

## **(1) a budget for the public defender's office, including salaries;**

### REGIONAL PUBLIC DEFENDER OFFICE NARRATIVE – 2014 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup>

#### **Personnel Costs – \$5,052,000**

This category provides for the salaries for the 77 FTE office including 1 Chief, 1 Deputy Chief, 1 Chief Operating Officer, 1 Office Administrative Assistant, 23 Staff Attorneys, 21 Mitigation Specialists, 14 Fact Investigators and 15 Legal Assistants. Anticipated staff is based on historical caseload data from Regions 1, 2, 3, 4, 5, 6 and 8.

#### **Fringe Benefits - \$1,441,898**

This category provides the benefits packages for each full time employee is an estimated 28% of personnel costs. The breakdown of each benefit is as follows: FICA, Medicare, Retirement, Health Insurance, Dental Insurance, Life Insurance, Unemployment Insurance and Worker's Compensation.

#### **Travel and Training – \$400,000**

##### Case Travel - \$208,500

Cases are scattered over numerous counties throughout the currently served regions. Protocols set by the office pursuant to capital representation guidelines require extensive investigation and frequent conferences with the client and his family. This requires frequent travel to the site of the client's incarceration as well as the location of key fact and mitigation witnesses both in and out of state and, in some instances, out of country. This category provides funding for those case related functions for attorneys, mitigation specialists and investigators and administrative staff members when necessary.

##### Administrative Travel – \$75,000

These funds are used by Administrative staff to do presentations to county commissioner courts and to talk about our office with eligible counties. This is fund also includes travel for office set up and maintenance visits with staff and offices.

##### Dues - \$2,500

This category is for dues for Public Defender organizations.

##### Training - \$114,000

This category provides funds for necessary for one training and travel, food and lodging to that training for all staff members.

#### **Supplies - \$120,000**

With a total of nine offices open throughout the current Administrative Regions, office supplies for each office must be provided for the daily operation of each office. Necessary supplies

include but are not limited to the following items: business cards, paper, printer cartridges, printer toner, monthly fees for Sprint hotspot, people locator, legal research (Lexis), small equipment for existing regions (cameras, laptop batteries, etc.) Currently we are paying phone and internet cost for 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> regions. We have had some difficulty in obtaining space, and are currently renting space in Kleberg and Burnet counties. That rent as well as additional rent in the 1<sup>st</sup> and 8<sup>th</sup> regions in the approximate amount of \$49,000, will come from this line item.

**Indirect Costs - \$352,695**

Lubbock County provides overall support services to the department. This line item would include support in IT for our computers and associated servers and networks, Human resources support from their HR department and support from the Lubbock County Auditor's office to assist with financial matters. This category represents support in these and many other services provided by Lubbock County.

**Contract Services - \$40,000**

In order to effectively manage cases and case files, the office has contracted with Justice Works (Formerly Defender Data) to provide an online capability to track cases, case documents and case time. This service provides a critical backup for documents stored on Lubbock County's dedicated servers. This service is paid out of this category. Further, it is planned to have the office evaluated by an outside entity to evaluate the effectiveness of the office and its delivery of services to the target clientele. This category is dedicated to payment for that eventual evaluation.

FY 2014 - all offices operational

Personnel***	If full year funding:
Chief PD	\$150,000
Assistant Chief PD	\$125,000
Lawyers (24)	\$2,400,000
Mitigation (21)	\$1,155,000
Investigators (14)	\$630,000
Legal Assistants (16)*	\$592,000
<b>TOTAL</b>	<b>\$5,052,000</b>
Fringe Benefits	<b>\$1,496,898</b>
Travel & Training**	<b>\$400,000</b>
Equipment	<b>\$0</b>
Supplies	<b>\$65,000</b>
Westlaw	\$20,000
General Office Supplies	\$43,400
Notary Fees	\$1,600
Contract Services	<b>\$40,000</b>
<b>Total Direct Costs</b>	<b>\$7,053,898</b>
<b>Indirect (5%)</b>	<b>\$352,695</b>
<b>Total FY14+</b>	<b>\$7,406,593</b>

**(2) a description of each personnel position, including the chief public defender position;**

## **X. PERSONNEL**

### **10.1 Chief Public Defender**

The CPD is a Lubbock County Department Head appointed by the Lubbock County Commissioners Court. The CPD is responsible for hiring and firing employees. Because the CPD is ultimately

responsible for all actions of those employees, and all cases assigned to the office, all pleadings and briefs must state the name and title of the CPD, as well as the APD responsible for that case. The CPD reviews and approves the budget and all payment requests.

## **10.2 Deputy Chief Public Defender**

The Deputy CPD is a management position in this office. Primary duties of that position are to assist the CPD in the administration of the office.

## **10.3 Assistant Public Defenders**

APDs are the attorneys responsible for representing individual clients appointed to the office.

## **10.4 Administrative Officer**

The Administrative Officer is a management position in this office. Primary duties of that position are to assist the CPD in the administration of the office; including, preparing the budget, entering data into the accounting program, monitoring internal controls and spending, and creating reports. The Administrative Assistant has the authority to enforce all administrative rules in the office. That does not include authority over case-related decisions. When those areas overlap, the matter should be referred to the CPD.

## **10.5 Chief Operating Officer**

The Chief Operating Officer is a management position. Primary duties of that position are to assist the CPD in the day-to-day operations of the agency with a focus on various departments that comprise a division. Work involves preparing and/or overseeing the preparation of financial analyses and reports; knowledge of accounting systems, procedures, and controls; and preparing and/or overseeing the preparation of agency budgets. Develops and implements sophisticated policies and procedures both in the finance and general operational realms. Oversees the allocation of local, state and other funds to agency operating programs and develops suitable plans for validating and matching the various funds used in financing departmental operations in consultation with executive management.

## **10.5 Investigators and Mitigation Specialists**

Mitigation Specialists will assist attorneys in the preparation of their cases. Attorneys should be careful to seek that assistance in a manner that will best serve the entire office. Whenever possible,

attorneys should coordinate their requests of an Investigator or Mitigation Specialist. Any disputes should be referred to the CPD.

## **10.6 Legal Assistants**

Primary responsibility for answering the phone is vested in the Legal Assistant. The phone should be answered “Public Defender Office.” Legal Assistants will also have duties related to case management, timekeeping, word processing, and other tasks consistent with their job description. All attorneys are responsible for their own word processing. However, it is appropriate to ask for assistance when necessary.

## **10.7 Interns**

Interns are generally law school students working for academic credit. They are always temporary workers who need guidance to do legal work. Attorneys should assign work to interns that assists the office and is educational for the intern.

## **10.8 Job Descriptions**

Attached Exhibit “A” for a comprehensive job description of each position with the office.

## **(3) the maximum allowable caseloads for each attorney employed by the public defender's office;**

### **IX. CASE MANAGEMENT**

#### **9.1 Data Entry**

All RPDO employees are required to enter time bi-weekly on the case management system which is in use at the time of entry.

#### **9.2 Workload**

There is no national standard in place suggesting the maximum workload for capital cases. The unique nature of the RPDO and its environment make it difficult to establish a maximum workload for staff attorneys. Factors which influence workload include (a) location of office vis-à-vis location of facility in which the client is detained, (b) the number and location of penalty stage witnesses, (c) the complexity of the case, (d) the need for national or international travel, (e) the potential emotional and physical impact of capital death cases on attorneys, (f) the trial schedule of an attorney and (g) whether a waiver or plea results in an expedited resolution of the case. Barring special circumstances as outlined above, the maximum workload per attorney is six (6).

#### **9.3 Continued Representation In Capital Cases After Waiver**

The Interlocal Agreement with the participating counties provides that the RPDO shall represent only those defendants facing the prospect of receiving a death penalty. However, the Chief Public Defender has the discretion to continue representation through disposition at the trial level in the event that the death penalty is waived by the state after appointment by the trial court. Among the factors to consider in making this determination are the pending caseload, the anticipated cost to finish the case (including investigative expenses), the length of time the RPDO has been on the case prior to the waiver, the preference of the assigned trial team, the quality and availability of local counsel, benefits to the client by continued representation, detriments to the client by continued representation, and the size of the county and its ability to adequately compensate local counsel.

#### **(4) provisions for personnel training;**

### **XIII. General Duties of Attorneys**

#### **13.1 Role of a Public Defender**

Indigent clients are entitled to the same zealous representation as clients capable of paying an attorney. Attorneys also have an obligation to uphold the ethical standards of the State Bar of Texas and to act in accordance with the rules of the court.

#### **13.2 Education, Training and Experience**

To provide competent, quality representation, be familiar with the substantive criminal law and the law of criminal procedure and its application, including changes and developments in the law. Where appropriate, consult with more experienced attorneys to acquire knowledge and familiarity with all facets of criminal representation, including information about practices of judges, prosecutors, probation officers, and other court personnel. When representing clients with mental illness or mental retardation, become familiar with the symptoms of the client's mental illness and their potential impact on the client's participation in the case, level of culpability, and sentencing options.

#### **13.3 Professional Development**

Attorneys are required to complete and report to RPDO Administration at least thirty (30) hours of continuing education courses or other training related to criminal law each year. The reporting year starts the date of hire. At least fifteen (15) hours shall specifically relate to the defense of death penalty cases in Texas. The Director must approve those hours that are being credited toward the death penalty specific requirement.



Mitigation Specialists are required to complete and report to RPDO Administration at least fifteen (15) hours of continuing education courses or other training specifically related to mitigation practice in death penalty cases each year. The reporting year begins the date of hire.

Investigators are required to complete and report to RPDO Administration at least fifteen (15) hours of continuing education courses or other training specifically related to investigation and forensic practice in homicide cases each year. The reporting year begins the date of hire.

#### **13.4 Duties**

Before agreeing to act as counsel or accepting appointment by a court, make sure that there are available sufficient time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter. If it later appears that the Office is unable to offer quality representation in the case, the Chief Public Defender should move to withdraw.

Maintain regular contact with the accused and keep the client informed of the progress of the case, where it is possible to do so. Promptly comply with a client's reasonable requests for information, and reply to client correspondence and telephone calls. If a client has abused the privilege (e.g. unnecessary and abusive calls), document the abuse in a letter to the client and provide specific rules about when to call. Whenever a client is particularly difficult, or potentially violent, bring along another person with you to the visit.

Unless case materials are too voluminous, or release would compromise a client's interests, they should be copied for the client upon request, so long as no applicable state or federal law prohibits the release of said materials. A client who is illiterate, or who refuses written materials, should receive a careful explanation of those documents. Warn the client not to share documents with others who may later use it as a basis to claim the client confessed to them.

Make every reasonable effort to contact a client not later than the end of the first working day after the date appointed, in compliance with Code of Criminal Procedure 26.04(j). In making this contact, provide the client with an explanation of the attorney-client privilege and instructions not to talk to anyone about the facts of the case without first consulting with their attorney. Never promise a result without fully researching the issue and having all the necessary facts. If there are contingencies, make them known to the client.

Appear on time for all scheduled court hearings in a client's case.

Be alert to all potential and actual conflicts of interest that would impair one's ability to represent a client. Where appropriate, seek an advisory opinion on any potential conflicts.

If a conflict develops during the course of representation, notify the client and the court.

When the Public Defender Office's caseload is so large that it is unable to satisfactorily meet these performance guidelines, the Chief Public Defender shall inform the court or courts before whom the cases are pending, and the Lubbock County Commissioner's Court.

If appointed to represent an indigent client, the Public Defender Office shall continue to represent the defendant until disposition of the case at the trial level, or waiver of the death penalty, or the office is relieved of its duties by the court or replaced by other counsel after a finding of good cause is entered on the record. The office may also appear in any ancillary matters that are necessary to a successful resolution of the client's criminal case.

**(5) a description of anticipated overhead costs for the public defender's office;**

**Overhead Costs for RPDO**

*a) Overhead Costs: The indirect costs or fixed expenses of operating a business (that is, the costs not directly related to the manufacture of a product or delivery of a service) that range from rent to administrative costs to marketing costs*

RPDO's anticipated overhead costs are incorporated into the organization's annual Lubbock County budget.

Itemization of anticipated RPDO overhead costs per FY:

Administration salaries	\$ 397,000
Supplies and operational expenses	\$ 110,700
Travel for Administration	\$ 75,000
<b>Total Anticipated Overhead Costs</b>	<b>\$ 582,000</b>

**(6) policies regarding the use of licensed investigators and expert witnesses by the public defender's office; and**

**14.3 Professional Assistance**



Counsel shall receive the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings.

1. Counsel should have the right to have such services provided by persons independent of the government.
2. Counsel should have the right to protect the confidentiality of communications with the persons providing such services to the same extent as would counsel paying such persons from private funds.
3. Counsel at all stages should demand on behalf of the client all resources necessary to provide high quality legal representation. If such resources are denied, counsel should make an adequate record to preserve the issue for further review.
4. Counsel should recognize that under Texas law, application to the Court for financial assistance for experts, with regard to some of the above issues may be requested in an ex parte proceeding, under seal, to preserve the attorney-client privileged information. Counsel should be prepared to submit ex parte requests for funding, accompanied by the appropriate affidavits, showing the need for the financial assistance sought, and be prepared to make a record to the court in-chambers of the necessity for such financial assistance. Counsel should also be aware that due to the constraints of the budgets of most counties, while a court may deny an initial request for funds, that subsequent, follow-up requests should be submitted to the court, based upon the exigencies of the case. See Article 26.052 f), V.A.C.C.P.

**(7) a policy to ensure that the chief public defender and other attorneys employed by the public defender's office do not provide representation to a defendant if doing so would create a conflict of interest that has not been waived by the client.**

#### **15.4 Conflicts of Interest**

In providing legal representation to clients, observe applicable rules of professional conduct governing the disclosure and avoidance of conflicts of interest.

In the performance of administrative duties, avoid conflicts of interest. A conflict of interest arises when a defender employee knows that he or she (or the spouse, minor child residing in the defender employee's household, or other close relative) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the ability to properly to perform administrative duties.

When a defender employee knows that a conflict of interest may be presented in the performance of duties, promptly inform the Chief Public Defender. If the conflict involves a conflict between or among clients, consider withdrawal from one or more representations, or other appropriate remedial actions, as necessary to comply with applicable rules of professional conduct.