

**Benton & Franklin Counties
Office of Public Defense
2013 Annual Report**

Benton County Operations

As the Public Defense Manager for Benton and Franklin Counties, I am proud to present the 2013 Annual report for our Benton County operations. This report recaps many of the highlights of our operations in 2013 including a year-end financial snapshot, and also summarizes our key achievements including achievements that fulfilled strategic goals set at the beginning of 2013.

A Strategic Plan for 2014 is being published simultaneously to this report. I encourage you to review that plan if you are interested in what this office plans to accomplish in 2014 and how these goals align with our stated Mission and Values.

In 2013, we made great strides in advancing our Mission and Values, which are stated below, and we will continue to do the same in 2014.

Very truly yours,

Eric Hsu

Eric Hsu, Attorney at Law
Public Defense Manager
Benton & Franklin Counties

Benton & Franklin Counties Office of Public Defense
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Mission Statement

The Mission of the Benton & Franklin Counties Office of Public Defense is to provide quality, cost-effective, legal representation to indigent and other qualified persons charged with criminal offenses, or otherwise facing incarceration or loss of liberty interest, so as to protect their Constitutional and other legal rights, educate them about the criminal justice system, and champion the interests of justice. The Benton & Franklin Counties Office of Public Defense will always be mindful of the fact that the resources that enable it to advance its Mission are entrusted to it by the taxpayers of Benton & Franklin Counties, and as such it will constantly strive to improve the efficiency and effectiveness of its team, of system which it manages, and of systems of which it is a part of, so as to always be a good steward of such resources.

Values

In order to advance its Mission, all Benton & Franklin Counties Office of Public Defense staff and contractors share the following Values.

A	Teamwork	We are constantly seeking out and developing inter-office and intra-office synergistic relationships through which to accomplish shared goals and create win-win outcomes.
B	Effectiveness & Efficiency	We are always choice-driven and introspective so as to maximize effectiveness (do that which has the most effect on advancing the Mission) and efficiency (while consuming the least amount of resources)
C	Quality	We take pride in quality work product in all aspects of what we do.
D	Cost-Effectiveness	We recognize the fiduciary duty we owe to the taxpayers who provide the resources by which we can advance our Mission and always strive to maximize cost-effectiveness without jeopardizing quality.
E	Compassion & Fairness	We recognize that all members of the public with whom we interact and for whom we provide services are fellow community members and citizens and we will treat them with respect, compassion, and fairness.
F	Effective Risk Management	We will always be mindful of the liability related interests of Benton & Franklin Counties and constantly seek to minimize the exposure of the Counties to liability risk.

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G**Continuous Improvement**

We recognize and embrace the dynamic nature of many factors that affect our ability to advance our Mission and as such, constantly seek out, and take action on, ways to improve every aspect of our operations. We will never settle for “good enough” or accept that the “way it has always been done” is necessarily the best way to continue to do it.

OPERATIONAL UPDATE

This next portion of the report provides a recap of Public Defense operations in Benton County including **caseloads, staffing and other updates.**

District Court operations

Summary

Benton County provides public defense services for all criminal cases that are pending in Benton County District Court. As of the end of 2013, the defender staffing in District Court was as follows:

- **3 attorneys (contractors)** – provisional representation at all in-custody initial appearances including felony “72 hour hold” matters on for initial appearance in District Court¹.
- **1 attorney (contractor)** – all probation violation and fail to pay fine dockets.
- **8 contract attorneys and 2 staff attorneys** – all pre-trial criminal cases with criminal charges.
- **2 attorneys (contractors)** – conflict cases and cases in excess of cumulative system caseload caps (these 2 contract attorneys are only paid by the case with no minimum compensation level)

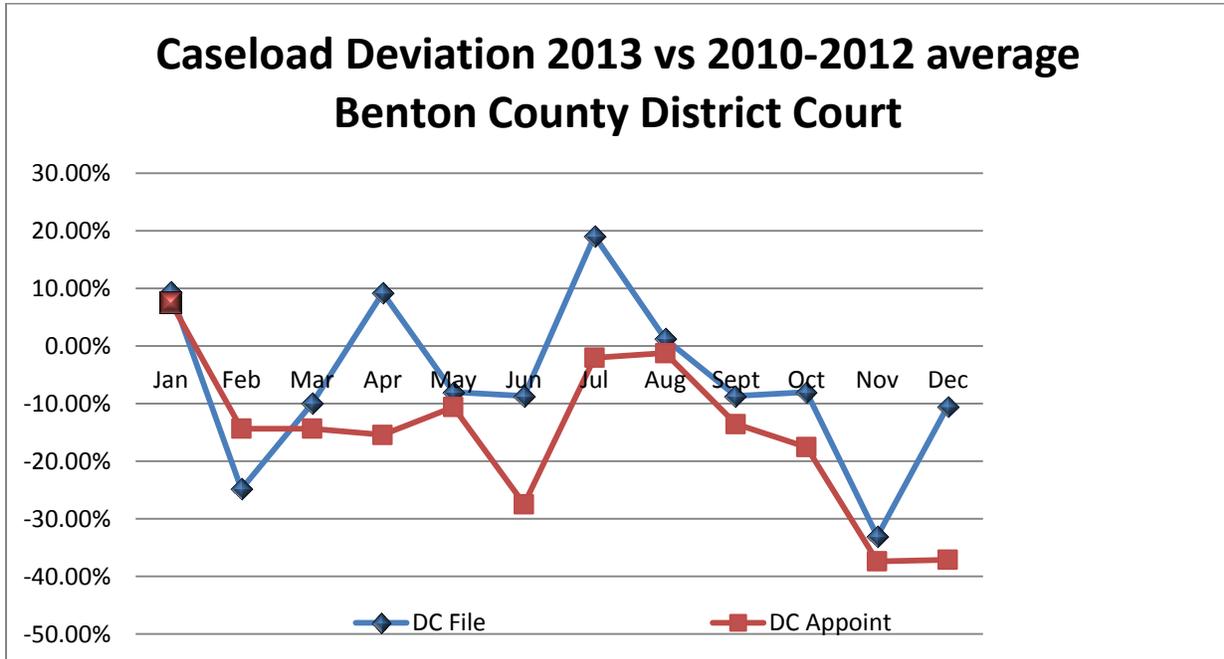
2012 Operational Highlights

- As shown in the following caseload chart, 2013 exhibited a split in trends with case filings staying roughly the same as the 2010-2012 avg levels, and case

¹ Because of the felony related responsibilities of these attorneys, 33% of their funding is provided out of a budget line item dedicated to Superior Court defense services.

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appointments consistently below 2010-2012 avg levels². **Overall, filings were -2.8% (below 2010-2012 avg levels); Appointments were -5.3% (below 2010-2012 avg levels).**



- The arraignment docket representation program³ continues to work well and cases are continuing to be resolved during this docket, but with much better risk management safeguards. Specifically, during 2013, an average of only 43.8% of the cases filed were appointed to public defenders (meaning, of course, that 56.2% of cases were either resolved before needing a public defender, or were defended by private counsel). It is our experience that the majority of the cases filed and not appointed to public defenders are not appointed to public defenders because they are resolved at initial arraignment. This percentage compares very favorably with the same metric from 2012 when 51.8% of filed cases were appointed to public defenders.
- **Staffing report**
 - Staff Attorney Alexandria Sheridan, who has been with the office over four

² For reference purposes, the term “filing” refers to the sum total of all cases filed in court (in this case, District Court). In comparison, the term “appointments” refers only to those filed cases that are actually appointed to public defenders. The ineligibility of a given defendant for public defense services or the resolution of the case at arraignment before a public defender is requested or assigned.

³ This program, approved by the Board of Commissioners and created in 2009 (for in-custody arraignments) and 2010 (for out-of-custody arraignments) provides provisional representation by public defenders at all arraignment dockets.

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years now, and has been gaining substantial experience in Superior Court cases, has been promoted to Public Defense Attorney 2, has been transferred full-time to Superior Court, and has been given supervisory duties over Staff District Court operations. Ms. Sheridan has also been assisting substantially in the development of policies and training material for District Court Staff Defenders.

- District Court Staff Defender Danielle Purcell resigned in mid 2013. In September, 2013, Deric Orr was hired on as this office's newest District Court Staff Defender.
- Since most of the District Court defense contractors existing in 2013 expired December 31, 2013, a Request for Qualifications ("RFQ") process was held in the latter months of the year for contracts to commence January 1, 2014. Ultimately, District Court contracts were awarded as follows:

Monthly Contracts⁴:

- Stacey McKinley
- Joshua Lilly
- Adrienne Farabee
- Mary Poland
- Dawn Hickman
- Trinity Orosco
- Raymond Hui
- Anthony Ochs
- Scott Naccarato

Overflow/Conflict Contracts⁵

- Jeff Briggs
- Mia Mendoza
- Jacinta "Jessica" Rodriguez
- Furthermore, a number of attorneys had Monthly Contracts that did not expire until later:
 - Gary Metro
 - Mark Cano
 - Caleb DiPeso

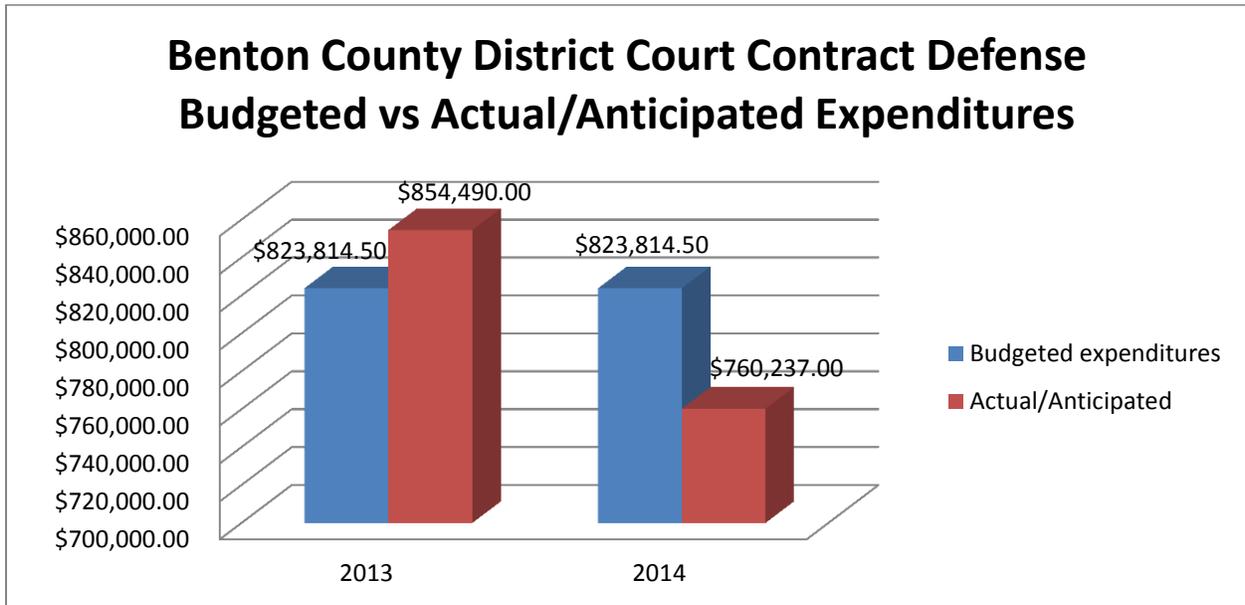
⁴ Three monthly contract holders had been awarded contracts in 2012 (Mark Cano, Caleb DiPeso and Gary Metro) so their respective contracts did not expire in 2013 as with the remaining contract holders.

⁵ Overflow/Conflict contract holders are only appointed cases on an "as needed" basis and are not guaranteed any minimum caseload level or compensation.

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District Court Financial Update

As can be seen in the following chart, BFOPD finished 2013 just slightly over budget for District Court operations but is anticipated to finish 2014 with a budget surplus that will exceed the deficit in 2013.



Superior Court operations

Summary

This office provides public defense services for all Superior Court criminal cases as well as contempt cases that may result in incarceration. As of the end of 2012, the defender staffing in Benton County Superior Court was as follows:

- **8 contract attorneys** and **1 staff attorney** - all pre-trial criminal cases pertaining to new criminal charges
- **1 contract attorney (reduced rate)** – Benton/Franklin Drug Court – shared between Benton and Franklin Counties
- **1 contract attorney (reduced rate)** – Child support contempt cases
- **1 contract attorney (reduced rate)** – Legal financial obligation contempt cases

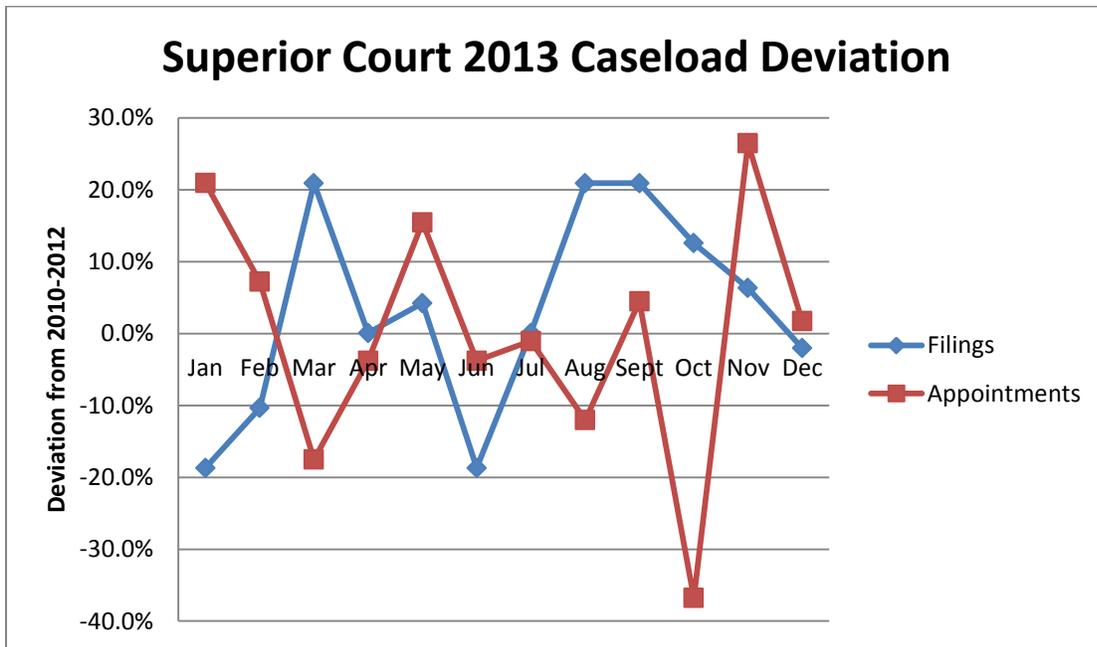
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- **1 contract attorney (reduced rate)** – Involuntary Treatment Act (“ITA”) defense – shared between Benton and Franklin Counties

2012 Operational Highlights

CASELOAD:

- As can be seen in the following chart, 2013 Superior Court caseload numbers were not remarkable and did not exhibit any notable trend other than commonly expected seasonal variances (though swinging to more extremes than are commonly seen). Ultimately, as compared with 2010-2012 averages, 2013 caseloads were **-0.5%** (filings) and **-1.5%** (appointments).



Hourly case report⁶ 2013 was a prolific year for homicide cases in Benton County, seeing 6 new homicide cases filed. Here is a summary of the homicide cases filed and pending during 2013, together with their resolution or status.

Case Name	Charge	Offense Date	Assignment	Status
Jacobsen	Manslaughter	Pre-2013	Contractor	1 st trial mistrial

⁶ Only homicide cases (defined as only including Aggravated Murder, Murder in the First or Second Degree, Manslaughter, Homicide by Abuse, Homicide by Controlled Substance, and vehicular homicide) and persistent offender crimes (three strike violent felony and 2 strike sexual abuse felony cases that are qualified for a life sentence without parole) qualify for hourly billing.

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				Re-trial in 2014
Scantling	Agg Murder 1	Early 2013	Staff Defender	Trial – Guilty as Charged
Aguilar	2 nd Deg Murder	Mid 2013	Contractor	Pending
McCorkindale	1 st Deg Murder	Mid 2013	Staff Defender	Pending
Hunt	1 st Deg Murder	Mid 2013	Contractor	Trial – Guilty of 2 nd Deg Murder
Young	1 st Deg Murder	Mid 2013	Retained Counsel	Pending
Matlack	1 st Deg Murder	Late 2013	Staff Defender	Pending
Gonzalez	1 st Deg Murder	Late 2013	Contractor	Plea Agreement 2 nd Deg Murder
Miller	1 st Deg Murder	Late 2013	Staff Defender	Pending

Staffing report

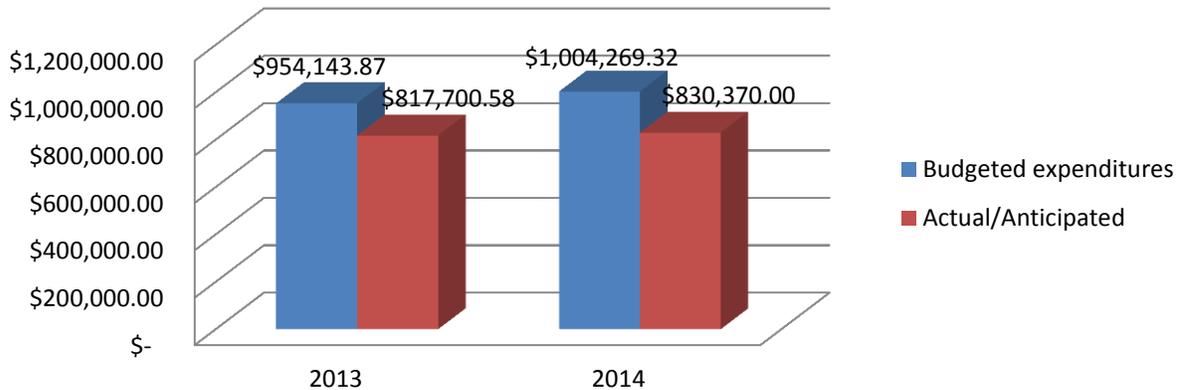
- The contracts for the three Superior Court defenders who did not choose to participate in the massed, voluntary, contract termination efforts (Sylvia Cornish, Sam Swanberg and Michelle Alexander) all held contracts that terminated December 31, 2013. They were all awarded new contracts with start dates of January 1, 2014 without a need for RFQ. With this award of contracts, now all Superior Court defense contracts are consistent in that they are all paid “by the case,” representing a departure from the previous practice of paying a fixed monthly compensation for “up to 150 cases per year.”

Superior Court Financial Update

In a large part because of the change in compensation scheme to a “by the case” system, a budget surplus was realized in 2013 and the surplus is expected to increase in 2014. More particularly, as the following chart shows, the actual and anticipated expenditures (respectively) for Superior Court contracts defense services in 2013 and 2014, are both substantially below budgeted levels.

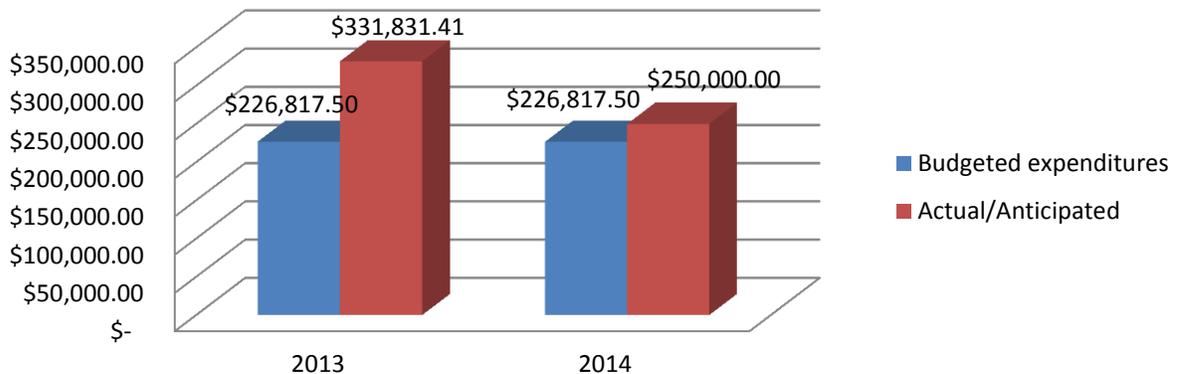
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Benton County Superior Court Contract Defense Budgeted vs Actual/Anticipated Expenditures



On the other hand, as shown by the following chart, expenditures for Miscellaneous Professional Services has exceeded budgeted levels in 2013 (almost entirely driven by the large volume of homicide cases filed and pending in 2013) and is expected to do so again in 2014 (though not to as large of a degree in light of the number of resolved and anticipated-to-be-resolved homicide cases recently).

Miscellaneous Professional Services Budgeted vs Actual/Anticipated Expenditures



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At the request of Benton/Franklin Superior Court, this office has entered into an agreement with Benton/Franklin Juvenile Justice to move toward taking over management of Juvenile public defense contracts. This will take place in two stages:

1. **(2013-14)** Take over all oversight of investigator/expert/vendor funding approval and claim approval. *Juvenile Justice Staff will retain responsibility for actual disbursement of funds (for investigator/expert/vendors), monthly caseload management and verification, and contract compliance.*
2. **(2015)** Take over all oversight of investigator/expert/vendor funding approval, claim approval and disbursement of funds (from Juvenile Justice line items); manage contract compliance. *Monthly caseload management and verification will retain responsibility for monthly caseload management and verification.*

GOAL ACCOUNTABILITY

A number of office-wide Strategic Goals were presented last year in our 2013 Strategic Plan. This next portion provides a re-cap of these goals and an update as to progress toward the metrics or deliverables indicated for each.

Goal #1

GOAL #1 – ENHANCE MISSION ACCOUNTABILITY of the Office of Public Defense by developing, implementing, tracking, and publishing a set of meaningful Performance Metrics.

Summary: The mission of the Office of Public Defense can be broken down into two portions: a) the *effectiveness* portion, that states that services provided will be of *high quality*, and b) the *efficiency* portion, that states that resources that support the services will always be used judiciously.

****Goal #1 was not completed since proposed metrics appeared to have little relevance to office performance that was within the control of members of the**

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department. This goal will be revisited in light of the ruling in *Wilbur v. City of Mt. Vernon*⁷

Goal #2

GOAL #2 – STREAMLINE COMMUNICATION CHANNELS with clients, their family and friends, and the public.

Deliverables for Goal #2

Deliverables for Goal #2

1. Develop and implement strategies to limit the number and duration of front-window interactions (since each interaction causes disruptions in the workflow of OPD's Office Manager who staffs the window and is responsible for managing many other administrative tasks). **By February 1, 2013 **This has already been done****
2. Develop "client letters" for District Court clients with instructions and answers to commonly asked questions. **By February 1, 2013 **This has already been done****
3. Convert the main phone line into OPD offices into a "phone tree" line and develop out-going message with comprehensive answers to commonly asked questions, provide way to skip message and directly access extensions for staff attorneys (since Office Manager previously routinely received calls asking her to transfer the call to staff attorneys). **By March 1, 2013 **This has already been done****
4. Overhaul website – see Goal #4

Goal #2 Accomplished in 2013

All listed deliverables accomplished ahead of schedule, including website overhaul.

⁷ *Wilbur v. City of Mt. Vernon* is a class action lawsuit against the cities of Mt. Vernon and Burlington, WA, wherein it was alleged that there were systematic, serious, and extremely prejudicial flaws in the public defense system shared by the two cities. The subsequent opinion written by the US District Court for Western Washington, is extremely critical of the public defense system at issue in the lawsuit, but more importantly, provides a number of benchmarks by which the system falls short. While not all of the benchmarks are applicable to our local system, a thorough review and analysis of this case will be conducted and relevant and important benchmarks will be gleaned to develop a better "metrics" system.

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Goal #3

GOAL #3 – MAXIMIZE AUDIT ACCOUNTABILITY for contract attorney caseload reporting, especially for Superior Court contracts.

Deliverables for Goal #3

Deliverables for Goal #3

1. Finalize changes with in-house database that will maximize utility and effectiveness of audit process, beta and roll-out. **By April 1, 2013**
2. Develop uniform audit process for Superior Court cases, reduce to writing, train staff, implement. **By April 1, 2013**

Goal #3 Accomplished in 2013

- In-house caseload tracking database now developed, tested and fully utilized for all caseload verification and audits for both District Court and Superior Court cases in both Counties.
- Uniform audit process developed and now used for all Superior Court cases. Includes delayed re-verification process to catch cases that have been re-assigned to private counsel

Goal #4

GOAL #4 - OVERHAUL WEBSITE to maximize utility, usability and information accessibility of the site.

Deliverables for Goal #4

1. Purchase an intuitive domain-name and redirect it to OPD's sub-page on Benton County's website. ****Already done in 2012 – purchased and redirected "BentonFranklinDefense.org" to OPD's sub-page on the Benton County website.**
2. Completely overhaul the website to make it user-centric and include the following features. **Beta testing by April 1, 2013. Live by April 15, 2013**
 - a. A frequently asked questions page
 - b. Ability for clients to look up their next court date
 - c. Ability for clients to look up their assigned public defender
 - d. Ability for clients to look up contact information for their public defender

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- e. Ability for clients to learn about the criminal prosecution process and steps locally
 - f. Ability for clients to learn about how to file a complaint about their public defender
 - g. Ability of family/friends of clients to learn about whether they are in jail
 - h. Ability of family/friends to access information about how to visit inmates, put money on their books or to post bail on their behalf
 - i. Ability of the public to learn about OPD's operations
 - j. Ability of the public to access reports, regularly published performance metrics and other documents published by OPD for public consumption
 - k. Ability of contractors to access policies and procedures
 - l. Ability of contractors to access regularly used forms
 - m. Ability of contractors to access information about available contracts or other positions
3. Publicize the website through all printed materials (including client letters), outgoing messages, and new business cards for staff attorneys. **By March 1, 2013 **Already Done****

Goal #4 Accomplished in 2013

- BentonFranklinDefense.org now re-directs to this office's sub-page on the Benton County website.
- The office's sub-page has been completely overhauled and addresses all of the sub-goals, "a" through "m."
- The office's website sub-page is now publicized on all office communication media including:
 - Business cards
 - Letterhead
 - Client letters
 - Outgoing messages

Goal #5

GOAL #5 – PROVIDE AT LEAST 12 HOURS OF CLE TRAINING to ensure that quality of services provided by staff and contract defenders continues to meet legal standards and client expectations.

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Deliverables for Goal #5

1. Sponsor and present at least 12 hours of local, free, CLE training for public defenders. **By December 31, 2013.**

Goal #5 Accomplished in 2013

Provided **17.0 hours** of local, free, CLE training for public defenders including an intensive Trial Advocacy Clinic in summer, 2013.

Goal #6

GOAL #6 – DEVELOP AND IMPLEMENT WEIGHTING SYSTEM for District Court cases that meets the requires of Washington State Supreme Court public defense standards.

Deliverables for Goal #6

1. Develop framework/system for distinguishing District Court cases from one another based on complexity factors that are relevant and meaningful to public defense functions. ****Already Done**
2. Collect data-set of historical caseload and associated data, and apply framework/system to it on a test basis. ****Already Done**
3. Draft a comprehensive policy on case-weighting for District Court cases. **By May 17, 2013.**
4. Present Case-Weighting Policy to Board of Commissioners for formal adoption. **By June 14, 2013.**

****Development and implementation of a weighting system has been delayed pending the publication, by Washington State Office of Public Defense, of a *model weighting system* as ordered by the Washington State Supreme Court.**

Goal #7

GOAL #7 – DEVELOP AND IMPLEMENT POLICIES AND PROTOCOLS relating to organizational structure, operational continuity, and staff policies.

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Deliverables for Goal #7

1. Formalize supervisory functions of Sr. Staff Attorney Alex Sheridan who has been promoted to Public Defense Attorney II, a position that has supervisory duties incorporated. **By April 15, 2013.**
2. Send Alex Sheridan to at least two WCRP or WCIA sponsored supervisor training opportunities. **By December 31, 2013.**
3. Develop an operational continuity protocol for approval of key mission-critical discretionary functions including pre-approval of case-related investigation and expert funding, signing of payment vouchers, and other functions. **By June 30, 2013.**
4. Develop and implement a comprehensive and turn-key recruitment, training, assignment and evaluation framework for summer and year-round internships. **By May 31, 2013.**
5. Develop, in conjunction with Alex Sheridan, a comprehensive set of internal staff policies covering, among other things, case review and setup protocols, staff leave approval, case and trial staffing procedures, trial prep standards, and professional conduct standards. **By December 31, 2013.**

Goal #7 Achieved in 2013

- Supervisory functions (District Court supervisor) for Sr. Staff Attorney Alex Sheridan have been formalized and communicated to office and District Court contractors.
- Alex Sheridan has been sent to one supervisor training opportunity (Staying out of Court on Employment Claims, 5/3/13) and is slated to attend at least one more in 2014.
- A comprehensive training, assignment and evaluation framework for law student interns has been developed **however, due to workspace constraints, there has been a temporary hiatus in internship opportunities at the office.**
- A comprehensive set of internal staff policies has been developed for the District Court Unit and has been utilized for the training and advancement of the most recent addition to the District Court team, Deric Orr. Work has also begun on the planning for staff policies for a future Superior Court Unit in anticipation of the eventuality that any expansion of staff defenders will be assigned to such a unit.

Still to be done:

- Development of an operational continuity plan for key signature approvals
- Arrangements will be made for Alex Sheridan to attend an additional supervisor training opportunity in 2014

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