Audit Report

Office of Appointed Counsel
Outside Counsel and Expert
Witness Billed Charges

April 2013

Angela M. Darragh, CPA, CISA, CFE
Audit Director

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Angela M. Darragh, CPA, CFE, CISA, Director

April 5, 2013

Mr. Don Burnette
Clark County Manager
500 South Grand Central Parkway, 6th Floor
Las Vegas, Nevada 89106

Dear Mr. Burnette:

In accordance with our annual audit plan, we conducted an audit of the Office of Appointed Counsel. The audit reviewed procedures for the period July 1, 2011 through February 15, 2013.

The audit objective is to determine if billed charges for outside counsel and expert witnesses are in accordance with Nevada Revised Statute and County policy.

To meet our objectives, we reviewed SAP reports for fiscal year 2011 to 2013 to determine the dollar amount of expenditures. We reviewed the Supreme Court Order for development of the office as well as the professional services contract that outlines the agreement with outside counsel. We conducted interviews with the Office of Appointed Counsel to understand how attorneys are assigned to cases, the pay structure for outside counsel, and the processing of invoices. We also examined a sample of 40 invoices to determine if the pricing structure agreed with Nevada Revised Statutes and invoices were accurate and supported with appropriate documentation. Finally, we obtained and verified that attorneys maintained appropriate insurance coverage and business licenses as required.

Overall, it appears that the billed charges for outside counsel and expert witnesses are in accordance with Nevada Revised Statutes and County policy. Additionally, the Office of Appointed Counsel is diligent in reviewing invoices as evidenced by corrections we observed during our invoice review. However, the language within the professional services agreement should include clarification in the areas of supporting documentation, expected milestones, ownership disclosure, invoice submission, and identification of attorneys working the case.

A draft report was provided to the Director of the Office of Appointed Counsel for comment and his response is included. We appreciate the cooperation and assistance provided by the Office of Appointed Counsel.

Sincerely,

/s/ Angela M. Darragh

Angela M. Darragh, CPA
Audit Director
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BACKGROUND

The Office of Appointed Counsel was established in the first half of 2008 in response to Supreme Court Order ADKT No. 411, which made sweeping changes to the way indigent people are represented. The Office of Appointed Counsel contracts with outside attorneys to provide legal representation to those individuals financially unable to employ counsel in adult criminal, juvenile criminal, and parental termination cases where the Office of Public Defender and the Office of Special Public Defender are unable to do so. The Office of Appointed Counsel is responsible to ensure all individuals who qualify for appointments outside of the Public Defender and Special Public Defender receive timely and competent legal representation and that such appointments are allocated in a manner that is fair, neutral, and nondiscriminatory.

The Indigent Defense Selection and Appointment Committee, composed of members from a variety of community stakeholders concerned with the integrity of indigent defense, select and maintain a pool of qualified attorneys who can then be appointed as defense counsel for a defendant.

The Office of Appointed Counsel had annual expenditures of $11.1 million for fiscal years 2011 and 2012. For fiscal year 2013, the office has expended $4 million as of December 31, 2012. Staffing consists of one full time attorney and one part time employee who manage the $11.1 million expenditures using Excel spreadsheets.

OBJECTIVES, SCOPE, AND METHODOLOGY

The audit objective is to determine if billed charges for outside counsel and expert witnesses are in accordance with Nevada Revised Statute and County policy.

This audit reviewed procedures through the last day of fieldwork, February 15, 2013. To meet our objectives, we reviewed SAP reports for fiscal year 2011 to 2013 to determine the dollar amount of expenditures. The Supreme Court Order was reviewed as well as the professional services contract that outlines the agreement with outside counsel. We conducted interviews with the Office of Appointed Counsel to understand how attorneys are assigned to cases, the pay structure for outside counsel, and the processing of invoices. We also examined a sample of 40 invoices to determine if the pricing structure agreed with Nevada Revised Statutes and invoices were accurate and supported with appropriate documentation. Finally, we obtained and
verified that attorneys maintained appropriate insurance coverage and business licenses as required.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS IN BRIEF

Overall, it appears that the billed charges for outside counsel and expert witnesses are in accordance with Nevada Revised Statutes and County policy. Additionally, the Office of Appointed Counsel does a diligent job in reviewing invoices as evidenced by corrections we observed during our invoice review. However, the language within the professional services agreement should include clarification in the areas of supporting documentation, expected milestones, ownership disclosure, invoice submission, and identification of attorneys working the case.

DETAILED RESULTS

Professional Service Agreement Needs Language to Clarify Agreement Terms

The professional services agreement simply states that invoices must be submitted to the Office of Appointed Counsel with appropriate documentation. The agreement does not specify what is considered appropriate documentation, nor does it outline expenditures that can be reimbursed, such as mileage, copying fees, etc. This increases the risk that expenditures are reimbursed that may not be appropriate or reasonable and necessary for the defense of the defendant. Additionally, the terms of payment per the agreement are vague and do not require any milestones or deliverables from the contracted attorney. Also, the agreement does not include standard language generally required by the County in the areas of suspension/termination or disclosure of ownership forms.

Recommendation

1. Work with the Purchasing Department to modify the agreement so that it clearly outlines the types of required
documentation needed to support payment requests. The agreement should clearly state what expenditures can be reimbursed.

**Attorney Invoices Should Identify Personnel Working Billed Hours**

Good business practice dictates that all submitted invoices identify the personnel that are included in billable hours for working on the case. Based on our review of 24 attorney invoices, we noted only two invoices that identified the personnel working for the billed hours. Including this information on the invoice will assist the Office of Appointed Counsel in reviewing and analyzing invoices to ensure hours are not being double billed.

**Recommendation**

1. Add language to the professional service agreement requiring all personnel working billed hours to be identified on the invoice.
March 27, 2013

Angela Darragh, Audit Director
Paul McPhee, Internal Audit

RE: Office of Appointed Counsel Audit

I have reviewed the March 2013 Office of Appointed Counsel’s (OAC) Audit Report and agree to the recommendations suggested. The audit’s highlights suggest that changes should be made to the language in the professional service agreement that the OAC signs with all outside private counsel. It is the goal of this office to make the necessary changes and bring to the Board of County Commissioners for approval by the first quarter in Fiscal Year 2014.

I would personally like to thank the members of the Audit Department who I had the privilege of working with over the last several months. The Office of Appointed Counsel is a somewhat unique and complicated office, only having been in existence since 2008. Their professionalism and commitment to understanding this office’s practices were invaluable in achieving a meaningful and comprehensive report.

Sincerely,

[Signature]

Drew R. Christensen, Esq.
Director of the Office of Appointed Counsel