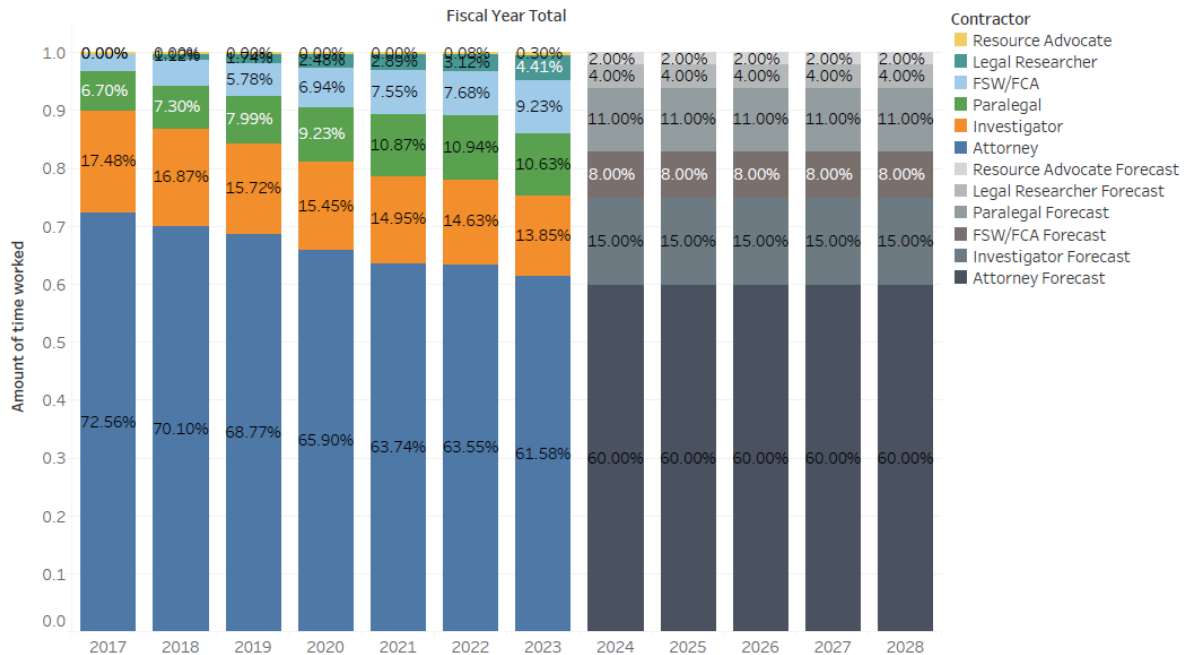
Performance Measure A: Providing Multidisciplinary Legal Teams to OADC clients

The OADC is dedicated to the practice of holistic defense, and empowering contractors to build and maintain strong and supportive teams to best serve their clients.

The chart below shows the overall percentage of hours spent on an average OADC case by varying team members. For example, the proportion of attorney time dropped 10.92%, from 72.5% in FY16 to 61.58% in FY23, and there is a reciprocating percentage increase in other contractor time. The OADC hopes to see the use of holistic teams continue to grow in the upcoming years.

In evaluating the previous year’s performance, the Agency experienced adjustments across the board in its proportional percentages as estimated in the FY24 Performance Plan. The OADC estimated the FY23 proportion of attorney time would drop to 60.0%, and the actual percentage ended up being 61.58%. In addition, the OADC estimated the FY23 proportion of FSW/FCA total to be 8.0%, and it actually increased to 9.23%. The Agency continues to succeed in providing multidisciplinary legal teams to OADC clients.

Contract Hours Percent of Total



Sum of Amount of time worked for each Fiscal Year Total Year. Color shows details about Contractor. The view is filtered on Fiscal Year Total Year, which excludes 2016.

Performance Measure B: Controlling Case Costs

The OADC analyzes its total annual expenditures and average cost per case monthly and strives to find innovative and effective strategies to control these costs. The below chart shows those amounts from FY16 to FY23 and the estimated numbers for FY24-27.¹ The OADC is dedicated to the practice of holistic defense, which is driven by multi-disciplinary legal teams, not just individual lawyers. The OADC works diligently to encourage contractors to build holistic and diverse legal teams that incorporate social workers, investigators, paralegals, case assistants, and more. This practice not only provides stronger advocacy for OADC clients, but also reduces costs.

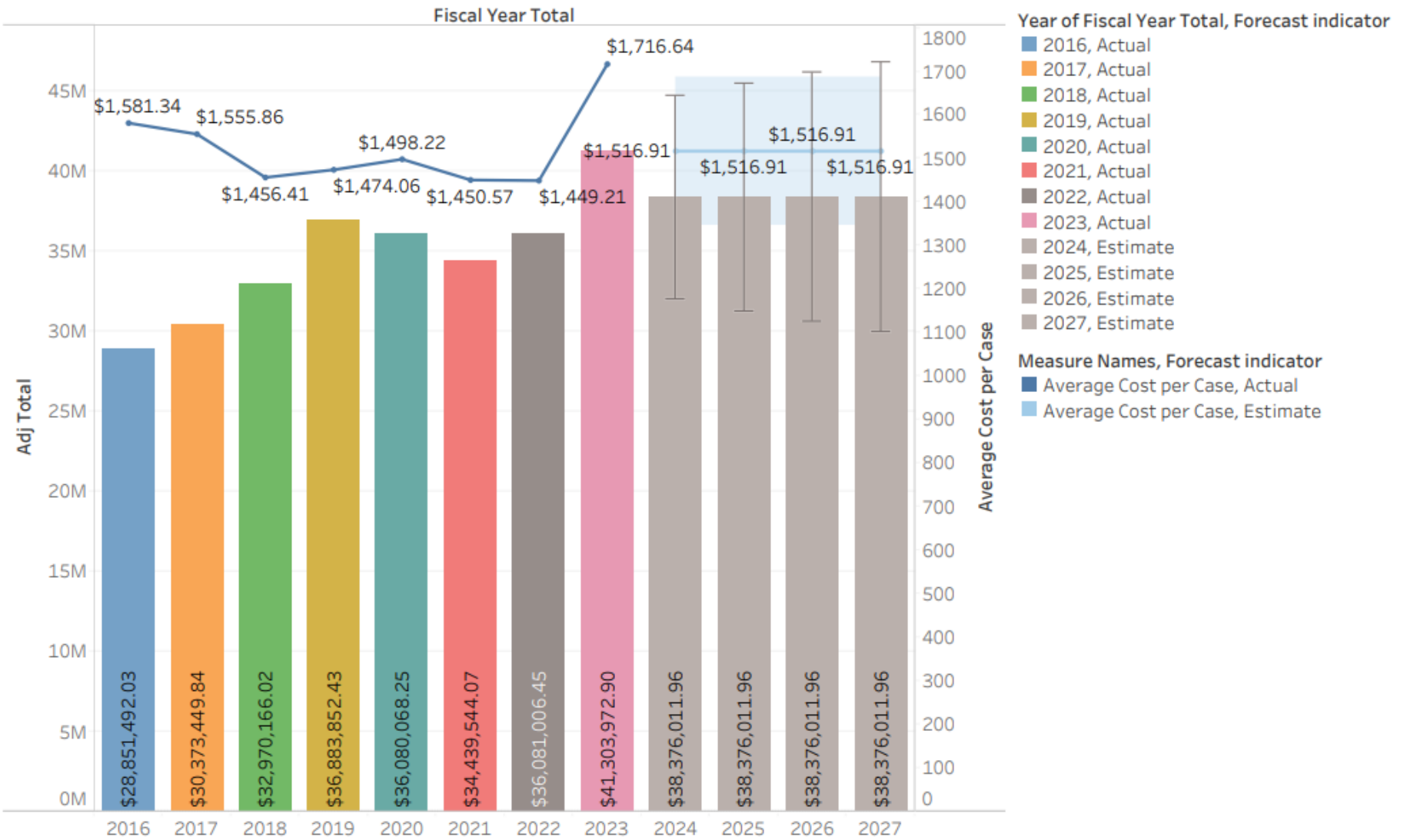
Due to the many factors that can affect both the Average Case Cost and Total Year-end Expenditures, it remains a struggle for the OADC to estimate these numbers accurately and consistently for future fiscal years. Some factors that contribute to this struggle include Hourly Contractor Rate Adjustments (which occurred in FY19, FY23, and in FY24), and year-end caseload and expenditure fluctuations. The Agency's current estimate for future average cost per case ranges from \$1,100 to \$1,750 (see blue highlighting at the top of the FY24-27 expenditure bars, showing a range of projected values created by the business intelligence software). As fiscal year expenditures move further beyond the pandemic-affected years of FY20-23 the Agency anticipates its range of estimated average cost per case will narrow.

In evaluating the prior year's performance, it was estimated in the FY24 Performance Plan that an average cost per case for FY23 would be \$1,461. The actual average cost for FY23 was higher than estimated and totaled \$1,717, a difference of approximately \$256 per case. The Agency continues to work towards controlling its average cost per case and keeping ancillary costs per case to a minimum.

We believe this increase in FY23 from the estimated to the actual is due to several factors. First, the estimate in FY24's Performance Plan did not account for the 6% increase in contractor rates. Adding 6% to the original estimate of \$1,461 (see P. 5, *Performance Plan FY24*) alone would increase the average cost per case to \$1,549. Second, there has been a marked increase in digital media and other material provided in discovery. This has significantly increased the time it takes contractors to review discovery, and because the constitution demands defense teams review every item of discovery, this cost cannot be avoided. However, as mentioned above in Section A., the use of multi-disciplinary teams has allowed the cost of initial discovery review to be shifted in many cases to lower-cost contractors. Third, the OADC believes the increased usage of multi-disciplinary teams, while adding value by both helping clients and assisting courts in imposing the most appropriate sentences (which generally means less expensive sentences for taxpayers), does increase the cost in some cases and thus adds to the average cost per case.

¹ The grey section in the chart below showing FY24-27 was created by the business intelligence software employed to assist OADC. These estimated values do not consider FY24 actual data, but are an estimate based upon prior years' expenditures.

Expenditures and Average Case Cost



IV. Strategies

Continuing to grow and support Holistic Defense Representation for OADC Clients

Holistic defense requires defense teams to expand their focus beyond the discrete legal matter at hand, to address factors that impact recidivism and criminal system involvement, such as lack of housing, unemployment, and more. Access to stable housing or treatment opportunities can be the difference between a client remaining in jail or detention and pre-trial release or a potential community-based sentence instead of jail, prison, or commitment. To further advance the OADC's focus on holistic public defense and support the Agency's mission, the OADC is working to make multidisciplinary teams the norm to address "enmeshed" consequences to incarceration and conviction or adjudication, such as loss of housing, inability to find employment, and loss of benefits.

In moving towards a holistic defense team model of practice, the OADC requested and received 1.0 FTE (Full Time Employee) for a Holistic Defense Coordinator (HDC) to begin working on both inward and outward facing aspects of the agency's overall move toward a more holistic approach to criminal defense. This individual has been hired and will begin employment in late August 2024. The HDC will continue the process of identifying ways in which the Agency can engage communities across Colorado, from the network of state and local agencies that serve our clients, to distinct neighborhoods where our clients live. The HDC will broaden the range of training around interdisciplinary teamwork to incorporate considerations around collateral and enmeshed consequences of criminal legal system involvement. The HDC will also form partnerships with non-profit and grant-funded entities that can support clients beyond the court-appointed criminal or youth defense case, in an effort to reduce recidivism.

The OADC also requested and received two Social Work Fellowship positions (Inclusivity and Greater Colorado Fellowships) as part of a pathway to practice for diverse and rural professionals. The fellowships are designed to support social work professionals helping grow and establish themselves in this work with the added stability and resources of a traditional employee model, for a maximum of two years, before moving on to hopefully become independent contractors. Investing in social workers through these fellowships will increase the likelihood of success and longevity of professionals in the communities where they practice, if they become independent contractors.

The OADC continues to invest in the growth and training for the Forensic Social Work, Forensic Clinical Advocate, and Resource Advocate program. The availability of Forensic Social Workers, Forensic Clinical Advocates, and Resource Advocates will increase the number of clients that are helped and continue to move teams towards a more holistic approach to defending clients. This will allow the OADC to help even more clients in a more cost-effective way.

Improved and Cost-Effective Research Tools

The OADC continues to provide resources and technology to its contractors. A highly utilized resource developed by the Agency is a centralized, online legal research and information platform called the eLibrary that continues to expand and assists many of the Agency's contractors. This asset is imperative because it reduces case costs by streamlining research time for contractors

while simultaneously improving the effectiveness of representation. This eLibrary has expanded to include a separate youth justice and social sciences section. The OADC also provides, at no cost to its contractors, Westlaw, Clearbrief, and EBSCO (legal and social science research databases).

Ancillary Services to Reduce Attorney Hours

To increase the quality and efficiency of OADC contract attorneys, the Agency has implemented and continues to seek out measures that reduce billed attorney hours and associated ancillary costs. These measures include:

1. An in-house appellate case management system that streamlines OADC appellate cases from inception through transmittal of the record on appeal.
2. An in-house post-conviction case management system that includes assembling the case file and preparing a triage memo prior to assigning the case to the Post-Conviction Unit or an attorney contractor.
3. Attorney access to electronic court records pursuant to HB 08-1264.
4. Expanding and promoting the eLibrary.
5. The use of interdisciplinary team members with lower hourly rates to perform a variety of case-related tasks based on their expertise and experience. Case Assistants, Legal Researchers, Investigators and Paralegals are qualified and experienced to perform essential, but often time-consuming case related functions, including but not limited to:
 - organizing, reviewing, and summarizing voluminous media.
 - reviewing evidence with the client at the jail.
 - managing discovery.
 - Preparing evidence for trial.
 - conducting legal research and drafting and filing pleadings, and
 - a variety of other cost-saving tasks.
6. Evaluating contractor efficiency and auditing billing.
7. Closely monitoring requests for expert assistance, and
8. Identifying and promoting technologies that increase contractor efficiency.

Fraud, Waste, & Abuse Prevention

The OADC diligently monitors all financial transactions. In addition to the annual audit performed by the Office of the State Auditor, the Agency reviews all payments, ensuring appropriate documentation and support for all bills. The Agency also utilizes segregation of duties, second level approvals, and an executive review of over-the-maximum requests. Annual vendor totals are also audited for anomalies. The Agency verifies monthly payroll through the state financial and payment processing system.

V. Performance Evaluation

Contractor Survey and Evaluations

This year the Agency conducted four contractor surveys. Two were directed at attorneys, one focusing on “expanding regional or substantive practice areas” and the other on “COCCA availability.” The two remaining surveys were sent to all contractors, to gather input on the creation of a new OADC Appointment and Billing System and a new OADC website.

OADC In-house Team Member Evaluations

The Agency conducted staff evaluations in June 2024. The Agency continued its evaluation approach by conducting self-evaluations, in which 21 FTE team members rated job quality and performance questions. Each team member met with their supervisor to discuss the results, concerns, and overall performance.