

**JUDICIAL BRANCH
OFFICE OF THE
ALTERNATE DEFENSE COUNSEL**



FY2010-2011 BUDGET HEARING

**Response to JBC Questions
November 16, 2009**

Lindy Frolich, Alternate Defense Counsel

QUESTIONS TO AGENCY

1. What would be the impact of a statutory change providing government immunity to the attorneys your office contracts with? Specifically, would such a change provide any financial benefits to the State?

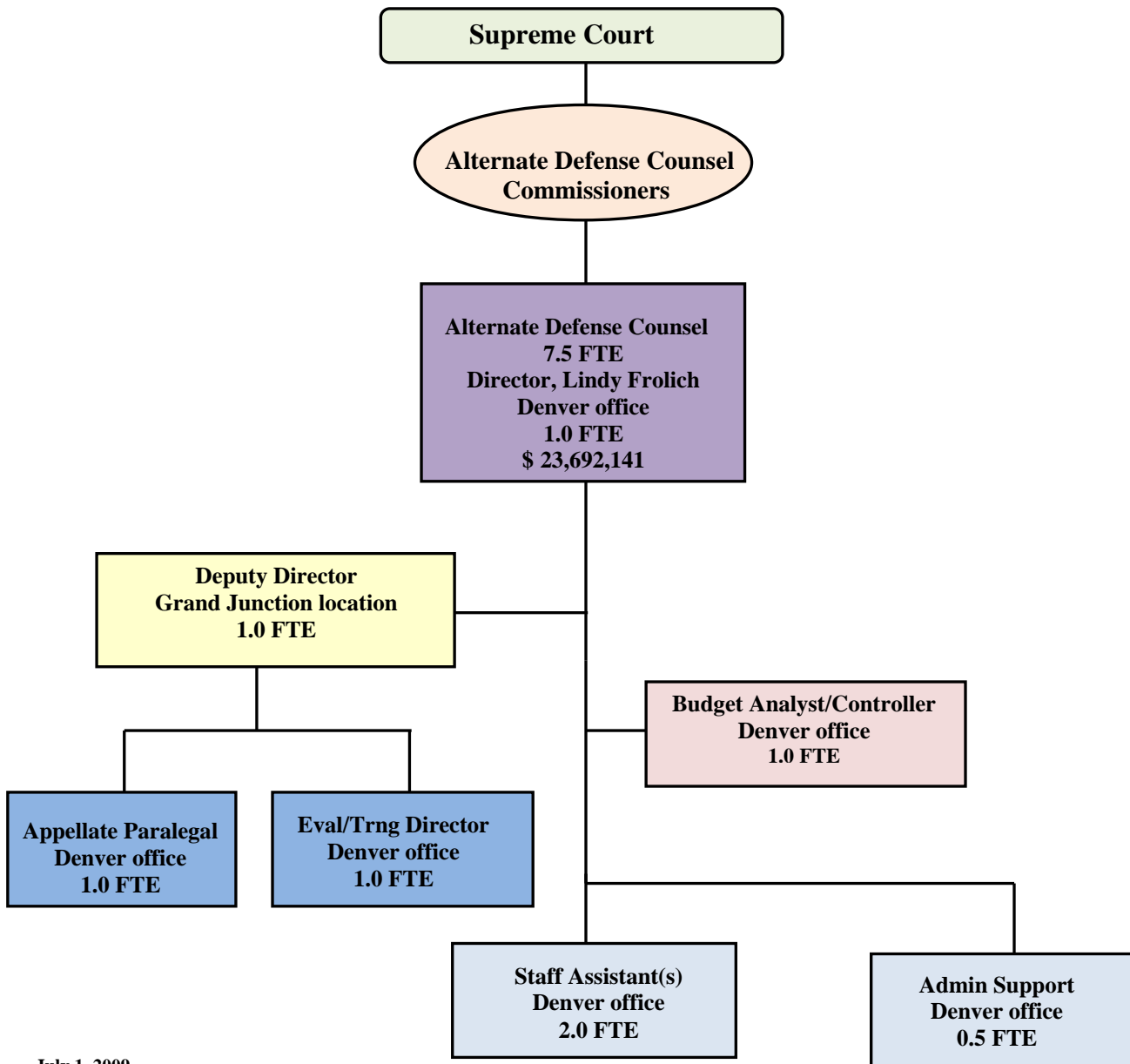
In practice, OADC contract lawyers often labor under the real concern that they will be sued by clients and thus required to pay the deductible under their malpractice insurance policy, regardless of the merits of the lawsuit. To protect themselves from a malpractice lawsuit, OADC contract lawyers sometimes are compelled to pursue claims made by a client that appear to be meritless or disingenuous. This is more common in post conviction cases. Immunity would allow the lawyer to reject and not pursue these types of claims and feel confident that a retaliatory lawsuit would have no financial risk to the lawyer. As a result, the attorney hours in these cases would decrease.

The OADC currently requires that all contract lawyers carry malpractice insurance. Although this cost varies considerably, it is substantial. With immunity from suite by OADC clients, lawyers could negotiate better rates for themselves with carriers due to the reduced number of cases where liability would attach. Additionally, if a malpractice claim were made by an OADC client, and immunity applied, the contract lawyer would not be required to pay the deductible under their malpractice insurance policy.

QUESTIONS COMMON TO ALL DEPARTMENTS

2. Organizational charts for your department, showing divisions and subdivisions (with geographic locations).

**Organizational Chart
Judicial Branch
Office of the Alternate Defense Counsel**



July 1, 2009

3. Definitions of the roles and missions of your department, its divisions and subdivisions.

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

The mission of the Office of the Alternate Defense Counsel (OADC) is to provide indigent individuals (adults and juveniles) charged with crimes the best legal representation possible. This representation *must* uphold the federal and state constitutional and statutory mandates, ethical rules, and nationwide standards of practice for defense lawyers. As a state agency, the OADC strives to achieve this mission by balancing its obligation to the criminally accused and the taxpayers of the State of Colorado. The OADC is committed to insuring that indigent defendants receive the best legal services available.

4. The number of current personnel and the number of assigned FTE by division and subdivision (with geographic locations), including all government employees and on-site contractors.

The OADC has personnel at two locations. The Denver office has 6.5 FTE and the Grand Junction location has 1.0 FTE. There are no on-site contractors at either location.

5. A specific list of names, salaries, and positions by division and subdivision of any salaried officer or employee making over \$95,000 per year in FY 2009-10.

The table below lists the OADC employees earning over \$95,000 per year, their position, their salary, and any bonuses received in fiscal year 2008-2009.

Employee	Position	FY2009-10 Salary	FY2008-09 Bonuses
Lindy Frolich	OADC Director	\$128,598	\$0
Roberta Nieslanik	OADC Deputy	\$123,072	\$0
Shawna Geiger	Eval/Training Director	\$96,936	\$0

6. A specific list of names, bonuses, and positions by division and subdivision of any salaried officer or employee making over \$95,000 per year who received any bonuses in FY 2008-09.

As noted in the preceding table under the response for question #4, there were no bonuses paid in FY2008-2009 to any salaried officer or employee making over \$95,000 per year.

7. Numbers and locations of any buildings owned or rented by any division or subdivision (by location) and the annual energy costs of all buildings.

The Office of the Alternate Defense Counsel only has one location where it leases space. It is located at 1580 Logan Street, Suite 330, Denver, Colorado, 80203. The building's total energy costs are unknown. The utility costs are grouped together and the costs are prorated by square foot to the tenants on a yearly basis. The Deputy Director has a home office in Grand Junction, which saves the agency the cost of another office location.

8. Any real property or land owned, managed, or rented by any division or subdivision (by geographic location).

The Office of the Alternate Defense Counsel does not own any real property.

9. List essential computer systems and databases used by the department, its divisions and subdivisions, with their actual FY 2008-09 expenditures.

The OADC's main business database is Sequel 2005 for its WEBPAY system that tracks appointments and vendor payment requests for attorneys, investigators, paralegals, transcribers, and experts. It interfaces with an upload to the State COFRS system to process invoices and issue warrants. The agency uses Financial Data Warehouse (FDW) for accounting and budgeting purposes. Detailed case information and case type reside in the WEBPAY system.

Software Maintenance	\$11,929
Software Purchases	\$1,534
Hardware Maintenance	\$8,070
Hardware Purchases (PCs/Servers)	\$5,557

10. Any actual FY 2008-09 expenditures over \$100,000 total from the department or from its divisions and subdivisions to any private contractor, identifying the contract, the project, and whether the contracts were sole-source or competitive bid.

The following table lists all vendors in which the agency paid over \$100,000 in fiscal year 2008-2009.

OADC Vendor payments over \$100,000 for fiscal Year 2008-2009		
<p> JOFFE, DANYEL S SAMPLER & WHITSON PC GLI INC RUTTENBERG, ALISON ANAYA FOLEY & MCKEDY PC COLEMAN LIU LYONS & COLLINS LLP LUCERO, JUDY L JENNIFER L GEDDE LLC MARTIN LAW LLC BARKER & TOLINI PC KENNETH I SINGER INC WILLIAMS, MICHAEL ANDREW NOBLE LAW FIRM LLC HEATHER COHEN & ASSOCIATES INC COLEMAN, KEITH C </p>	<p> ROOT, MICHAEL G DICKE, JOHN A GOLDSTEIN, LESLIE ANN HEDEEN, PETER CASTLE, JAMES A TUSSAY-COOPER, TINA GUICHARD, GARY G AL ST CLAIR PC WHITAKER & WHITE LLC HOPKINS LAW LLC MARQUEZ, ERNEST F FARRELL & ASSOCIATES GOUDY, KATHY MACINNIS III, DANIEL A STUETZ, JEFFREY JOHN </p>	<p> MARTINEZ LAW LLC MANDARIN A BOWERS PC LINDSEY, MICHAEL DAVID LAW OFFICE OF MARK BURTON PC VESTER, MICHAEL A HAYDT, NANCY MANNINA, JOHN TRENT YOUNG & ZEN LLC REISCH LAW FIRM LLC MCALLISTER LAW OFFICE PC TIFTICKJIAN LAW FIRM PC KATHLEEN A CARLSON PC TATE, JAMES P SIMONET LAW FIRM PC </p>

The OADC contracts are neither sole source nor competitive bid contracts. The OADC contracts with over 400 attorneys and over 150 investigators. These contracts do not contemplate or guarantee a specific dollar amount or a specific number of court appointments. The OADC provides each judicial district with a list of lawyers who are under ongoing contract for services at the court appointed rate. The court then appoints lawyers to represent indigent defendants based on these lists. The contract lawyers and investigators submit bills for work performed at the court appointed rate, and these submissions are paid by the OADC.

11. The amount of actual FY 2008-09 expenditures for any lobbying, public relations, gifts, public advertising, or publications including:

The Office of the Alternate Defense Counsel did not have expenditures in FY 2008-09 for the following categories: lobbying, public relations, gifts, public advertising, or publications used for lobbying purposes.

- a. expenditures for lobbying by public employees, contract lobbyists, or "think tanks;"
- b. expenditures for lobbying purposes at other levels of government;

- c. expenditures for lobbying purposes from grants, gifts, scholarships, or tuition;
- d. expenditures for publications or media used for lobbying purposes;
- e. expenditures for gratuities, tickets, entertainment, receptions or travel for purposes of lobbying elected officials; or
- f. expenditures for any public advertising. Include all advertising campaigns, including those that are not for public relations.

12. List of all boards, commissions, and study groups, including all funding, actual FY 2008-09 expenditures, travel, per diem budgets and assigned FTEs.

The Alternate Defense Counsel Commission oversees the Office of the Alternate Defense Counsel system pursuant to C.R.S. §21-2-101, et. seq. The nine members of the Commission are appointed by the Colorado Supreme Court. The members of the commission serve without compensation but are reimbursed for actual and reasonable expenses incurred in the performance of their duties. There are no assigned FTEs to the commission. The agency contracts with a recording secretary to record and transcribe the minutes of the Commission meetings.

Recording Secretary – minutes/transcribing (Contractor)	\$475
In-State Non-Employee Personal Per Diem	\$2,150
In-State Non-Employee Personal Vehicle Reimbursement	\$1,952
Total Commission Expenses FY2008-2009	\$4,577

- 13. Suggest budget and staff reductions, including reductions in FTE and hours, by division and subdivision, that will reduce your department’s total FY 2010-11 General Fund expenditures by 12.5% relative to FY 2009-10 appropriations before any adjustments that have been announced since the end of the 2009 session.
- 14. Suggest budget and staff reductions, including reductions in FTE and hours, by division and subdivision, that will reduce your department’s total FY 2010-11 General Fund expenditures by 25.0% relative to FY 2009-10 appropriations before any adjustments that have been announced since the end of the 2009 session.

STAFF REDUCTIONS

The agency has 7.5 FTE. A 12.5% reduction would be approximately 1.0 FTE. A 12.5 % reduction in the agency’s personal services line item would equal \$98,683, or 0.42% of the agency’s total budget.

A 25% reduction would be approximately 2.0 FTE. A 25% reduction in the agency's personal services line item would equate to \$197,366, or 0.83% of the agency's total budget.

Either a 12.5% or 25% reduction in staff would result in the agency not providing the administrative services that are required to complete the duties of the agency. Contractor bills would not be paid in a timely fashion, appeals and post conviction cases, both time sensitive, would not be filed and assigned in a timely fashion, and other ancillary services such as investigators, interpreters, experts, etc, would not be hired, assigned, and paid in a timely fashion.

Budget Reductions:

The total number of cases assigned to the OADC through the courts has increased 975% since the inception of the agency in fiscal year 1996-1997. In spite of this, the OADC has maintained its operating overhead expenditures *below 4% of its total appropriation for each fiscal year*. Because the remaining 96% of the agency's budget resides in the conflict contracts and mandated line items, a 12.5% or 25% reduction would have to come from these two line items.

A 12.5% budget reduction equates to \$2,961,518 of the OADC's FY2009-2010 budget.

A 25% budget reduction equates to \$5,923,035 of the OADC's FY2009-2010 budget.

The OADC has long suggested to the JBC that, although we cannot control the case load, we can work to make the agency and contractors more cost effective through structured efficiency efforts. However, some cases, such as:

- Death Penalty trial cases,
- Cases proceeding under the Unitary Appeal Bill, and
- Actual innocence cases

are more costly for the agency due to the complexity of these types of litigation.

All OADC contractors, from lawyers to experts, work for OADC at a rate that is 1/5 to 1/2 of what is paid in the private sector. Each year, lawyers express concern about their ability to pay their overhead costs while being compensated at OADC rates.

CURRENT VOLUNTARY COST-SAVING MEASURES:

The agency has already implemented the following, measures to reduce FY2009-2010 and FY2010-2011 expenditures:

- In August 2009, the OADC launched a pilot project aimed at reducing the cost of post conviction cases. Each post-conviction case is triaged based on specific guidelines. When appropriate, the case is contracted out for a flat fee rather than an hourly rate using the short list of ADC contractors with specialized training in post conviction work. Because this project is in its early stages, it is not yet possible to address specific cost savings.
- Adjusting contractor judicial district assignments to reduce travel time and mileage.
- Attorneys are only paid for their travel time and receive no reimbursement for mileage.
- Maintaining the same recommended maximum fees per case, instead of increasing these maximums as the rates have increased. This allows for additional oversight by the OADC by requiring contractors to provide justification for fees in excess of the recommended maximum and OADC approval before payment can be made.
- Effective August, 2009, the OADC began reducing attorney contractor fees by 10% when the contractor exceeds the recommended maximum.
- Creating a centralized system for disseminating discovery in grand jury indictment and multi co-defendant cases, thereby significantly reducing discovery costs.
- The OADC is coordinating cost reduction methods for electronic discovery charged by individual district attorney offices across the state. Recently, a small number of district attorney offices proposed changing to paperless discovery. These projects are in the planning or pilot stages, but it is hoped that they will decrease discovery costs for all appointed counsel.
- In an attempt to counteract the rising cost of DNA testing related to litigation in “actual innocence” cases, the OADC applied for a federal post-conviction DNA grant. While the OADC did not receive a grant, it has arranged to meet with the Colorado Attorney General (whose office did receive such a grant) to discuss DNA testing in pending OADC post-conviction cases. The OADC is also working toward having criminal defense lawyers who are specially trained in DNA science involved in cases involving DNA testing, rather than training every lawyer in DNA testing procedures and outcomes.

- The OADC sought and secured passage of H.B. 08-1264, granting OADC contract attorneys free access to electronic court records through the public access system. The OADC continues to train its contract attorneys to access and appropriately use the system.
- The OADC continues an in-house appellate project that streamlines the OADC appellate cases from inception through transmittal of the record on appeal.
- In order to increase the quality and efficiency of the OADC contract attorneys, the OADC developed a brief and motions bank for its contract attorneys. The agency continues to gather briefs and motions to upload to the bank, plans to add transcripts of experts and police officers, and is researching the viability of linking to court appellate opinions. The OADC continues to train contractors to access and use the bank.

Because the agency is case load driven, and the types of cases filed and sentences sought is out of our control, the exact savings from these measures cannot be calculated.