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August 1, 2008

The Honorable Ulysses S. Currie  
Miller Senate Office Building  
3 West Wing  
11 Bladen Street  
Annapolis, MD 21401-1991

The Honorable Norman H. Conway  
House Office Building, Room 121  
Annapolis, MD 21401-1912

Dear Mr. Chairmen:

Enclosed please find the response of the Office of the Public Defender to the 2008 Joint Chairman's Report. As requested, this response details the fiscal impact of fully funding the Office of the Public Defender's operating needs.

Thank you for your concern about the fiscal health of the Office of the Public Defender.

Sincerely,

A handwritten signature in blue ink that reads 'Nancy S. Forster'.

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Nancy S. Forster  
Public Defender

Enclosures

cc: Members of the Senate Budget and Taxation Committee  
Members of the House Appropriations Committee  
Honorable Martin O'Malley  
Secretary T. Eloise Foster, Department of Budget and Management  
Sean Malone, Governor's Legislative Office  
Flora Arabo, Department of Legislative Services  
Diane Lucas, Department of Budget and Management

Maryland Office of the Public Defender

**Report on the Fiscal Impact of  
Fully Funding the Office of the Public Defender's  
Operating Needs**

Report to the Joint Chairmen  
Senate Budget and Taxation Committee  
House Appropriations Committee

August 2008

This report is submitted in response to the following committee narrative appearing on page 20 of the Joint Chairmen's Report – State Operating Budget, April 2008:

**Report on the Fiscal Impact of Fully Funding the Office of the Public Defender's Operating Needs:** The Office of the Public Defender (OPD) shall submit a report to the committees regarding the fiscal impact of fully funding the agency's operating needs in fiscal 2010. The report shall include the fiscal impact of (1) reducing the agency's turnover rate to 3%; (2) bringing attorney caseloads into full compliance with Maryland caseloads standards; and (3) increasing the panel attorney fee from \$50 to \$75 per hour. OPD shall submit the report by August 1, 2008.

## Executive Summary

The Office of the Public Defender has suffered chronic under-funding for many years. The office received new personnel positions from fiscal 2004 through fiscal 2007; however, those new positions were allotted to Office of the Public Defender in recognition of the agency's dire need to bring down caseloads per attorney in order to avoid the drastic result of defendants appearing in Court, charged with serious offenses, unrepresented by an attorney. The influx of new positions went a long way toward helping the agency and the state to avoid catastrophic results. The new positions in no way, however, brought the Office of the Public Defender in total compliance with the Maryland Caseload Standards that were adopted by the executive and legislative branches in 2006. The Office of the Public Defender welcomes the opportunity to respond to the committee's request for a report on the "Fiscal Impact of Fully Funding the Office of the Public Defender's Operating Needs."

This response will address the needed costs in the manner outlined in the Joint Chairmen's Report Request: lower turn-over, additional staffing needs and the cost of raising the panel rate to \$75 per hour.

Although further detail and discussion are included in this response, the fiscal impact of fully funding the agency's operating needs in fiscal 2010 can be summarized as follows:

I. Reducing the agency's turnover rate to 3% .....	\$1,468,276
II. Bringing attorney caseloads into full compliance with the Maryland Caseload Standards.....	\$9,852,581
III. Increasing panel attorney fees to \$75 per hour.....	<u>\$3,076,063</u>
<b>Total.....</b>	<b>\$14,396,920</b>

## **Background**

For years, the Maryland General Assembly has expressed concern about the chronic under-funding, under-staffing and growing caseloads of the Maryland Office of the Public Defender (hereinafter OPD). The legislature requested a joint performance audit of the Department of Budget and Management and the Office of the Public Defender in 2001. The audit found that chronic under-funding resulted in: lack of caseload standards or workload measures, deficient information technology and related problems with complete and accurate data collection, and wildly inflated turnover rates. (See Attachment A, Findings and Recommendations, No. 6, Office of Legislative Audits, 2001 Performance Audit.) The audit recommended adoption of caseload standards, acquisition of adequate IT hardware and case management software, and funding based upon actual, not fictional, documented staffing and operational needs.

In response, the OPD launched the Caseload Initiative. It was adopted by the then incoming Ehrlich Administration, and embraced by the Maryland General Assembly. The Caseload Initiative was developed in partnership with the budget and policy analysts at both the Department of Budget and Management and the Department of Legislative Services. It was designed to provide immediate relief from excessive caseloads statewide. It was divided into several phases to ensure immediate progress while minimizing the impact on the State's operating budget.

The Caseload Initiative had these components:

- I. Reduce Excessive Caseloads.
- II. Develop Maryland-specific Caseload Standards.
- III. Maintain Compliance with Caseload Standards
  - a. Caseload-based budgeting based on the state-specific caseload standards;
  - b. Accurate caseload data and efficient case management with an effective case management system.

The caseload crisis was addressed by developing interim targets for average annual attorney caseloads based on the American Bar Association caseload standards for criminal defense. Because the performance measures within the OPD Managing for Results were to achieve 80% to 120% compliance with the ABA standards, the initial goal of the Caseload Initiative was to hire enough attorney and related support staff to achieve statewide average annual attorney caseloads that met 120% of the ABA standards. Concurrently, OPD worked with the National Center for State Courts to develop the Maryland-specific caseload standards.

At this junction, the Caseload Initiative has been completed. OPD received the last of its 212 new positions in fiscal 2007; the ProLaw case management system is installed and is now operating in all locations and the Maryland specific caseload standards have been developed and endorsed by stakeholders. For the past two years, OPD now reports its caseload compliance in relation to the Maryland-specific standards. Moreover, the Agency no longer

relies on fictional turnover rates when making budget requests or in an effort to balance its budget.

## **1. Reducing Turnover to 3%**

Historically, the OPD has been forced to utilize an artificially high turnover rate in order to fund other basic operating costs of the agency (See Attachment A, Findings and Recommendations, No. 6, Office of Legislative Audits, 2001 Performance Audit). Recently, however, OPD has made progress towards achieving an acceptable turnover rate. In the fiscal 2009 appropriation, the agency has received funding to reduce the turnover rate to 5% from the 6.9% rate in fiscal 2008.

Using the salary forecast data provided to the agency by the Department of Budget and Management, the total payroll in 2010 budgeted with a 3% turnover rate will be \$84,565,154. This is an increase of \$1,468,276 from a projected 2010 payroll budgeted at 5%. Please note that the information for mandating healthcare costs is not yet available for 2010; accordingly these figures are estimates.

In sum, in order to fund the OPD at the reasonable, and realistic, turnover rate of 3%, approximately \$1.5 million additional dollars are necessary.

## **2. Bring Attorney Caseloads into Compliance with Maryland Caseload Standards and Related Costs**

The OPD saw an increase in the average attorney caseload this past year due to the continuing increase in the number of cases opened and handled by the OPD in spite of the hiring of additional attorneys. The increasing number of cases opened statewide has slowed the level of progress resulting from additional attorney positions.

Nevertheless, OPD continues to make progress in reducing the average attorney caseload even though many District averages remain above the Maryland Standards.

By the end of fiscal 2007, the OPD received a total of 119 new attorney PINS and 93 new support staff PINS. The final installment of 22 attorney PINS (postponed from fiscal 2006) was allocated in fiscal 2007. These last 22 PINS came with a 50% turnover mandating that these positions could not be filled until the second half of fiscal 2007.

The table below shows the allocation of new attorney PINS over the four years of the agency's Caseload Initiative.

<b>Caseloads Initiative</b>	<b>Attorney PINS</b>	<b>Support Staff PINS</b>	<b>Total PINS</b>
<b>Fiscal 2004</b>	35	23.5	58.5
<b>Fiscal 2005</b>	38	30.5	68.5
<b>Fiscal 2006</b>	24	39	63
<b>Fiscal 2007</b>	22	N/A	22
<b>Totals</b>	119	93	212

### **A. The Maryland Standards**

During fiscal 2005, the OPD reported to DBM and the budget subcommittees on the status of the Maryland specific caseload standards as developed by the National Center for State Courts in their report titled, *Maryland Attorney and Staff Workload Assessment, 2005*. As a result of those briefings, the General Assembly concluded that these standards are appropriate to ensure effective assistance of counsel in Maryland and directed the OPD to incorporate those standards into its Managing for Results (MFR) program and to use those standards when determining and assessing budgetary needs.

The Maryland specific Caseload Standards were developed to address differing practices within the various regions of the State and to address practice differences within different types of cases. The final caseload standards include "case weights" – average amount of time needed to provide competent representation in a case -- for 17 different types of cases within each of the three geographic regions: urban, suburban and rural.



## **B. Projected Staffing Needs under Maryland Standards**

Based on calendar year 2007 statistics, OPD estimates a need for an additional 55 attorneys and 25.5 support staff to be in full compliance with the Maryland Caseload Standards. This calculation is based on the formulas created within the Case Weighting Study to calculate implied attorney need based on the 17 differing types of cases within each of the three geographic areas of the State.

The greatest need is in the Circuit Court—primarily felonies. The need for additional attorneys results from a cumulative 10% increase in cases opened since fiscal 2003 when the Caseload Initiative began. It is noteworthy that OPD case data shows a significant increase in the number of non-violent felonies (ie, drug cases) opened by OPD in the last four years.

In the chart below, the attorneys needed are outlined by District and by the area of practice. Generally, OPD hires attorneys into Assistant Public Defender I positions for District Court, Assistant Public Defender II positions for Juvenile Court and Assistant Public Defender III positions for felony work in the Circuit Court.

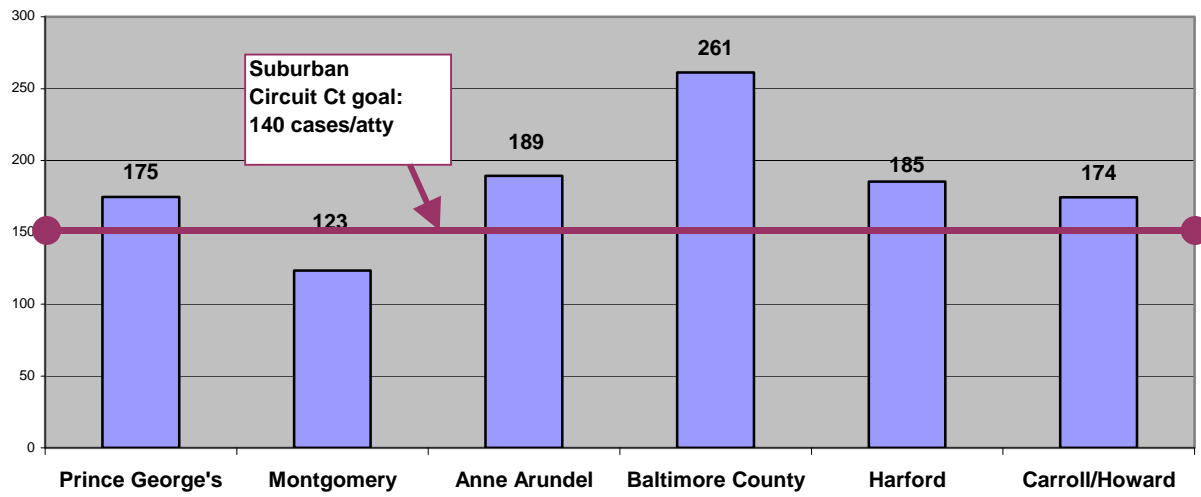
<b><u>District</u></b>	<b><u>Region</u></b>	<b><u>Circuit</u></b>	<b><u>District</u></b>	<b><u>Juvenile</u></b>	<b><u>Totals</u></b>
Baltimore City	Urban	0	0	0	0
Lower Shore	Rural	2.0	3.0	2.5	7.5
Upper Shore	Rural	3.0	.5	.5	4.0
Southern MD	Rural	2.0	3.0	.5	5.5
Prince George's	Suburban	7.0	6.0	0	13.0
Montgomery	Suburban	0	.5	0	.5
Anne Arundel	Suburban	4.0	3.0	2.0	9.0
Baltimore Co.	Suburban	11	.5	0	11.5
Harford	Suburban	0	0	0	0
Carroll/Howard	Suburban	0	0	0	0
Fred/Wash Co's.	Rural	1	1.5	1.5	4.0
Western MD	Rural	0	0	0	0
<b>Totals</b>		<b>30</b>	<b>18</b>	<b>7</b>	<b>55</b>

This chart reflects the additional attorney need assuming that there are no vacancies and that all attorney PINS appropriated to OPD can be filled at all times.

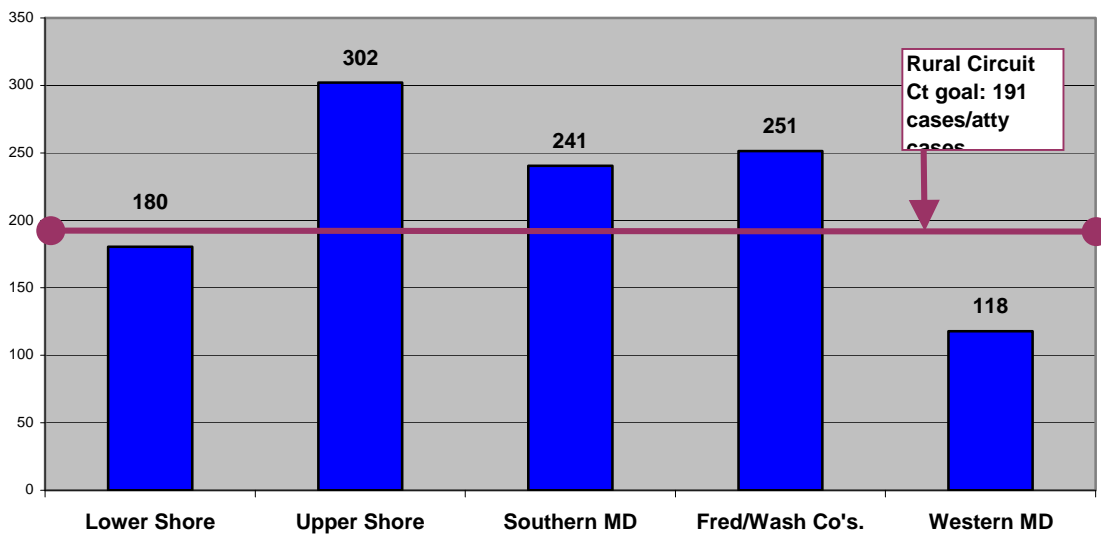
As shown in the following charts, OPD District offices are only 25% compliant with the Maryland Caseload Standards. As reported in the agency's Managing for Results strategic plan, OPD meets standards in 25% of the district offices for Circuit Court standards (three of 12 districts); 25% compliant in District Court (three of 12 districts) and 25% compliant in Juvenile Court (three of 12 districts). Although this is a decrease in overall agency compliance since calendar year 2005, several districts are within 10% of the Maryland standards and many districts show a significant decrease in the average annual attorney caseload even though still above the standards.

The following seven charts show the average annual attorney caseload for each district office grouped by area of law and by geographical region.

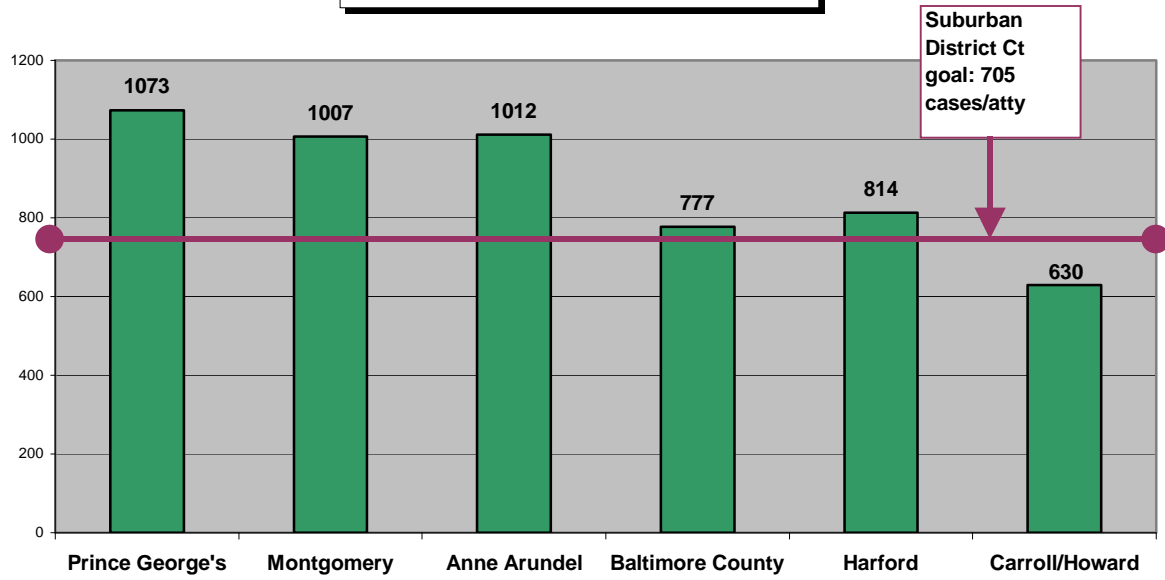
**Circuit Court - Suburban Districts  
2007 Average Attorney Caseloads**



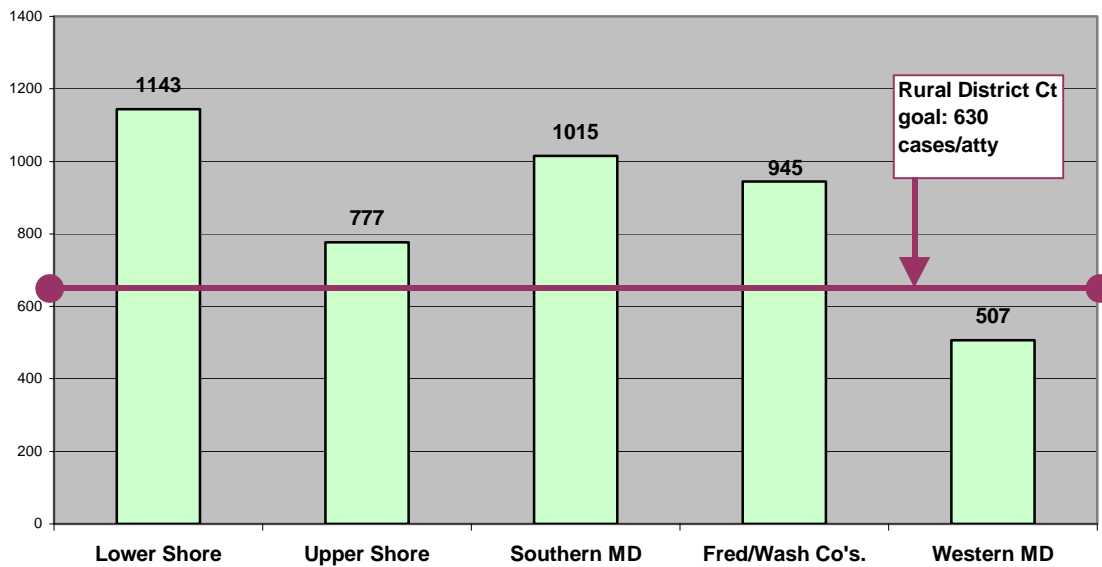
**Circuit Court - Rural Districts  
2007 Average Attorney Caseloads**



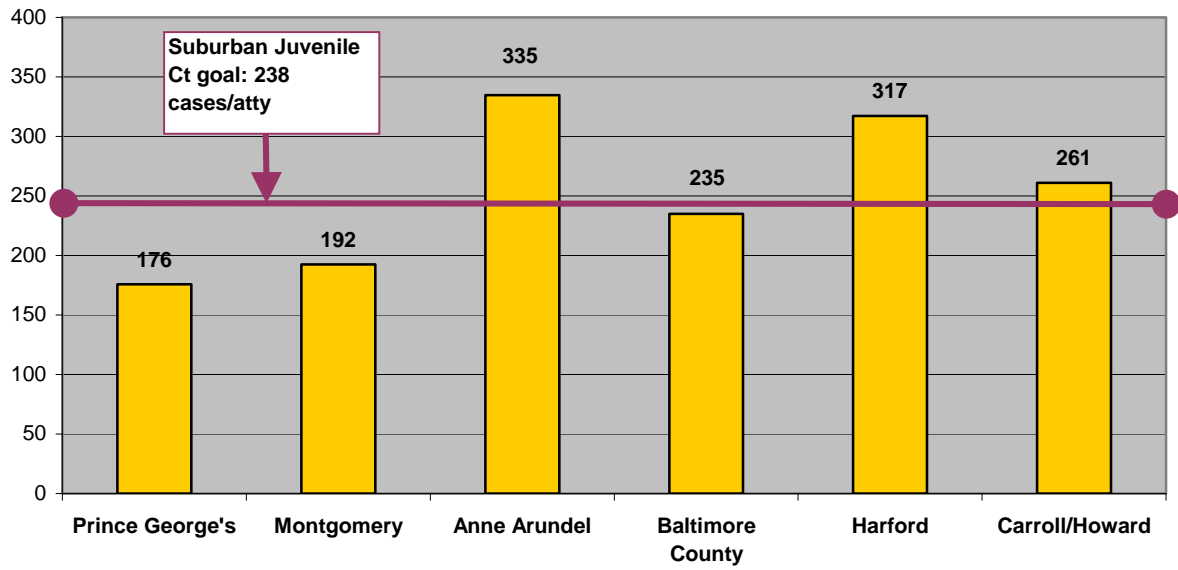
**District Court Caseload Averages  
Suburban Counties - Calendar Year 2007**



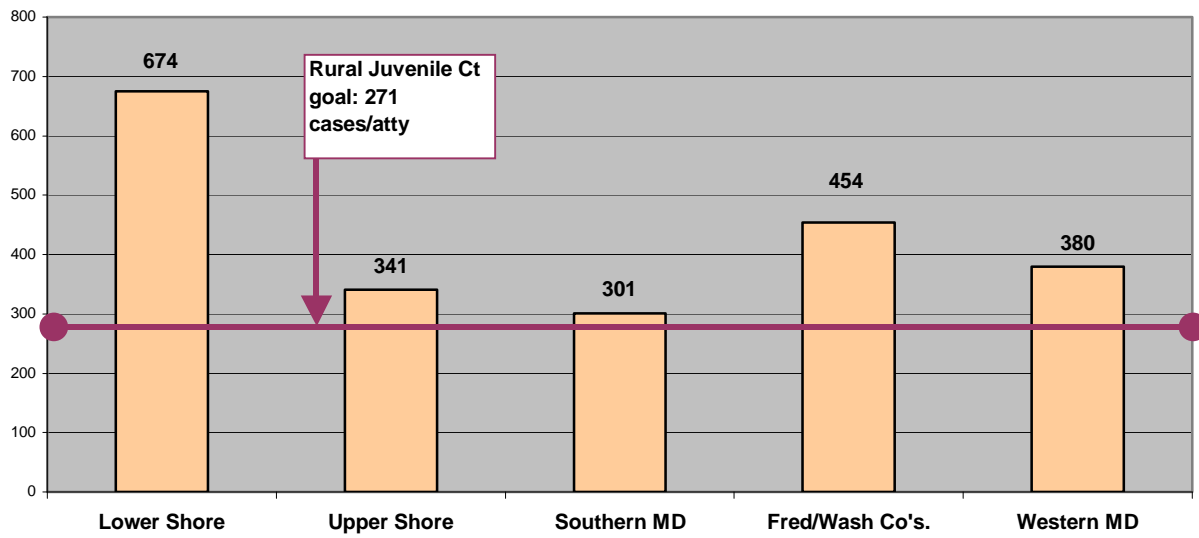
**District Court Caseload Averages  
Rural Counties- Calendar Year 2007**

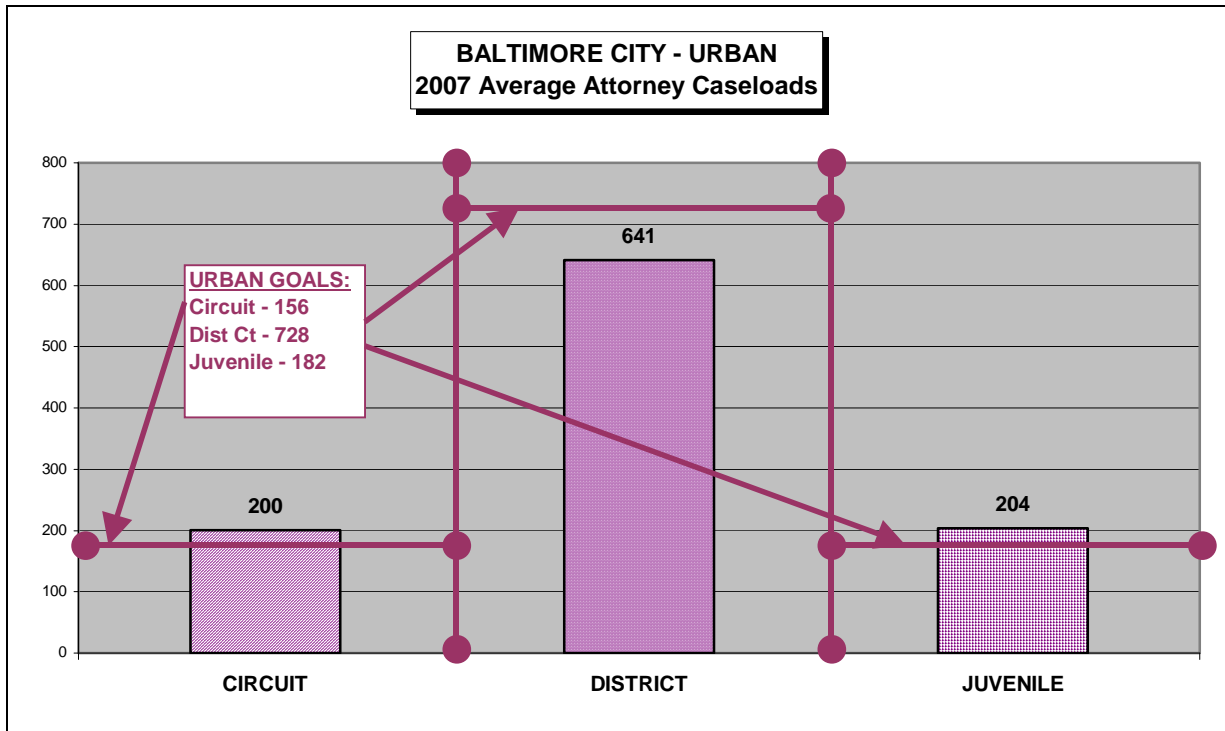


**Juvenile Court Caseloads Averages  
Suburban Districts - Calendar Year 2007**



**Juvenile Court Caseload Averages  
Rural Districts - Calendar Year 2007**





### C. Support Staff

OPD has calculated a commensurate number of support staff required in relation to the projected 55 new attorneys. Using the following ratios of support staff to attorneys, it is estimated that 25.5 additional staff would be needed.

	<b>Ratio</b>	<b>Attorneys</b>	<b>Net Need</b>
<b>Secretary</b>	1 to 5	55	11
<b>Law Clerk</b>	1 to 10	55	5.5
<b>Investigator</b>	1 to 10	55	5.5
<b>Social Worker</b>	1 to 15	55	3.5
<b>TOTAL</b>			<b>25.5</b>

**D. Operating Costs for New Personnel**

In addition to the salary and fringe benefit costs to hire new personnel, the related operating costs for new hires must also be considered. Computers, phone lines, supplies, average annual travel and the cost of additional leased space have all been calculated. The following charts show the cost detail of these new positions and the cost assumptions for the procurement of additional lease space.

Classification	Grade	Positions	Salary (FY09)	Total	w/ Fringes
APD I	20-0	18	\$ 52,950	\$ 953,100	1,270,800
APD II	21-0	7	\$ 56,496	\$ 395,472	527,296
APD III	22-0	23	\$ 60,290	\$ 1,386,670	1,848,893
APD 3.5	23-0	7	\$ 64,349	\$ 450,443	600,591
Total Attorneys		55		\$ 3,185,685	4,247,580
Secretary	9-0	11	\$ 26,783	\$ 294,613	392,817
Law Clerk	7-0	5.5	\$ 23,796	\$ 130,878	174,504
Investigators	11-0	5.5	\$ 30,200	\$ 166,100	221,467
Social Workers	16-0	3.5	\$ 41,074	\$ 143,759	191,679
Total Support Staff		25.5		\$ 735,350	980,467
<b>Total Staff</b>		<b>80.5</b>		<b>\$ 3,921,035</b>	<b>\$ 5,228,047</b>

Operating costs		Per employee	Total (80.5 FTE's)	
One time costs	computer	1,200.00	96,600.00	one time
	comp software	500.00	40,250.00	one time
	furniture	2,561.00	206,160.50	one time
Annual costs	phone	216.00	17,388.00	annual
	travel	312.00	25,116.00	annual
	rent		158,430.00	annual
	supplies	535.00	43,067.50	annual
<b>Total operating costs for new positions</b>			<b>587,012.00</b>	

<b>Total Operating Costs</b>			<b>\$ 587,012</b>
<b>Personnel Costs for 1st year @ 75%</b>			<b>\$ 3,921,035</b>
<b>TOTAL COST FISCAL 2010</b>			<b>\$4,508,047</b>

**Detail of New Lease Space Cost Assumptions**

<b><u>ATTORNEYS</u></b>	<b><u>NUMBER OF PERSONNEL</u></b>	<b><u>SQUARE FOOTAGE RATE ASSUMPTION</u></b>	<b><u>SQUARE FOOTAGE</u></b>	<b><u>TOTAL</u></b>
DISTRICT 2	7.5	17	150	19,125.00
DISTRICT 5	13	23	150	44,850.00
DISTRICT 7	9	16	150	21,600.00
DISTRICT 8	11.5	16	150	27,600.00
DISTRICT 11	<u>4</u>	14	150	<u>8,400.00</u>
	45			121,575.00
Secretary	8.25	20	90	14,850.00
Law Clerk	4.13	20	90	7,425.00
Investigators	4.13	20	108	8,910.00
Social Workers	<u>2.63</u>	20	108	<u>5,670.00</u>
	19.13			36,855.00



## **E. Attorneys for Problem-Solving Courts**

Another challenge facing the OPD is the issue of staffing the ever-expanding number of Problem Solving Courts. The Judiciary, through the Administrative Office of the Courts (AOC), has undertaken the formation and expansion of Drug Treatment Courts (DTC) and other specialty courts throughout the State. The major expansion of DTC occurred when the Drug Treatment Court Commission was established in October 2003 pursuant to the order of Chief Judge Robert M. Bell of the Maryland Court of Appeals. Although primarily grant funded, the judiciary did seek and receive preliminary funding in the fiscal 2007 supplemental budget. Since that time, OPD has reviewed its staffing needs in light of the OPD's Caseload Initiative and current Drug Treatment Court projections to determine what cases could be absorbed within existing resources and what courts required additional staffing. Accordingly, OPD requested additional positions in fiscal 2008 and fiscal 2009. These requests have not been granted. As has been consistently made clear to the legislature, and the judiciary, by the Public Defender, as of July 1, 2008, the agency cannot staff any additional Problem Solving Courts. Nor can it staff any existing courts that expand the number of defendants placed into the court. (See Attachment B, Letter from Public Defender to Judges Cox and Hueston)

Problem Solving Court (PSC) expansion includes the establishment of new drug courts and the expansion of the number of clients served by existing drug courts. PSC includes drug courts for District Court, circuit court, juvenile, and CINA cases, as well as family drug courts, DUI courts, mental health courts, truancy courts and most recently, a proposed prostitution court in Baltimore City. In fiscal 2009, AOC will have 49 problem solving courts operating statewide, with at least seven more in the planning stages. Harford County alone will have five different specialty courts operating in fiscal 2009. (See Attachments C1 and C2, List of all Problem Solving Courts.)

The OPD Caseload Initiative did not contemplate the staffing of problem solving courts for numerous reasons: 1) the Initiative's purpose was to address ten years of caseload growth preceding the existence of drug court; 2) very few drug courts existed in fiscal 2002 when the initiative was launched with little workload impact on the agency and with no established caseload standards to justify staffing requests; and 3) the few drug courts in existence were grant funded.<sup>1</sup>

Problem solving courts operate as a separate entity from the criminal court, with a unique process encompassing its therapeutic modality. This unique treatment-oriented process is more time intensive for all parties involved, requiring more client contact, more court appearances and longer court appearances than the initial criminal case. Often attorneys appearing in PSCs are unavailable to appear in the regular District or Circuit courts. Furthermore, the Assistant Public Defenders appearing in PSCs are asked to "pick-up" representation of defendants who were previously represented by private counsel. These additional clients further inflate attorney caseloads.

Compliance with caseload standards in District Operations is one of the OPD's main MFR goals. OPD has successfully reduced caseloads in District Operations statewide through the Caseload Initiative. However, the number of cases opened has continued to increase across the State in most types of cases at the same time that Problem Solving Courts are undergoing

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<sup>1</sup> It should be noted that grant funding specifically excludes the defense. Thus, while grants have been given to the prosecution to increase their participation in these courts, the OPD has not received any on going funding toward meeting the cost of representation in these courts except in Baltimore City.

an exponential expansion. The OPD had absorbed the growth in PSC cases with Caseload Initiative PINS received over the last several years. However, the continuing expansion of PSCs cannot be met with current staffing and thus threatens serious backtracking on compliance with the Maryland Caseload standards.

OPD has determined that additional staffing for the following PSCs is critical to maintain adequate staffing for the regular criminal cases that are the agency's core mission. This additional staffing does not account for PSCs that are in the planning stage as of July 2008. (See Attachment C3, Funding Detail for OPD Staffing of Problem Solving Courts.)

**Anne Arundel County**

District Court DTC 1 Attorney

Four courts will be operating in fiscal 2009. OPD is requesting one attorney to staff both the District Court DTC and the DUI Court. These PSCs together are projected to have 224 cases by fiscal 2009. The county's District Court cases have increased 2188 since the launch of the Caseloads Initiative.

**Baltimore City**

District Court 2 Attorneys  
Juvenile DTC 1 Social worker

Six problem-solving courts will be operating in Baltimore City by fiscal 2009. OPD is requesting two attorneys and one social worker. Although the AOC projects 325 cases in this DTC by fiscal 2009, the OPD has already documented a caseload of over 500 cases in 2006. Two attorneys are needed to keep up with the growing popularity of the DTC and to supplement the funding deficit resulting from the stagnant funding from Probation and Parole which has not increased salaries since the funding began over five years ago. Juvenile delinquency cases in Baltimore City have continually increased since fiscal 2003. While the Caseloads Initiative has allowed OPD to absorb much of this increase, we cannot also absorb the projected 120 juvenile DTC cases (or 160 cases handled by OPD in 2006) without additional staffing.

**Dorchester County**

District DTC 0.25 attorney = 0.5 attorney for both DTC's.  
Juvenile DTC 0.25 attorney

Dorchester County DTC caseloads will exceed 80 cases combined. Dorchester County is part of District 2, which also includes Wicomico and Worcester Counties. Most attorneys must appear in cases in multiple counties in District 2. In addition, only one attorney currently handles all Dorchester juvenile cases. These juvenile cases have increased 179% since the Caseloads Initiative began. District court cases have increased 45%, reflecting a 61% increase in district court criminal cases and a 70% increase in traffic cases from which DTC cases arise.

**Harford County**

Circuit DTC	DUI/DTC	Juvenile DTC
Drug DUI/DTC		
Dual-Diagnosis DTC	Family DTC	Re-entry DTC
	2 Attorneys	
	1 Paralegal	

These seven DTC's are projected to handle a total of over 250 cases in fiscal 2009. The attorneys and paralegal will handle overflow cases in all seven courts. Harford County has experienced a 32% increase in District Court cases, a 55% increase in circuit court cases and a 12% increase in juvenile cases since fiscal 2003 when the OPD's Caseload Initiative began. The OPD handled 75 cases in 2006 just in the Harford County Family DTC.

**Prince George's County**

Circuit DTC	1 Attorney
Juvenile DTC	1 Attorney
District DTC	1 paralegal
Family DTC	(1 planned)

Prince George's County DTC's expect over 300 cases in fiscal 2009 combined. This is in addition to a 49% increase in non-violent felony cases from which must DTC cases arise and a 43% increase in juvenile cases in the last four years.

**Wicomico County**

Circuit DTC	0.5 Attorney
District DTC	

Wicomico will have two DTC's in fiscal 2009 with projected caseloads near 150. The one attorney position requested will be split between Dorchester and Wicomico Counties both within District 2. Wicomico County experiences the highest enrollment in DTC with projections over 100 cases. District Court cases in Wicomico County have increased 35% over the last four years.

**Worcester County**

Circuit DTC	DUI/DTC	Juvenile DTC
District DTC	Family DTC	
	1 Attorney	
	1 paralegal	

This county expects to have five drug courts operating by fiscal 2009 with a combined caseload of 135 cases. This attorney will work in all of the DTC to allow other staff attorneys to be free to handle the recent 20% increase in cases. The juvenile cases in Worcester County have more than doubled since fiscal 2003, while the District Court has experienced an increase of approximately 25%.

The ability of the OPD to continue to staff PSCs depends entirely on whether this agency receives fiscal support to allow for the proper staffing. The OPD cannot absorb the representation of any additional PSCs unless and until additional funds are secured.

Moreover, given that Problem Solving Courts can be started whenever a judge or other stakeholder recommends it, it is near impossible to accurately assess OPD staffing needs in a single budget request. The proliferation of these courts does not follow fiscal year budget timing.

## **F. Information Technology**

As part of the Caseload Initiative, both the OPD and the funding authorities recognized that a sufficient IT infrastructure was essential to the OPD's ability to handle its cases in a manner consistent with the Maryland Caseload Standards.

To that end, in 2003, the OPD procured a centralized case management system by which to track all of its cases: ProLaw. Additionally, new hardware and the requisite software licenses were obtained in fiscal 2003 through fiscal 2004.

Perhaps the most critical area of related costs to the appropriation of new positions is the maintenance and upgrade of the agency's current IT equipment and infrastructure. Unfortunately, because of cost cutting measures and the reality of the OPD's under-funding, the IT infrastructure is in need of critical upgrades. All IT concerns have a significant impact on the daily business operations of OPD as the case management system and the agency's network have become a critical piece of agency operations upon which over 1,000 users are dependent.

The OPD must address the following areas to maintain the network capabilities that it is now experiencing. First, the existing infrastructure must be addressed. Second, there are limitations of current infrastructure that create technological issues that dictate what viable options the agency has to pursue. As currently configured there are critical vulnerabilities within the Agency's network, which if left unaddressed, significantly increase the risk of a major network failure.

The OPD's existing infrastructure includes over 1,100 workstations, more than 30 servers in more than 50 locations, one centralized email server and the centralized ProLaw database which is copied to 21 Servers. The OPD owns all this equipment without any warranties or applicable maintenance coverage.

The technological issues that the agency faces include the basic age of all workstations and the use of outdated software. End users have begun to experience frequent disruptions to the use of JIS, Outlook, ProLaw, and access to their own documents.

Other technological issues have developed due to OPD growth and the intervening technology changes in the IT industry since the network was developed. One critical factor is that the ProLaw database is now very large at 24GB. This causes a lack of robustness, slowing both searches for information in ProLaw and the proper daily entry and update of new cases.

Significant factors causing the limitations of current infrastructure are that the workstations, servers and routers cannot be upgraded. With the aging of the equipment, the agency has experienced that repairs take longer. The inability to repair equipment quickly could leave the agency without the use of ProLaw, email or the Internet for days at a time.

One of the current trends in criminal practice throughout the State is the practice of the State Attorneys' offices to provide the required discovery to defense counsel electronically on DVDs. Unfortunately, we are not currently able to read DVDs on the vast majority of the aging workstations.

Further, the age of the equipment and the software also hinders the maintenance and viability of the network. For example, Dell doesn't support hardware after five years. Seventy-five percent of OPD's workstations are at least six years old, 95% of network equipment is at least six years old and 84% of the servers are six or more years old.

We face the same problem with software. Microsoft only supports the latest two versions of its software, meaning that they will not provide any technical support for the earlier versions. The entire agency operates with Windows 2000 which is now more than two versions old with the advent of Microsoft's VISTA.

Also, the Email Exchange is two versions older than current version and thus is not supported. Also the ProLaw database use of a SQL Server is almost two versions older than current version and is not supported.

Other relevant factors that document the agency's need for IT enhancements are the recent growth in the size of the OPD and technology changes within the industry. OPD has added 250 employees since design of the original infrastructure. Also, the ProLaw database tripled in size since 2004. Changes in modern technology leave the OPD hindered by its aging equipment and infrastructure as the Courts and State Attorneys' Offices now distribute information electronically, and broadcast video (webcasts) of court proceedings via the Internet. Also the IT industry has changed to 64-bit (vs 32-bit) platforms that affect both hardware and software. Exchange 2007 & ProLaw 11 only run on 64-bit platforms. The last unfunded piece of the current IT landscape is the \$600,000 per year cost of the Verizon contract for the IT consultants.

Impact of OPD growth & technological changes have hampered the OPD in that the data storage capacity is approaching its limits and backup protection can no longer be guaranteed. At present, OPD end-users cannot view discovery from the prosecutors nor can users easily view webcasts of court proceedings that are currently available from the appellate courts in Annapolis.

The potential technological failures described here severely will impact business operations and the delivery of legal services. In fact, OPD is at risk of a catastrophic failure because the servers, network and all workstations are all nearing the end of their useful life cycle. In sum, 85% of hardware & software is unsupported by the manufacturer and the OPD IT Division can no longer fix everything that breaks.

## **Solutions**

In order to address these critical concerns, the needed solutions are as follows.

1. Upgrade network equipment and increase bandwidth to remote sites.
2. Upgrade servers & associated software.
3. Upgrade enterprise applications
4. Upgrade to Exchange 2007 / Office 2007
5. Upgrade to SQL 2005 / ProLaw 11
6. Replace workstations in phases over 3 years.

A full explanation of the proposed expenses for the IT upgrades discussed is listed in Attachments D1, D2 and D3. With the proper fiscal support, the proposed timeline for these improvements would be as follows:

- |                              |                  |
|------------------------------|------------------|
| 1. Upgrade Network Equipment | Sep 08 - Mar 09  |
| 2. Upgrade Servers & SW      | Sep 08 - Sep 09  |
| 3. Upgrade Exchange          | Oct 08           |
| 4. Upgrade ProLaw & SQL      | Jan - Jun 09     |
| 5. Replace Workstations      | Feb 09 - Dec 10. |

Although the costs may appear steep, the listed IT needs are a minimum necessary to maintain the current system. Other additional items that have been previously discussed, and postponed at this time, include a Web-based Internet system for panel attorney bill submission, estimated at a one time cost of approximately \$150,000, and the acquisition of Web-based ProLaw estimated at a one time cost of \$2 million.

Taken together, the full cost of a fully operational and current IT system is approximately \$4 million. However, a significant portion of the cost is for hardware purchases that can be phased-in through the State Treasurer’s lease purchase agreement. One third to one half of the \$1.9 million for workstation replacements can be deferred to later years yielding a lower cost for fiscal 2010. See Full Funding Detail in Conclusion.

**Summary of Information Technology Costs for full Operating Needs**

1. Verizon contract for on-site technical assistance	\$600,000/year
2. Network equipment and upgrades	\$273,000 (See Appendix #1)
3. Server upgrades and replacements	\$1,207,000 (See App. #2)
4. Workstation replacements (total cost)	\$1,905,000
5. Additional connectivity	<u>\$100,000/year</u>
<b>Full total</b>	<b>\$4,085,000</b>
<b>Fiscal 2010 cost</b>	<b>\$2,815,000</b>

**G. Leased Space**

The OPD requires funding to meet the increasing costs of its currently leased space and to expand or relocate its offices in three jurisdictions. Since the successful completion of the Caseload Initiative, the number of OPD employees has increased 27% from slightly over 800 regular State positions in fiscal 2003 to 1015, the current number of regular PINS in fiscal 2009. The agency also has 47.5 contractual FTE’s in the fiscal 2009 appropriation. The current shortfall, or cost to fully fund all current lease space, is \$73,376.

Although funding to accommodate office space for each of the new positions received was budgeted, lease escalation, overall overcrowding and saturation of the existing office space

has resulted in OPD's need to seek alternative lease space in the following locations: Kent County, Harford County and Wicomico County.

In Kent County, a commercial lease is needed to replace the privately owned building where the OPD office has been located for many years. The space is needed to accommodate two attorneys, one secretary, one law clerk and a common area for reception. The estimated cost of acquiring the needed space is \$39,106.

In Harford County, the OPD is currently located in the District Court Multi-service Center in Bel Air. The District Court plans to take over the current OPD Circuit Court/ Intake/Juvenile office space to construct a fifth courtroom. This space is the larger of the two office areas currently occupied by the OPD. According to Richard Funk, Facilities Administrator for the District Court, the court is looking to take the space as soon as fiscal 2009. This would displace over three-quarters of the current OPD staff.

Additionally, the federal BRAC (base realignment) program is estimated to cause an increase of 20,000 people to the Harford County area. This will substantially increase the population and police presence in the Aberdeen area, which is already a high crime area. To handle the increase, there will be several new prosecutors hired and the Harford County Detention Center is beginning construction on a 300+ bed expansion. The Harford County OPD may also need additional staff in the near future to keep pace with this anticipated increase in cases.

Harford County has the most drug treatment and other problem solving courts of any jurisdiction in the State of Maryland. There currently are seven specialty courts including: Circuit Court Drug Court, a dual-diagnosis court for those with psychological issues, a DUI court in the District Court, a drug treatment court for CINA families, a drug treatment court in the juvenile court, a drug court especially for those addicts who are re-entering the community, and lastly, a drug related DUI court. As a result, the attorneys must spend more time in court and in meetings dealing with a relatively few number of clients. The fewer number of cases handled by each attorney also results in a need for additional attorneys (and the accompanying office space) in order to meet caseload standards.

The Harford County OPD handled 5,238 cases in CY2007, which is a 30% increase over the number of cases handled in fiscal 2003. There were eleven attorneys assigned there prior to the Caseload Initiative and currently the district has 15 attorney positions allocated. Additionally, Harford County has added two social workers. The additional space needed (in addition to replacing the space repossessed by the District Court) includes 22 offices (15 attorneys, two social workers, three intake specialists, the intake supervisor and the office manager), 11 cubicles for the remaining support staff, a server/storage room, a file room and a supply room.

Clearly, the current Harford County office space is inadequate for the existing staff. Files piled in hallways and offices create a hazard to employees and clients. Attorneys, intake specialists and social workers that are situated in cubicles create the likelihood that privileged and confidential conversations will be overheard. The current situation will reach a crisis level when the District Court moves forward to reclaim the OPD's current space. The estimated cost of acquiring the needed space is \$234,744.

In Wicomico County, the number of cases handled in CY2007 was 4,969, which is a 32% increase over fiscal 2003. There were nine attorneys prior to the Caseload Initiative and currently there are thirteen. The Wicomico County office needs 35 offices, one supply room, a large file room, a bathroom and a waiting room with the receptionist office glassed off.

Currently there are three investigators and the one social worker sharing an office and two other attorneys sharing an office. The District Public Defender and the Office Manager are amid the process of giving up their slightly larger offices to reconfigure them to accommodate two attorneys in each. There is also an intake worker without an assigned work area that has to move from space to space to do intake. Usually, he does intake in the kitchen because all of the offices are occupied. The estimated cost of acquiring the needed space is \$207,566. (See Attachment E, Funding Detail for Additional Leased Space.)

The total unfunded need for leased space is summarized below.

<b>LEASE LOCATIONS</b>	<b>UNFUNDED NEED</b>
Kent County	\$ 39,106
Harford County	234,744
Wicomico County	207,566
<b>New Lease subtotal</b>	<b>\$481,416</b>
Shortfall in Existing Leased Space	73,376
<b>TOTAL</b>	<b>\$ 554,792</b>

## **H. Training and Books**

Any organization providing legal services must have a rigorous, current and demanding training regimen for attorneys, clerical support staff, professional support staff and Information Technology staff. The OPD Training Division consists of the Training Director, one attorney trainer, one staff trainer and one secretary. Clearly this small staff would be incapable of providing a reasonable level of training for an office that includes over 1060 employees of which 564 are attorneys. However, the OPD has historically relied on senior experienced employees, who volunteer their time to train and to supplement trainings by the Training Division. Additionally, the Training Division organizes statewide conferences so that as many staff members as possible can attend particular trainings. The Training Division works diligently to limit costs and increase efficiency. However, due the recurring under-funding of the OPD, adequate training has been hampered and optimum professional training has become impossible.

Ideally, all OPD attorneys would be periodically sent to trainings conducted by national, regional and state organizations such as: The Maryland Institute for Continuing Professional Education of Lawyers, the National Criminal Defense College, the National Legal Aid and Defenders' Association or the National Association of Criminal Defense Lawyers. The OPD recognizes the costs associated with such a plan would be prohibitive. An efficient, cost effective strategy for addressing OPD's training problem would be to send experienced attorneys to nationally recognized education programs so that they could then train their peers. Because of the varied nature of OPD representation (Juvenile Delinquency, Capital Defense, CINA, Appellate etc.) it is necessary to send a minimum of 50 attorneys per year to such trainings. Costs for these trainings, which vary widely, would necessarily include transportation and lodgings. A reasonable estimate is \$110,000 per year. Even with this amount



of funding, the number of attorneys trained each year would represent less than five percent of OPD lawyers.

The approximately 500 support staff employees of OPD also require a reasonable level of training. Clerical employees, Information Technology staff, Personnel Division workers, the Equal Employment Opportunity Officer, among others, each have unique training needs that have previously not been addressed. Information Technology training is particularly expensive. A reasonable estimate for providing a practical level of training to a small number of employees would be approximately \$25,000 per year.

OPD employs approximately 30 licensed Social Workers who are required by state regulations to obtain annual continuing professional education in order to maintain their licenses. OPD has been provisionally approved to provide some Social Worker training. However, until now, it has been necessary for social worker employees to attend trainings outside of OPD, usually at their own expense. Providing minimum Social Worker training will cost approximately \$15,000 per year.

As a result of under-funding, OPD has virtually no up-to-date law books. For example, OPD does not maintain a single current version of the Maryland Annotated Code. OPD has elected to utilize an Internet based legal research tool (Westlaw) as a cost saving strategy. However, there are many instances when actual legal texts are necessary (i.e.: District Court attorneys who do not have access to computers while in court representing multiple clients). In order to provide a bare bones, absolute minimum number of books, OPD requires approximately \$35,000. (See Attachment F for a sampling of actual training costs)

## **I. Experts and transcripts**

The significant caseload increase experienced by the OPD over the last five years has caused cost over runs in areas of trial support services. Full funding for experts would require an additional \$368,655 and full funding for all transcripts requires an additional \$611,816.

## **J. Pending Litigation regarding Attorney Representation at Bail Reviews**

In November 2006, a class action lawsuit was filed against the Commissioners of the District Court for Baltimore City, and several others, challenging Maryland's practice of denying indigent defendants counsel when they first appear before a District Court Commissioner. The case is Quinton Richmond, et al vs. District Court of Maryland, et al. The plaintiffs ask, among other things, that the Court declare that an initial bail hearing before the District Court Commissioner triggers the Maryland Public Defender Act whereby indigent defendants have a right to counsel appointed by the State to represent them before the Commissioner.

Although the OPD is not a party to the lawsuit, the agency has followed its progress. The outcome on the merits will clearly affect the agency and will impose a significant fiscal burden on OPD if required to provide attorneys at the Commissioner level where Commissioners operate 7 days per week, 24 hours per day. The plaintiffs lost at the trial level and the case was on appeal to the Court of Special Appeals; however, on July 23, 2008, the Maryland Court of Appeals granted certiorari on its own motion. A ruling on this issue will be forthcoming from Maryland's highest court.

There is a real possibility that the court can rule that while counsel is not required when a defendant appears before a Commissioner, OPD must provide counsel at the bail review hearing before a District court judge. OPD does not have sufficient staffing to provide counsel at all judicial bail reviews throughout the State.

If the Court of Appeals were to mandate that the OPD must provide counsel at the judicial bail reviews, OPD estimates that providing this additional service statewide will require an additional 25 Intake Specialists to prepare files and 25 Assistant Public Defenders to represent the defendants before the District Court judges. These numbers are in addition to the 55 attorneys and 25.5 support staff positions described above.

<b>Attorneys needed for Representation at District Court Bail Reviews</b>		
District	Attys	Comment
Baltimore City	0	Service provided, funded by DPSCS
Lower Shore	4	One atty for each County
Upper Shore	5	One atty for each County
Southern MD	3	One atty for each County
Prince George's	2	One atty for each District Ct location
Montgomery	0	Service provided currently
Anne Arundel	2	One atty for each District Ct location
Baltimore County	3	One atty for each District Ct location
Harford	0	Service provided, funded by County
Carroll/Howard	2	One atty for each County
Fred/Washington	2	One atty for each County
Western MD	2	One atty for each County
<b>TOTAL</b>	<b>25</b>	

### **3. Increasing the panel fee to \$75 per hour**

For fiscal 2009, OPD has been appropriated \$4 million for panel attorney reimbursement. However, the \$4 million appropriated in fiscal 2009 is insufficient. For two years, OPD has been forced to rollover into the following fiscal year, almost \$1 million due to significant under-funding in this area. OPD's fiscal 2008 actual expenditures for paneling all of the cases where the OPD has an ethical conflict were approximately \$4.7 million, or \$700,000 above the actual appropriation. Using the \$4.7 million figure as a more accurate estimate for projecting panel costs into 2010, the increase to \$75 per hour will require additional general funds of approximately \$3,076,000.

<b>PROJECTED PANEL FUNDS</b>		
	<b>Monthly</b>	<b>Full year Expenditure</b>
<b>Fiscal 2008 - actuals</b>	<b>\$ 393,115</b>	<b>\$ 4,717,376</b>
<b>Fiscal 2010</b>	<b><i>proj at \$75/hr</i></b>	<b>\$ 7,076,063</b>
<b>Fiscal 2009</b>	<b>Appropriation</b>	<b>\$ 4,000,000</b>
<b>NET NEED</b>		<b>\$ 3,076,063</b>

The OPD has experienced an increase in the number of private attorneys who are willing to accept public defender conflict cases. This increase, or stabilization, of the panel attorney lists within the individual district offices can only be attributable to the panel rate increase three years ago to \$50 per hour. Accordingly, the next increase to \$75 per hour will undoubtedly further enhance the availability of qualified attorneys to handle panel cases.

In June 2008, two panel attorneys challenged the OPD panel fees in the Circuit Court for Anne Arundel County as insufficient for them to properly represent a defendant, Lee Stephens, charged with capital murder. A ruling on their motion is pending. (See Attachment G, Motion to Dismiss) If successful, there is a possibility that the Court may order the OPD to pay capital counsel far more than \$75.00 per hour.

While improved, the availability of qualified attorneys to handle serious and complex felony cases remains a challenge to the District Public Defenders, especially in the rural areas. Although not at a crisis level at this point, OPD is aware that increases in the panel attorney compensation rate must be sought in future years to recruit and retain competent attorneys who can provide the effective assistance of counsel to OPD clients.

## Conclusion

A summary of all costs detailed in this report can be seen in the table below.

<b>OFFICE OF THE PUBLIC DEFENDER PROJECTED FULL FUNDING FOR 2010 DETAILED SUMMARY OF COST CALCULATIONS</b>					
	<b>Full Funding</b>	<b>Fiscal 2009 Appropriation</b>	<b>Total Increase Needed</b>	<b>Increase Needed Fiscal 2010</b>	<b>Notes</b>
<b>1. Turnover reduced to 3%</b>	\$84,565,154	\$83,096,878	\$1,468,276	\$1,468,276	
<b>2. New Personnel and Related Costs</b>					
<b>55 attorneys</b>	\$4,247,580	N/A	\$4,247,580	\$3,185,685	25% turnover applied
<b>25.5 Support staff</b>	\$980,467	N/A	\$980,467	\$735,350	25% turnover applied
<b>Operating costs</b>	\$ 587,012	N/A	\$ 587,012	\$ 587,012	
<b>Problem Solving Cts.</b>	\$1,041,663	N/A	\$1,041,663	\$ 809,271	25% turnover applied
<b>IT</b>	\$4,085,000	N/A	\$4,085,000	\$2,815,000	Via lease purchase
Leases	\$2,174,270	\$2,100,894	\$ 73,376	\$ 73,376	
New Leases	\$481,416	N/A	\$ 481,416	\$ 481,416	
<b>Experts</b>	\$1,874,507	\$1,505,852	\$ 368,655	\$ 368,655	
<b>Transcripts</b>	\$1,311,816	\$ 700,000	\$ 611,816	\$ 611,816	
<b>Books</b>	\$ 35,000	N/A	\$ 35,000	\$ 35,000	
<b>Training</b>	\$ 150,000	N/A	\$ 150,000	\$ 150,000	
<b>3. Panel Rate Increase</b>	\$7,076,063	\$4,000,000	\$3,076,063	\$3,076,063	
<b>TOTALS</b>	\$108,609,948	\$ 91,403,624	\$17,206,324	<b>\$14,396,920</b>	See Notes Above

# **ATTACHMENTS**

Maryland Office of the Public Defender

**Report on the Fiscal Impact of  
Fully Funding the Office of the Public Defender's Operating Needs**

Report to the Joint Chairmen  
Senate Budget and Taxation Committee  
House Appropriations Committee

August 2008

# **ATTACHMENT A**

## Performance Audit Report

## Office of the Public Defender

November 2001

**Finding #6**

**The Office used unrealistically high employee turnover rates to keep its budget requests within budget ceilings. However, turnover that is not realized generally results in budget deficits.**

**Analysis**

The Office used unrealistically high employee turnover rates to prepare its fiscal year 2001 and 2002 budget requests. This was done to stay within the mandated budget ceilings imposed by the Department of Budget and Management and still include funding requests for non-payroll costs that the Office deemed critical. The employee turnover rate is used to estimate annual payroll savings resulting from employee vacancies in authorized positions. Estimated annual salary costs in the budget are reduced as the turnover rate is increased. The estimated savings resulting from the unrealistically high employee turnover rates were budgeted by the Office for other non-payroll costs in order to stay within the budget ceiling.

For example, the Office's fiscal year 2002 budget request was based on an unsupported 16.2 percent turnover rate, which was significantly higher than the 4.3 percent targeted rate that the Department felt was justified from experience. The difference in rates resulted in approximately \$5.4 million of additional payroll savings that the Office allocated to other costs. For example, \$2.5 million was allocated for panel attorneys and \$600,000 was allocated for experts' testimony. Nevertheless, the Department adjusted the Office's turnover rate to 6.4 percent and reduced the non-payroll budgets.

Likewise, for fiscal year 2001 budgeting, the Office used an unsupported 10.1 percent turnover rate. This was a significant increase over the 5.3 percent rate used when budgeting for fiscal year 2000 and was also revised downward by the Department. The Office's actual turnover rate for fiscal years 2000 was 4.9 percent, and for fiscal year 2001 through March 2001 was calculated by the Department as 4.6 percent.

Office management advised us that the budget ceilings set by the Department were unrealistically low to adequately fund its needs. The higher turnover rates were used so that it could at least show its budget needs for the non-payroll areas. However, this is not an acceptable budgeting practice since turnover that is not realized results in budget deficits.

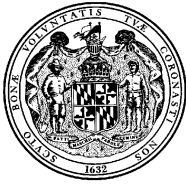
**Recommendation #6**

**We recommend that the Office use a reasonable employee turnover rate that is based on actual experience and include appropriate justifications for increases to non-payroll budget items when preparing its budget requests.**



# ATTACHMENT B

STATE OF MARYLAND



**OFFICE OF THE PUBLIC DEFENDER  
ADMINISTRATION  
WILLIAM DONALD SCHAEFER TOWER  
6 SAINT PAUL STREET, SUITE 1400  
BALTIMORE, MARYLAND 21202-1608  
Ph. (410) 767-8469 Fax (410) 333-8496  
Toll Free 1-888-766-2095**

NANCY S. FORSTER  
PUBLIC DEFENDER

MICHAEL R. MORRISSETTE  
DEPUTY PUBLIC DEFENDER

PATRICIA L. CHAPPELL  
CHIEF ADMINISTRATIVE OFFICE

MARTIN O'MALLEY  
GOVERNOR

March 28, 2008

Honorable Jamey Hueston  
District Court of Maryland  
For Baltimore City  
5800 Wabash Avenue  
Baltimore, MD 21215

Honorable Kathleen Gallogly Cox  
Circuit Court for Baltimore County  
County Courts Building  
401 Bosley Avenue  
Towson, MD 21204

Dear Judges Hueston and Cox:

Thank you for meeting with me, Michael Morrisette and Peter Rose on March 18, 2008, to discuss my concerns regarding the expansion of problem solving courts.

By the first week of April the Office of the Public Defender will be requesting that the policy and procedure manuals in all existing problem solving courts be re-evaluated so as to reflect the role of Assistant Public Defenders in these courts consistent with the standards I have developed for our participation. I will share these new standards with you before requesting re-evaluations.

I have given very serious consideration to your request that I staff an expanded drug treatment court in Baltimore City. Unfortunately, I cannot provide any further resources for this proposed expansion. Again, I respectfully ask that you wait until fiscal year 2010 to

Honorable Jamey Hueston  
Honorable Kathleen Galloghy Cox  
March 28, 2008  
Page 2

expand so that the Office of the Public Defender has an opportunity to request increased funding and positions.

I remain committed to my position that the Office of the Public Defender cannot and will not staff any new problem solving courts or any expansion of existing problem solving courts. As you know, each case in these courts requires significant attorney time and attention. This increased workload is sapping the ability of my attorneys to provide effective representation to their non-problem solving court clients.

The Office of the Public Defender has been more than cooperative with the Judiciary in attempting to staff these ever growing courts without any additional positions and while being the only "stakeholder" who is refused funding. We simply cannot continue to do so.

Sincerely,

Nancy S. Forster  
Public Defender

NSF/jps

cc: Honorable Robert M. Bell, Chief Judge

Gray Barton, Executive Director  
Office of Problem Solving Courts

Jennifer Moore, Deputy Executive Director  
Office of Problem Solving Courts

Michael Morrisette, Deputy Public Defender  
Office of the Public Defender

Peter Rose, General Counsel  
Office of the Public Defender

Honorable Jamey Hueston  
Honorable Kathleen Galloghy Cox  
March 28, 2008  
Page 3

Bcc: Elizabeth L. Julian, District Public Defender  
Grace Reusing, Deputy District Public Defender  
Thelma Triplin, District Public Defender  
Donald Zarembo, Deputy District Public Defender

# **ATTACHMENTS C**

# Problem Solving Courts

## Drug Treatment Courts 42

Adult Circuit	
AnneArundel	
Baltimore City	
Carroll	
Cecil	
Frederick	
Harford	
Montgomery	
Prince George's	
St Mary's*	
Wicomico	
Worcester	
<b>Total</b>	<b>11</b>

Adult District	
Anne Arundel	
Baltimore City	
Dorchester	
Harford	
Howard	
Prince George's	
Talbot	
Wicomico*	
Worcester	
<b>Total</b>	<b>9</b>

Juvenile	
Anne Arundel	
Baltimore City	
Baltimore County	
Calvert	
Caroline	
Dorchester	
Harford	
Montgomery	
Prince George's	
Somerset	
St. Mary's Charles	
Talbot	
Washington	
Worcester	
<b>Total</b>	<b>15</b>

Family/Dependency	
Baltimore City	
Harford	
Talbot	
Worcester	
<b>Total</b>	<b>4</b>

DUI/Drug Court	
Anne Arundel	
Harford	
Howard	
<b>Total</b>	<b>3</b>

\*Court added in 2008

## Truancy

Baltimore City	
Dorchester	
Somerset	
Wicomico	
Worcester	
<b>Total</b>	<b>5</b>

Mental Health	
Baltimore City	
Harford	
<b>Total</b>	<b>2</b>

In Planning Stages		
Baltimore County	Adult District	
Charles	Family	
Frederick	DUI	
Montgomery	DUI	
Prince George's	Family	
Washington	Adult	
Worcester	DUI	
<b>Total</b>	<b>7</b>	

**ATTACHMENT C2**

OPD DISTRICT	COUNTY	Adult Circuit	Adult District	Juvenile	Family Dependency	DUI/Drug	ATTACHMENT C2	
							Mental Health	Truancy
District 1	Baltimore City	X	X	X	X		X	X
District 2 Lower Shore	Dorchester Somerset Wicomico Worcester		X X*	X X	X	P		X X X X
District 3 Upper Shore	Caroline Cecil Queen Anne's Talbot	X		X X	X			
District 4 Southern MD	Calvert Charles St. Mary's			X X X	P			
District 5	Prince Georges	X	X	X	P			
District 6	Montgomery	X		X		P		
District 7	Anne Arundel	X	X	X		X		
District 8	Baltimore County		P	X				
District 9	Harford	X	X	X	X	X	X	
District 10	Carroll Howard	X				X		
District 11	Frederick Washington	X P		X		P		

\* Court opened in 2008    P = Drug Court in Planning

**ATTACHMENT C3**

**Personnel Costs for Problem Solving Courts**

Classification	Grade	Positions	Salary (FY09)	Total	w/ Fringes
APD I	20-0	1	\$ 52,950	\$ 52,950	70,600
APD II	21-0	4	\$ 56,496	\$225,984	301,312
APD III	22-0	5	\$ 60,290	\$301,450	401,933
Total Attorneys		10		\$580,384	773,845
Paralegal	8-0	3	\$ 25,239	\$ 75,717	100,956
Social Workers	16-0	1	\$ 41,074	\$ 41,074	54,765
Total Support Staff		4		\$116,791	155,721
Total Staff		14		\$697,175	\$ 929,567

Operating costs		Per employee	Total (14 FTE's)	
1 time costs	computer	1,200	16,800	one time
	comp software	500	7,000	one time
	furniture	2,561	35,854	one time
Annual costs	phone	216	3,024	annual
	travel	312	4,368	annual
	rent		37,560	annual
	supplies	535	7,490	annual
	<b>Total operating costs for new positions</b>		<b>112,096</b>	
			<b>Total Operating Costs</b>	<b>\$ 112,096</b>
			<b>Personnel Costs for 1st year @ 75%</b>	<b>\$ 697,175</b>
			<b>TOTAL COST FISCAL 2010</b>	<b>\$809,271</b>



# **ATTACHMENTS D**

**ATTACHMENT D1**

<b>OPD Network Equipment</b>					
<b>Part Number</b>	<b>Description</b>	<b>Qty</b>	<b>MLP</b>	<b>MLP Disc</b>	<b>Extended</b>
WS-C6509-E	ENH CHAS 9SLT 15RU NO PWR SU	1	\$9,500.00	\$3,705.00	\$5,795.00
S733ESK9M-12218S	CAT6000-SUP720 IOS ENTERPRIS	1	\$8,000.00	\$3,120.00	\$4,880.00
WS-SUP720-3B	CATALYST 6500 CISCO 7600	1	\$28,000.00	\$10,920.00	\$17,080.00
CF-ADAPTER-SP	SP ADAPTER FOR SUP720 AND SU	1	\$0.00	\$0.00	\$0.00
MEM-C6K-CPTFL512	CAT6500 SUP720 CFLASH MEM 51	1	\$995.00	\$388.05	\$606.95
MEM-S2-512MB	Catalyst 6500 512MB DRAM on	1	\$0.00	\$0.00	\$0.00
MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on	1	\$0.00	\$0.00	\$0.00
WS-SUP720-3B	CATALYST 6500 CISCO 7600	1	\$28,000.00	\$10,920.00	\$17,080.00
CF-ADAPTER-SP	SP ADAPTER FOR SUP720 AND SU	1	\$0.00	\$0.00	\$0.00
MEM-C6K-CPTFL512	CAT6500 SUP720 CFLASH MEM 51	1	\$995.00	\$388.05	\$606.95
MEM-S2-512MB	Catalyst 6500 512MB DRAM on	1	\$0.00	\$0.00	\$0.00
MEM-MSFC2-512MB	Catalyst 6500 512MB DRAM on	1	\$0.00	\$0.00	\$0.00
WS-X6724-SFP	GIGE MODULE 24PORT FABRIC- EN	1	\$15,000.00	\$5,850.00	\$9,150.00

MEM-XCEF720-256M	SW 256MB DDR XCEF720	1	\$0.00	\$0.00	\$0.00
WS-F6700-CFC	CATALYST 6500 CENTRAL FWD CA	1	\$0.00	\$0.00	\$0.00
GLC-LH-SM	PIC GB ETHRNT TRCVR LC SFP	12	\$995.00	\$388.05	\$7,283.40
GLC-SX-MM	GE SFP LC CONN SX TRANSCEIVE	12	\$500.00	\$195.00	\$3,660.00
WS-X6148A-GE-TX	CAT6500 48-PORT 10/100/1000	1	\$7,000.00	\$2,730.00	\$4,270.00
WS-C6509-E-FAN	CATALYST 6509- E CHASSIS FAN	1	\$495.00	\$193.05	\$301.95
WS-CAC-3000W	POWER SUPP Catalyst 6500 300	2	\$3,000.00	\$1,170.00	\$3,660.00
CAB-7513AC	POWER CORD AC	2	\$0.00	\$0.00	\$0.00
MEM-C6K-CPTFL512	Catalyst 6500 Sup720/Sup32 C	1	\$0.00	\$0.00	\$0.00
BF-S720-64MB-RP	Bootflash for SUP720-64MB-RP	1	\$0.00	\$0.00	\$0.00
MEM-C6K-CPTFL512	Catalyst 6500 Sup720/Sup32 C	1	\$0.00	\$0.00	\$0.00
BF-S720-64MB-RP	Bootflash for SUP720-64MB-RP	1	\$0.00	\$0.00	\$0.00
NAC3350-1500-K9	NAC APPLIANCE 3350 SERVER -M	1	\$41,990.00	\$16,376.10	\$25,613.90
CAB-AC	POWER CORD,110V	2	\$0.00	\$0.00	\$0.00
NAC3350-SVR	NAC Appliance 3350 Server Ha	1	\$0.00	\$0.00	\$0.00
NAC-SVR-41-K9	NAC Appliance Server Release	1	\$0.00	\$0.00	\$0.00

AIR-WLC4404-100-	4400 SERIES WLAN CONTROLLER	1	\$34,995.0 0	\$13,648.05	\$21,346.95
AIR-PWR-CORD-NA	AIR LINE CORD NORTH AMERICA	1	\$0.00	\$0.00	\$0.00
SWLC4400K9-50	CISCO UNIFIED WLAN CONTROLLE	1	\$0.00	\$0.00	\$0.00
SWLC4400K9-50-ER	Cisco Unified WLAN Controlle	1	\$0.00	\$0.00	\$0.00
AIR-PWR-4400-AC=	4400 SERIES WLAN CONTROLLER	1	\$1,495.00	\$583.05	\$911.95
AIR-PWR-CORD-NA	AIR LINE CORD NORTH AMERICA	1	\$0.00	\$0.00	\$0.00
GLC-T=	1000 BASE-T SFP	2	\$395.00	\$154.05	\$481.90
ASA5540-BUN-K9	ASA 5540 APPLIANCE WITH SW,	1	\$16,995.0 0	\$6,628.05	\$10,366.95
CAB-AC	POWER CORD,110V	1	\$0.00	\$0.00	\$0.00
SF-ASA-8.0-K8	ASA5500 SERIES SOFTWARE V7.2	1	\$0.00	\$0.00	\$0.00
ASA5500-SSL-250	ASA 5500 SSL VPN 250 USER LI	1	\$19,995.0 0	\$7,798.05	\$12,196.95
ASA-VPN-CLNT-K9	CISCO VPN CLIENT SOFTWARE	1	\$0.00	\$0.00	\$0.00
SSM-BLANK	ASA/IPS SSM Slot Cover (Sub-	1	\$0.00	\$0.00	\$0.00

ASA5540-VPN-PR	ASA 5540 VPN Premium 5000 Pe	1	\$0.00	\$0.00	\$0.00
ASA5500-ENCR-K9	ASA 5500 Strong Encryption L	1	\$0.00	\$0.00	\$0.00
ASA-180W-PWR-AC	ASA 180W AC Power Supply (Su	1	\$0.00	\$0.00	\$0.00
ASA-ANYCONN-CSD-	ASA 5500 AnyConnect Client +	1	\$0.00	\$0.00	\$0.00
7206VXR/NPE-G1	7206VXR with NPE-G1 includes	1	\$22,000.00	\$8,580.00	\$13,420.00
PWR-7200/2	POWER SUPPLY DUAL AC CISCO 7	1	\$3,000.00	\$1,170.00	\$1,830.00
PWR-7200	SUPPLY POWER OPTION AC CISCO	1	\$0.00	\$0.00	\$0.00
CAB-AC	POWER CORD,110V	2	\$0.00	\$0.00	\$0.00
S72AISK9-12415T	CISCO 7200 IOS ADVANCED IP S	1	\$4,500.00	\$1,755.00	\$2,745.00
MEM-NPE-G1-256MB	MEMORY 2 128 MEM MODULES (25	1	\$0.00	\$0.00	\$0.00
MEM-NPE-G1-FLD64	CISCO 7200 COMPACT FLASH DIS	1	\$0.00	\$0.00	\$0.00
WS-G5484	MOD 6509 1000BASE-SX	2	\$500.00	\$195.00	\$610.00
PA-A6-OC3SMI	1-port ATM OC3 SM IR Port Ad	1	\$12,000.00	\$4,680.00	\$7,320.00
PA-A6-T3	1PRT ENH ATM DS3 PRT ADPTR 8	1	\$8,000.00	\$3,120.00	\$4,880.00

WS-C3560E-12SD-S	CATALYST 3560E 12 10/100/100	1	\$15,995.00		\$6,238.05	\$9,756.95
S3560EVT-12244SE	CAT 3560E IOS UNIVERSAL W/O	1	\$0.00		\$0.00	\$0.00
C3K-PWR-300WAC	3560E-12D AND 3560E-12SD 300	2	\$0.00		\$0.00	\$0.00
CAB-16AWG-AC	AC POWER CORD, 16AWG	2	\$0.00		\$0.00	\$0.00
CAB-AC	POWER CORD, 110V	1	\$0.00		\$0.00	\$0.00
CISCO1841	MODULAR ROUTER	42	\$1,395.00		\$544.05	\$35,739.90
CWLMS-3.0-100-K9	LMS 3.0 WINDOWS ONLY 100 DEV	2	\$9,995.00		\$3,898.05	\$12,193.90
					TOTAL EQUIPMENT PRICE	\$233,788.60
					LABOR CHARGES	\$4,781.76
					TOTAL SYSTEMS PRICE	\$238,570.36
					TOTAL ANNUAL MAINTENANCE PRICE	\$33,769.33
					TOTAL PRICE	\$272,339.69

See Excel Attachment D2 for this attachment

**ATTACHMENT D3**

**WORKSTATIONS**

<b>Part Number</b>	<b>Description</b>	<b>Qty</b>	<b>MLP</b>	<b>Software</b>	<b>Workstation Subtotal</b>	<b>MLP Disc</b>	<b>Extended</b>
	Dell OptiPlex GX 760	1128	\$1,200.00	\$489.04	\$1,689.04		\$1,905,236.56
TOTAL EQUIPMENT PRICE							\$1,905,236.56



# **ATTACHMENT E**

**ATTACHMENT E**

<b>COST DETAIL FOR ADD'L LEASE SPACE</b>	
	-
	<b>Fiscal</b>
<b><u>KENT COUNTY</u></b>	<b><u>2010</u></b>
LEASE COSTS	10,200
TELEPHONE	5,952
PHONE SYSTEM	7,000
OFFICE EQUIPMENT	9,954
EQUIPMENT RENTAL	6,000
<b>TOTAL</b>	<b>39,106</b>
<b><u>HARFORD COUNTY</u></b>	<b><u>FY2009</u></b>
LEASE COSTS	97,460
TELEPHONE	46,128
PHONE SYSTEM	22,000
OFFICE EQUIPMENT	57,156
EQUIPMENT RENTAL	12,000
<b>TOTAL</b>	<b>234,744</b>
<b><u>WICOMICO COUNTY</u></b>	<b><u>FY2009</u></b>
LEASE COSTS	69,728
TELEPHONE	46,128
PHONE SYSTEM	22,000
OFFICE EQUIPMENT	57,710
EQUIPMENT RENTAL	12,000
<b>TOTAL</b>	<b>207,566</b>
<b><u>GRAND TOTAL</u></b>	<b>481,416</b>

# **ATTACHMENT F**

## TRAINING COST

### *Capital Defense Training*

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
NAACP Legal Defense & Educational Fund Annual Capital Punishment Training Conference (Airlie)	Warrenton, VA	4 Days	\$830 (includes all tuition accommodations, food & travel)	Must - This is the only training of its kind and is a national forum for state trainers.	4
NLADA Life in the Balance	Varies	4 Days	Tuition \$550 approx.\$500 for air and \$500 for hotel	High - quality program skill based.	4
CACJ/CPDA Capital Defense Seminar	Location varies	4 Days	Tuition only - \$300	High - extremely well organized - high quality - skill based - lots of options	2
Bryan R. Schechmeister Death Penalty College	Santa Clara, CA	6 Days	\$7255 (includes tuition, dorm accommodations & food)	High - Bring Your Own Case Format - intense and very constructive.	8
Clarence Darrow Death Penalty Defense College	Ann Arbor, MI	6 days	\$725 (includes tuition, dorm accommodations, & some meals)	High - Bring Your Own Case Format - intense and very constructive	8
NACDL Making the case for Life	Varies	\$250.00	Registration \$250; hotel \$650; air \$400; food approx \$150.00	High – The primary focus of this CLE programs the investigation development, and presentation of penalty phase mitigation evidence in capital cases.	2

*General Trial Skills Training*

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
National Criminal Defense College Trial Practice Institute	Macon, GA	2 weeks	\$1200 tuition; \$550 board; meals & transportation not included	High - excellent comprehensive skills training for practitioners with some jury trial experience. Lecture, demo & exercise format	3
National Criminal Defense College Advanced Cross Examination	Atlanta, GA	2 days	\$550.00 tuition; meals, transportation & lodging not included	High - excellent deconstruction of cross exam for all skill levels. Lecture, demo & exercise format	2
Western Trial Advocacy Institute	Jackson, WY & regional locations	1 week	975 plus 151 room plus air. Food included	High - intensive hands on training for practitioners with some jury trial experience. Exercise format.	1
Defender Advocacy Institute	Dayton, OH	1 week	\$655 tuition; hotel \$90+ /day	High – bring your own case/small group format might be especially useful for complex felony case prep	1

*CINA Training*

TRAINING PROGRAM	LOCATION	LENGTH OF PROGRAM	APPROXIMATE	PRIORITY	DESIRED NO.
			COST		OF PERSONS
Juvenile Justice/Education Reform	New Orleans	1 day	Tuition \$500; sir \$300; hotel approx. \$400		1
Law, Confidentiality and Technology	St. Petersburg, Fl.	1 day	Tuition \$500; air \$400; hotel approx. \$400		1
University of D.C. Law	Washington, DC	1	Tuition \$500; air \$400, hotel approx. \$400		

*Advance Skills Training*

TRAINING PROGRAM	LOCATION	LENGTH OF PROGRAM	APPROXIMATE	PRIORITY	DESIRED NO.
			COST		OF PERSONS
National Defense College Advanced Cross Examination	Macon, GA	3 Days	Tuition \$550; room approx. \$375, air approx. \$500	High – Advanced skills on cross examination	3
NLADA Annual Meeting	Varies	4 Days	Tuition \$600; air, room & food approx. \$1200	High – Variety of advanced training sessions	2-3

*Investigation Training*

TRAINING PROGRAM	LOCATION	LENGTH OF PROGRAM	APPROXIMATE COST	PRIORITY	DESIRED NO. OF PERSONS
NDIA Annual Conference	<b>Varies</b>	2 days	\$265 tuition Air- approx \$300.00 lodging, approx \$400.00	High good review of investigative tactics and current updates	2

***Juvenile Training***

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
<b>NJDC Summit</b>	Varies	3days	Travel & lodging	High – great training on juvenile delinquency	0

***IT Training***

<b>TRAINING PROGRAM</b>	<b>PROVIDER</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>DESIRED NO. OF PERSONS</b>
Exchange Server 2003 Administration: Hands On	Learning Tree	Rockville, MD	5 Days	\$2650*	2 + 1**
Installing, Configuring & Troubleshooting MS SQS Server	Skill Path	Reading, PA	1 day	\$995	2+1
Installing, Administering & Troubleshooting MS SQL Server	National Seminars Group	Ellicott City, MD	2 Days	\$899	2+1
SQL Server 2005 Comprehensive Introduction: Hands-On	Learning Tree	Baltimore, MD. Rockville, MD	4 days	\$2650*	2+1
SQL Server 2005: Administrators Upgrade	Learning Tree	Rockville, MD	3 days	\$2650*	2+1**
Developing SQL Queries for SQL Server	Learning Tree	Rockville, MD. Washington, DC.	4 days	\$2650*	2+1
Mastering MS Project	SkillPath	Frederick, MD. Annapolis, MD. Baltimore, MD.	2 Days	\$499	2+1**
Hands-On Web Site Development Workshop	SkillPath	Frederick, MD. Annapolis, MD	1 Day	\$1195	2+1
JavaScript for Web Development	Learning Tree	Rockville, MD. Baltimore, MD.	4 days	\$2650*	

**\*Several tuition plans available**

**\*\* Darlene Walker from Training Division**

*Community Defense Training*

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
NLADA Substantive Law Conference	Varies	4 days	Tuition \$400	High – for practitioners new to CD	1 or 2
NLADA Annual Meeting	Varies	4 days	Tuition \$400	High – variety of CD training sessions	1-2
NLADA Equal Justice Conference	Varies	3 days	Tuition \$400	High –	1-2
Community Oriented Defense Network	Brennan Center, NYC	2-3 Days	Registration fee \$0; transportation Approx. \$350; food approx. \$150	High. This program is specifically designed for community defenders 3	
Medico-Legal Investigation of Death	Detroit	3-4 Days	Tuition \$550; airfare approx. \$300; hotel approx. \$300; food approx. \$140.	High. This program is extremely help it go over many of the most relevant aspects of investigation of homicides, including appropriate protocols for evidence collection, knife wounds, gun shot wounds, blood spatter, suicide/homicide determinations	1
NASM (National Association of Sentencing Mitgators) Conference	Varies	2-4 Days	Registration \$550; hotel approx. \$450; air approx. \$250; food approx. \$120	High. For community defense social worker	1



***Training Division Training***

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
<b>Train the Trainers</b>	Varies	2 days	Tuition \$550.00' air approx. \$350; hotel approx. \$200	Necessary for trainers to learn interactive training	5 per year
ACLEA "Boot Camp for Trainers"	Varies	5 Days	Air approx. \$195; hotel approx \$800; food approx. \$125	High for Training Division Chief conference is geared towards reviewing the basics in running a training program, current trends and issues in all areas of CLE training	1
NLADA Leadership Conference	Varies	4 Days	Registration \$600; air, room & food approx. \$1200	Addresses pertinent issues related to indigent defense	2
NLADA Annual Meeting	Varies	4	Tuition \$400; air approx. \$400; hotel approx. \$600	High Reviews current issues in training for public defense	2
NIJ conference	Washington area	3 days	Registration free,	High overview of current research in science	2
Communicating with a Multi-Generational Workforce	Varies	1 Day	Tuition \$1,895		2
Designing Effective Questionnaires: A Step-by-Step Workshop	Various	3 Days	Tuition \$2,095		2
Diversity Train-the Trainer Certificate Program	Cornell Univ., NY	3 Days	Tuition \$1,695		2

***Management Training***

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
NDLI New Leadership Conference	Varies	4 days	\$650 tuition	High – communication skills training for day to day management and conflict resolution	3 per year
NLADA management and leadership classes	Varies	4 days	Tuition \$500; air approx. \$600 to \$700; hotel approx. \$400	Excellent training for district public defenders and division chiefs.	3

***Immigration Training***

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
Defending Immigrants Partnership – Immigration Consequences	Varies	2 days	No registration, just travel & lodging	Moderate to high – great training on immigration consequences	6

***Appellate Training***

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
NLADA Appellate Defender Training	New Orleans, LA	4 days	Tuition -\$725, air approx-\$300.00 hotel approx - \$500.00	High – great training. Training opportunities for appellate training are rare	5 per year
ALI/ABA Advanced Writing & Editing	Washington, DC	1.5 days	\$395 tuition	High. Excellent program to reinforce necessary writing skills	2

*Forensics Training*

<b>TRAINING PROGRAM</b>	<b>LOCATI ON</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
Defending Child Abuse Allegations	Nevada	4 days	Registration \$500 air approx \$400; hotel approx \$400 food approx \$150	High Necessary to learn the underlying science and keep current with issues	2
National Center on Shaken Baby Syndrome (NCSBS)	Varies	4 days	Registration \$300; air approx. \$400; hotel approx. \$400;; food approx. \$200	Very important. State oriented conference on SBS. Very important to understand the science of SBS from the States perspective in order to defend these types of cases	2
NAME ANNUAL CONFERENCE	varies	4-5 days	400.00	Current issues in forensic pathology, reviews standards for medical examiners	1
DNA CONFERENCE	Dayton, Ohio	2 days	Registration \$400; air approx. \$500; hotel approx. \$400	High - Current issues in forensic pathology, reviews standards for medical examiners	2
NACDL Annual Forensics Conference	Nevada	2-3 days	Tuition \$500; air approx. \$400; hotel approx. \$400; food approx. \$200	Annual review of developments in all areas of forensics and the law	2
Armed Forces Institute of Pathology	Washington, DC.	5days	950	Annual program on outlining guidelines for the interpretation of autopsy findings	2
FG Lee Seminar in Homicide Investigation	MD OCME	5 days	Approx. \$700.00	High for investigators and attorneys handling homicides.	5

Association of Firearm and Toolmark Examiners annual conference	Varies	5 days	Tuition approx \$500.00, hotel approx \$540.00 air approx \$400.00	Very important to keep current on this critical issue in criminal defense	2
NIJ conference	Washington area	3 days	Tuition free,	High overview of current research in the science	2

*Personnel Training*

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
FMLA Compliance update by SkillPath	Varies	1 Day	\$199 or \$189 each for 4		4
Workshop for personnel/HR assistants by SkillPath	Varies	2 Days	\$399 or \$349 each for 4		4
The Conference on State & Federal Personnel Laws	Varies	1 Day	\$199 or \$189 each for 4		4

*EEO Officer Training*

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
ADA & FMLA Compliance update by National Employment Lawyers Institute	Washington, DC.	2 Days	\$590 transportation; food approx. \$28		1
National Conference on Equal Employment Opportunity	Varies	4-5 Days	Tuition approx. \$500; air & hotel approx. \$1000 plus food		1
Public Sector EEO & Employment Law Conference	Varies	2 Days	Tuition \$521; transportation approx. \$28 plus food		1

*Recruitment Division Training*

TRAINING PROGRAM	LOCATION	LENGTH OF PROGRAM	APPROXIMATE COST	PRIORITY	DESIRED NO. OF PERSONS
National Association of Law Placement Membership (NALP) educational conference	Varies	5 Days	Tuition \$425; air approx. \$300; hotel approx. \$888	Provides hands on nuts & bolts information for immediate use in boosting the productivity & cost effectiveness of the workplace	1
NALP Diversity Summit	Varies	5 Days	Tuition \$395; air approx. \$300; hotel approx. \$500; food approx. \$90	Designed to bring together legal career professions with focus on expanding diversity in the workforce	1

*Social Work Training*

<b>TRAINING PROGRAM</b>	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>		<b>DESIRED NO. OF PERSONS</b>
National Organization of Forensic Social Workers	Varies	3 to 4 Days	Tuition \$295, air approx. \$400; hotel approx. \$500	High – The topics of this conference would directly benefit our social workers to better assist the attorneys & to advocate for our clients pre & post trial	3
NASAMS	Varies	3 to 4 Days	Tuition \$650; air approx. \$400; hotel approx. \$500	High – The topic of this conference would directly benefit our social workers to understand evaluation tools used & to better tell our clients stories	4
Ethical Documentation and Confidentiality of Client Records	Baltimore, MD	1 Day	Tuition \$60		2
The Addicted Brain	Baltimore, MD	1 Day	Tuition \$60		2
Ethnogerontology: Beyond Cultural Competence in Gerontological Social Work Practice	Baltimore, MD	1 Day	Tuition \$60		2
Resources and Interventions for Incarcerated Parents	Baltimore, MD	1 Day	Tuition \$135		4
Adolescent Effects of Bullying on Kids	Towson, MD	1 Day	Tuition \$100		2
Cognitive Behavioral	Columbia,	1 Day	Tuition \$150		4

Interventions	MD			
Working with the Urban Male	Columbia, MD	1 Day	Tuition \$100	4
A Child's Journey Through Grief	Baltimore, MD	1 Day	Tuition \$100	4

*Support Staff Training*

	<b>LOCATION</b>	<b>LENGTH OF PROGRAM</b>	<b>APPROXIMATE COST</b>	<b>PRIORITY</b>	<b>DESIRED NO. OF PERSONS</b>
Administrative Professionals Retreat	Varies	1 Day	Tuition \$300 to \$500, air approx. \$300 to \$500; hotel approx. \$300 to \$500	High – 1 employee once a year should attend	4
Managing Multiple Projects, Objectives and Deadlines	Varies	1 Day	Tuition \$189		4
The Indispensable Assistant	Varies	1 Day	Tuition \$139		4
Handling Difficult & Demanding Customers: A Communication Course	Varies	1 Day	Tuition \$149		8
Business Writing & Grammar Skills	Varies	1 Day	Tuition \$299		10
How to Work with People	Varies	1 Day	Tuition \$199		4
Management Leadership Skills for First-Time Supervisors	Various	1 Day	Tuition \$179		4
Making the Transition from Staff to Supervisor	Various	1 Day	Tuition \$89		5
How to Supervise People	Various	1 Day	Tuition \$89		4
How to Effectively Manage Multiple Locations	Various	1 Day	Tuition \$399		3

The Creative Leadership Camp for Managers, Supervisors & Team Leaders	Various	1 Day	Tuition \$189		5
Managing Multiple Projects, Objectives and Deadlines	Various	1 Day	Tuition \$189		4
Time Management	Various	1 Day	Tuition \$179		8





# **ATTACHMENT G**

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

STATE OF MARYLAND

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v.

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CASE NO. K08-646

LEE STEPHENS

Defendant

MOTION TO PRECLUDE THE DEATH PENALTY  
DUE TO INSUFFICIENT DEFENSE FUNDS

Comes Now Petitioner, Lee Stephens, through counsel Michael E. Lawlor, Lawlor & Englert, LLC, and Gary E. Proctor, Law Offices of Gary E. Proctor, LLC, and respectfully requests that this Honorable Court preclude the imposition of the death penalty due to insufficient funds. In support of this argument, counsel states as follows:

**BACKGROUND & SUMMARY OF ARGUMENT**

Undersigned counsel want to say right upfront that this motion does not seek to malign the Maryland Public Defender’s Office (hereafter “PDO”). In the opinion of counsel, they do the best job they can with woefully inadequate resources. That said, it is not counsel’s job to assist the PDO in penny pinching at the expense of their client. Neither is it counsel’s role to cast blame in the direction of the Legislature, who may have complicit in the perennial underfunding of indigent defense. Rather it is counsel’s job, and sole concern, to represent Mr. Stephens. The lack of funding provided to Mr. Stephens by the PDO is in violation of the ABA Guidelines, and will result in Mr.

Stephens not receiving the effective assistance of counsel, and experts. Defendant prays that this Court strike the death notice, a position that has precedent in our law. Failing that, counsel asks that this Court delay the prosecution of Mr. Stephens until such times as adequate funding is forthcoming.

### **RELEVANT FACTS**

Undersigned counsel, Mr. Proctor, entered his appearance in this case on October 10, 2006, having been appointed by the PDO. Only three (3) days later he wrote to the division within the PDO that appointed him, and stated that:

I must say that your office's cap of \$20,000 is manifestly unreasonable. At a rate of \$50 per hour, this translates to 400 hours. As Mr. Lawlor's retention letter is the same, that means that Mr. Stephens' lawyers will be compensated for a total of 800 hours in his case. In all candor, if we do our jobs properly (and we will) we should have reached this cap at least a year before trial. I have already spent 88 hours on the case - - and I have yet to file a single motion (other than my appearance), attend a single court hearing, or interview a single witness. With the ABA Guidelines and Supreme Court caselaw mandating that attorneys must investigate a defendant's prior criminal history, I expect to spend approximately 200 hours researching and litigating Mr. Stephens' prior murder conviction alone.

The Administrative Office of the U.S. Courts has prepared statistics with regard to Federal Death Penalty cases. They found that the average number of hours per attorney team in cases that went to trial was 1,889. If the case pled the number is still 1,262 hours. These numbers are, if anything, on the conservative side for Mr. Stephens' case ...[t]hus, in all likelihood trial counsel will be remunerated for less than half of the time they spend on the case. Indeed, in your letter you state that paralegals will be remunerated at \$20.00 per hour but you do not intimate that there is a cap. Thus, if I were retained as a paralegal it is highly likely that I'd make out better on the deal given the amount of hours that I am likely to work.

I understand that your office is perennially underfunded, and make no mistake, I have no intention of withdrawing from Mr. Stephens' case but I felt compelled to write to you concerning this...I still have a death case in rural Louisiana. In the poorest part of the second poorest state a court ordered that I be paid \$95 an hour with no cap. Of course, the Federal Government's rate is also almost three times yours, and also does not include a cap.

Letter of Gary Proctor to Stefanie McArdle, 10/13/06.<sup>1</sup> No response was ever received.

The setting of a trial date by this Honorable Court provided counsel with the impetus to once again reach out to the PDO to outline their concerns with regard to funding. So, almost 18 months after their initial overture, Mr. Proctor once again wrote to the Public Defender herself, Nancy Forster Esquire, to outline his concerns:

As at December 31, 2007 I has already spent 215 hours on the case - - and I have yet to litigate more than subpoena motions, or have more than a day or two of motions, or interview more than a few witnesses....As the ABA points out, once I reach the cap I have a *disincentive* to do any further work as I will effectively be uncompensated at that point.

None of us goes into this kind of work for the money, but we at least hope to keep up with our mortgage payments while doing it. The fee you pay is less than my office overhead. I am appointed to a Federal capital case, and the amount I can bill in that case is **fourteen** times what I can bill in Mr. Stephens' case.

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<sup>1</sup> As certain parts of this letter pertain to matters of attorney-client privilege, and as the PDO has erected a Chinese Wall with regard to some of its employees working on Mr. Harris' case, while some advise counsel for Mr. Stephens, counsel has chosen to excerpt the relevant portions of the relevant letters in this motion, rather than attach as exhibits. Counsel has discussed the letters with the persons to whom they were sent, and it is not anticipated that their authenticity will be disputed.

Letter of Gary Proctor to Nancy Forster, 3/10/08. Again this letter was not responded to.

Finally, counsel sought to email the Public Defender, Ms. Forster, and her Deputy, Mr.

Morrisette. Counsel pointed out that:

I have twice written to your office concerning this issue, once on October 13, 2006 and then again on March 10, 2008. To date, I have not gotten a reply (a copy of my most recent letter is attached). I also attach the ABA Guidelines. As you will see, Guideline 9.1 states that "Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases."

Email of Gary Proctor to Nancy Forster, 4/7/08. This finally extracted a response from OPD, but counsel is no closer to resolving this issue. Ms. Forster's Deputy, Mr. Morrissette did point out that bills in excess of the cap could be paid, at the office's sole discretion.

### **THE AMERICAN BAR ASSOCIATION GUIDELINES**

The American Bar Association has promulgated guidelines entitled 'Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.'<sup>2</sup> For more than twenty years ABA Guidelines have weighed heavy in the U.S. Supreme Court's consideration of Ineffective Assistance of Counsel as "[p]revailing norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable." *Strickland v. Washington*, 466 U.S. 668, 688-689 (1984). This was recently reaffirmed in *Wiggins v. Smith*, 539 U.S. 510, 522 (2003).<sup>3</sup>

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<sup>2</sup> Although available on the internet, it is most easily found at 31 Hofstra L. Rev. 913 (hereafter referred to as "the ABA Guidelines.") All references are to the individual guideline numbers and ensuing commentary.

<sup>3</sup> For the relevance of ABA Guidelines see further: *Rompilla v. Beard*, 125 S. Ct. 2456, 2465 (2005); *Florida v. Nixon*, 125 S.Ct. 551, 563 (2004); *Kandies v. Polk*, 385 F.3d 457, 479 (4<sup>th</sup> Cir. 2004) (concurring opinion).

ABA Guideline 9.1 is directly on point with the issue raised in the pleading at bar. Counsel hopes that this Court will forgive them for quoting at length, but it makes the point much more appositely that they could hope to accomplish:

#### GUIDELINE 9.1—FUNDING AND COMPENSATION

....

B. Counsel in death penalty cases should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.

1. Flat fees, caps on compensation, and lump-sum contracts are improper in death penalty cases.

2. Attorneys employed by defender organizations should be compensated according to a salary scale that is commensurate with the salary scale of the prosecutor's office in the jurisdiction.

3. Appointed counsel should be fully compensated for actual time and service performed at an hourly rate commensurate with the prevailing rates for similar services performed by retained counsel in the jurisdiction, with no distinction between rates for services performed in or out of court. Periodic billing and payment should be available.

C. Non-attorney members of the defense team should be fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.

...

#### Commentary

In order to fulfill its constitutional obligation to provide effective legal representation for poor people charged with crimes, “[g]overnment has the responsibility to fund the full cost of quality legal representation.” This means that it must “firmly and unhesitatingly resolve any conflicts between the treasury and the fundamental constitutional rights in favor of the latter.”

As Subsection A of this Guideline emphasizes, each jurisdiction is responsible for paying not just the direct



compensation of members of the defense team, but also the costs involved in meeting the requirements of these Guidelines for high quality legal representation (e.g., Guideline 4.1, Guideline 8.1).

As a rough benchmark, jurisdictions should provide funding for defender services that maintains parity between the defense and the prosecution with respect to workload, salaries, and resources necessary to provide quality legal representation (including benefits, technology, facilities, legal research, support staff, paralegals, investigators, mitigation specialists, and access to forensic services and experts). In doing so, jurisdictions must be mindful that the prosecution has access at no cost to many services for which the defense must pay. A prosecution office will not only benefit from the formal resources of its jurisdiction (e.g., a state crime laboratory) and co-operating jurisdictions (e.g., the FBI), but from many informal resources as well. For example, a prosecutor seeking to locate a witness in a distant city can frequently enlist the assistance of a local police department; defense counsel will have to pay to send out an investigator. Yet funding for defense services usually lags far behind prosecution funding.

In particular, compensation of attorneys for death penalty representation remains notoriously inadequate. As Justice Blackmun observed in 1994:

[C]ompensation for attorneys representing indigent capital defendants often is perversely low. Although a properly conducted capital trial can involve hundreds of hours of investigation, preparation, and lengthy trial proceedings, many States severely limit the compensation paid for capital defense. . . .

As a result, attorneys appointed to represent capital defendants at the trial level frequently are unable to recoup even their overhead costs and out-of-pocket expenses, and effectively may be required to work at minimum wage or below while funding from their own pockets their client's defense.

Low fees make it economically unattractive for competent attorneys to seek assignments and to expend the time and effort a case may require. A 1993 study of capital representation in Texas, for example, showed that "more and more experienced private criminal attorneys are refusing to accept court appointments in capital cases because of the time involved, the substantial infringement on their private practices, the lack of compensation for counsel fees and experts/expenses and the enormous pressure that they feel in handling these cases." Similarly, a survey of Mississippi attorneys appointed to represent indigent defendants in capital cases found that eighty-two percent would either refuse or be very reluctant to accept another

appointment because of financial considerations. A 1998 study of federal death penalty cases reported that “[a]lthough the hourly rates of compensation in federal capital cases are higher than those paid in non-capital federal criminal cases, they are quite low in comparison to hourly rates for lawyers generally, and to the imputed hourly cost of office overhead.”

...

It is such inmates—and the justice system—rather than lawyers (who can always move to more lucrative fields) that are victimized when jurisdictions fail to fulfill their financial responsibilities. What is “most important [is that] the quality of the representation often suffers when adequate compensation for counsel is not available.” This is not a merely theoretical concern...These realities underlie the mandate of this guideline that members of the death penalty defense team be fully compensated at a rate commensurate with the provision of high quality legal representation. The Guideline’s strong disapproval of flat fees, statutory caps, and other arbitrary limitations on attorney compensation is based upon the adverse effect such schemes have upon effective representation. Rather, compensation should be based on the number of hours expended plus the effort, efficiency, and skill of counsel. When assigned counsel is paid a predetermined fee for the case regardless of the number of hours of work actually demanded by the representation, there is an unacceptable risk that counsel will limit the amount of time invested in the representation in order to maximize the return on the fixed fee.

Moreover, any compensation system that fails to reflect the extraordinary responsibilities and commitment required of all members of the defense team in death penalty cases, that does not provide for extra payments when unusually burdensome representation is provided, or that does not provide for the periodic payment of fees to all members of the defense team will not succeed in obtaining the high quality legal representation required by these Guidelines.

For better or worse, a system for the provision of defense services in capital cases will get what it pays for.

Id. (emphasis and footnotes removed). It is surely beyond dispute that no lawyer - - not even one 15 minutes out of law school - - would allow himself to be retained at \$50.00 per hour with only \$20,000 in his trust account for a capital case. While it is true that counsel *may* receive fees in excess of this, the hourly rate will not change.

Moreover, twelve years ago the United States District Court for the District of

Maryland noted that average overhead costs in the State of Maryland were \$53 per hour. No doubt, with inflation, this number is now markedly higher, resulting in undersigned counsel **losing money** even if they are paid in full for Mr. Stephens' case, which they will probably not be. *Booth v. Maryland*, 940 F.Supp. 849 (1996).

### **EXPERTS**

Counsel is in the unenviable position of having all experts reluctant to work on Mr. Stephens' case because they are not paid a living wage by the PDO. Or rather, counsel have many experts willing to work on the case, but due to the low level of fees experts either push Mr. Stephens' case to the back-burner when a better paying case comes along - - and every other case is better paying - - or accept so many cases to make up the shortfall in the PDO's rates that they are unable to devote the kind of work necessary in this capital case.

At a hearing in this matter counsel will call several of their experts as witnesses so that the Court can hear firsthand from them as to the financial constraints implicit in working on Mr. Stephens' case. While previously several experts have been able to juggle Mr. Stephens' case with other better paying clients, now that we have a trial date, these same experts have expressed reluctance to do the work required at the current wage.

### **CASELAW**

Before moving to Maryland, undersigned counsel Mr. Proctor was a criminal defense lawyer in Louisiana. To that end he represented a defendant named Adrian Citizen. Mr. Citizen was charged with a capital offense. Mr. Proctor was ordered to be paid \$195.00 per hour, all was good with the world. With one slight wrinkle: there

were no funds with which to pay him. The Louisiana Supreme Court, hardly the doyen of liberal activism, held that:

we have often expressed in indigent defendant funding cases that budget exigencies cannot serve as an excuse for the oppressive and abusive extension of attorneys' professional responsibilities, and that this Court, in the exercise of its constitutional and inherent power and supervisory jurisdiction, has the power to take corrective measures to ensure that indigent defendants are provided with their constitutional and statutory rights. [T]his Court must address the immediate problems of the instant defendants in securing constitutionally adequate counsel (in a constitutionally and statutorily required timely manner) in their forthcoming capital prosecutions. We are very much cognizant of the lengths to which other state courts have gone to ensure that the indigents' constitutional rights are protected, in spite of legislative inaction.<sup>4</sup>

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<sup>4</sup> For example, the Supreme Judicial Court of Massachusetts confronted a lack of legislative funding in *Lavallee v. Justices in the Hampden Superior Court*, 442 Mass. 228, 812 N.E.2d 895 (2004). In that case, certain judicial districts lacked the funding to woo competent attorneys to represent the indigent. *Id.* 812 N.E.2d at 899-900. Additionally, the state agency charged with providing court-appointed counsel in most circumstances had no staff available to represent petitioners. *Id.* While the district court in that case denied petitioners any relief, the court reversed holding:

We conclude that the petitioners are being deprived of their right to counsel under art. 12 of the Massachusetts Declaration of Rights, a deprivation that has resulted in severe restrictions on their liberty and other constitutional interests. Although we do not grant the precise remedy the petitioners seek for the reasons we shall explain, we hold that, on a showing that no counsel is available to represent a particular indigent defendant despite good faith efforts, such a defendant may not be held more than seven days and the criminal case against such a defendant may not continue beyond forty-five days.

*Lavallee*, 812 N.E.2d at 901.

The court reached this holding after looking to the manner in which other courts presented with difficulties securing or paying counsel addressed the problem. *Lavallee*, 812 N.E.2d at 908. Specifically, the court recognized that while many of its sister courts have rightly concluded that the inadequate compensation of counsel amounts to the deprivation of the constitutional rights of the criminal defendants represented by inadequately compensated counsel, such courts also face the constraint that appropriating funds is a legislative matter. *Id.* The court further noted that several State courts have temporarily deferred in the first instance, and only temporarily, to legislative action to ensure that the system for compensation for indigent representation meets constitutional standards. *Id.* (citing *Peart*,

This is particularly appropriate in cases involving indigent defense in our state courts, as this is an area over which the Court has supervisory jurisdiction and the duty to ensure that the criminal justice system is functioning in a constitutional manner.

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621 So. 2d at 791; *State ex rel. Stephan v. Smith*, 242 Kan. 336, 747 P.2d 816, 848-50 (1987) (unconstitutional system of compensation to be remedied by legislative and administrative action); *Smith v. State*, 118 N.H. 764, 394 A.2d 834, 839 (1978) ("adequate [legislative] appropriations will have to be made in order to comply with this ruling and to ensure the continued functioning of the criminal justice system").

The *Lavallee* court also recognized that some state courts of last resort have granted preliminary relief in the form of increased compensation rates, but have simultaneously directed their Legislatures to amend permanently the compensation rates for indigent representation. *Id.*, 812 N.E.2d at 908 (citing *State ex rel. Wolff v. Ruddy*, 617 S.W.2d 64, 67-68 (Mo. 1981) (court established temporary guidelines pending solution); *State v. Lynch*, 1990 OK 82, 796 P.2d 1150, 1164 (Okla. 1990) (guidelines set by court effective until Legislature acts)). Along these lines, a New York trial court recently issued a permanent injunction directing that counsel be paid \$ 90 per hour, and removed the statutory fee cap until the Legislature changed the rates and increased its appropriation for compensation for indigent representation. *Lavallee*, 812 N.E.2d at 908 (discussing *New York County Lawyers' Ass'n v. State*, 196 Misc. 2d 761, 763 N.Y.S.2d 397 (N.Y. Sup. Ct. 2003)). Finally, the court recognized that "[a] spirit of mutual cooperation among the legislative, executive, and judicial departments is unquestionably the people's best guaranty of constitutional government." *O'Coin's, Inc. v. Treasurer of the County of Worcester*, 362 Mass. 507, 287 N.E.2d 608, 615 (1972).

In contemplating more dramatic action should the need arise, the Court in *Peart* pointed to cases such as *Arnold v. Kemp*, 306 Ark. 294, 813 S.W.2d 770, 776-77 (1991) (\$1,000 cap on fees constitutionally unacceptable because burden imposed on attorneys was excessive to the extent that it constituted a taking; court also found that system of appointing attorneys, based on where attorney lives and his ability to provide effective assistance of counsel, violated the appellants' right to equal protection); *State v. Lynch*, *supra* (applauding *pro bono* legal representation, court nevertheless holds that "voluntary services are insufficient to accommodate the right of indigent citizens to the effective assistance of counsel"); *Stephan*, *supra*, 747 P.2d at 841 (ordering the dismissal of charges against certain defendants if the state cannot make available funds for their defense).

At least one indigent defender has prompted a trial court to take the extreme measure of threatening to hold a legislative body reluctant to release funds in contempt. When Kentucky cut the budget for his office, indigent defender Dan Goyette responded with a corresponding cut in services. Specifically, his office refused to provide attorneys for people facing involuntary mental hospitalization. The chief judge in Goyette's District reportedly ordered the official in charge of the state budget to restore Goyette's funding or face contempt. Other judges in the district ordered the release of four unrepresented persons hospitalized against their will. Abbe Smith, For Tom Joad and Tom Robinson: The Moral Obligation to Defend the Poor, 1997 Annual Survey of American Law 869, 887.

In this case, Mr. Citizen, was indicted for first-degree murder on October 10, 2002, and he remains in jail with no funds available for the attorney appointed to represent him and, under current circumstances, may remain there indefinitely.... Implicit in these defendants' constitutional right to assistance of counsel is the State's inability to proceed with their prosecution until it provides adequate funds for their defense.

...A district judge should appoint counsel to represent an indigent defendant from the time of the indigent defendant's first appearance in court, even if the judge cannot then determine that funds sufficient to cover the anticipated expenses and overhead are likely to be available to reimburse counsel. The appointed attorney may then file a motion to determine funding, as was done in this case, and if the trial judge determines that adequate funding is not available, the defendant may then file, at his option, a motion to halt the prosecution of the case until adequate funding becomes available. The judge may thereafter prohibit the State from going forward with the prosecution until he or she determines that appropriate funding is likely to be available.

*State v. Citizen*, 898 So.2d 325, 336-339 (La. 2005).

More recently, the State of New Mexico, has addressed this issue in *State v. Young*, 172 P.3d 138 (2007). In the interests of brevity, counsel will not cite that case at length in this Motion, but would direct the Court to the cogent opinion in its entirety.

The holding, however, is unambiguous:

We are persuaded by the evidence in the record that the attorneys for the defendants are not receiving adequate compensation. The inadequacy of compensation in this case makes it unlikely that any lawyer could provide effective assistance, and therefore, as instructed by the United States Supreme Court, ineffectiveness is properly presumed without inquiry into actual performance. *See Cronin*, 466 U.S. at 661 (noting that there may be cases where "circumstances ma[k]e it so unlikely that any lawyer could provide effective assistance that ineffectiveness [is] properly presumed without inquiry into actual performance at trial.").

*Id.* at 141. By contrast, counsel (and experts) for Mr. Stephens would salivate at the prospect of receiving remuneration equivalent to Mr. Young's.

## **MARYLAND'S REMUNERATION VIS-A-VIS OTHER JURISDICTIONS**

Attached as Exhibit A is an exhaustive study by the Spangenberg Group of the rate paid to counsel in each of country's death penalty jurisdictions. Whereas it is almost

a year old, and rates may have modestly increased in some jurisdictions, it provides useful information.<sup>5</sup>

As the Court will see, Maryland is at the bottom of the pile. While it may have a budget shortfall, it is surely no better off than its neighbor Virginia, which pays counsel more than twice as much. Indeed, in post-Katrina New Orleans, death penalty counsel are paid \$110 per hour, while counsel for Mr. Stephens can shoot for \$50 but it may be much less when all's said and done.

It is not undersigned counsel's concern that the Legislature seeks to tighten its belt, nor that the state must balance the budget. Nor should counsel for Mr. Stephens pry into how the OPD allocates its appropriations from the Legislature. All they are and should be concerned with is that Mr. Stephens receives adequate funding in the matter at bar. This the OPD has singularly failed to do.

### **THE SIMPLE MATHEMATICS OF TRIAL**

Trial is currently estimated to take ten (10) weeks. That will mean, more or less, 50 trial days. Given the estimated length of each day's trial, preparing to put on or cross witnesses for the following day, travel back and forth, and the like, counsel conservatively estimates a ten (10) hour day. Thus, the trial alone will take counsel 25% over the cap. Add on to this interviewing the other 40 inmates that were on the tier at the time of the killing of Officer McGuinn, the work counsel has already done, the twenty-eight (28) boxes of discovery that have still yet to be reviewed, the several trips to Salisbury, Maryland, Delaware, and Pennsylvania that will be required to interview Mr. Stephens' family, as well as the several days of pretrial motions that are already scheduled and the multifarious other issues that will undoubtedly arise in the

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<sup>5</sup> For example, it shows the Federal rate as \$163.00. It is counsel's understanding that on 1/1/2008 this rate was raised to \$170.00.

16 months between now and trial and, at a minimum, each counsel for Mr. Stephens anticipates working well in excess of 1200 hours in this case - - or three times the cap.

Both your Honor and undersigned counsel, Mr. Proctor, own Harley Davidson motorcycles. Last summer Mr. Proctor took his motorcycle to the dealership for some repairs. When he paid his bill, Mr. Proctor noticed that the dealership had charged him \$65.00 per hour for mechanic labor. While not wishing to denigrate the great deeds that bike mechanics perform to keep Hogs rolling it is, to say the least, not the proper order of things when a mechanic is billed out at 30% more than a lawyer charged with representing someone whose very life is on the line. Furthermore, the mechanic has no cap, and likely gets his wrenches provided. As the Court is aware, currently 28 boxes of discovery are winging their way to undersigned counsel. Reading this alone, will place undersigned counsel over the woefully insufficient cap.

Both counsel work in small practices. Mr. Proctor is a sole practitioner, Mr. Lawlor a three attorney firm. Neither can absorb the financial losses of a lengthy trial in the matter at bar, being paid less than overhead at best several months later, and maybe not at all if their bill is deemed unreasonable. Inevitably, they will face a Hobson's choice: represent Mr. Stephens to the best of their ability and face financial ruin, or neglect Mr. Stephens' case to pay the bills and book their client a bunk in death row. And even if this case has their undivided attention, Mr. Stephens is likely not to benefit from the effective assistance of experts due to their woefully insufficient remuneration. This is not about putting money in counsel's pockets, it is about Mr. Stephens getting effective assistance of counsel when his life is on the line. Certainly it should not be lost on the Court that his Honor, the deputies, D.O.C. personnel, and prosecution are all paid a living (if not extravagant) wage with



monotonous regularity every two (2) weeks or so.<sup>6</sup> Moreover, the Court's, Mr. Harris' counsel, the State's Attorney's Office, all of these entities effectively supply all overhead expenses, and the salary awarded goes into the pocket of the receiver - - Mr. Lawlor and Mr. Proctor are not paid a sufficient amount to even cover their overhead. Only counsel tasked with the job of trying to ensure that Mr. Stephens is given effective assistance at both guilt and penalty phase must cross their fingers and hope for a pittance several months hence. If the state chooses to pay peanuts, they will likely get monkeys. This Court cannot stand idly by while that happens.

WHEREFORE, the Defendant respectfully requests that the Court strike the death notice or otherwise delay trial in this matter until adequate funds become available for the defense. Counsel also prays that a hearing be granted in this matter.

Respectfully submitted,

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Michael E. Lawlor  
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(301) 474-3404

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<sup>6</sup> See *Young*, *id.* at 140-141 ("The videographer, who merely records witness interviews, receives \$ 75.00 per hour, and has received "at least three to four times the amount that the attorneys have been compensated.")

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_\_ day of May, 2008, a copy of the foregoing was mailed to the Office of the State's Attorney, 7 Church Circle, Annapolis, Maryland 21401.

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Gary E. Proctor