



LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

February 17, 2014

LOUISIANA PUBLIC DEFENDER BOARD OVERSIGHT OF CAPITAL DEFENSE SERVICES

The Louisiana Public Defender Board does not adequately oversee capital defense services provided by 42 district offices and six contract programs that handle death penalty cases, nor does it adequately monitor all capital case lawyers to ensure they are providing “high-quality legal representation” to defendants charged with first-degree murder, Legislative Auditor Daryl Purpera said Monday.

The performance audit also said the board does not adequately track the cost of capital defense services “to ensure these services are provided in a cost-effective and fiscally responsible manner,” as required by state law.

The state auditor’s report said the public defender board does not “comprehensively monitor” the district offices to see if they comply with capital defense guidelines as state law requires. The board said it does not have sufficient staff or resources to do so.

In the fiscal year that ended June 30, 2013, the board received about \$33.1 million from the state: \$17.5 million went to the 42 judicial district offices to help pay the costs of representing indigent defenders in both capital and non-capital cases; another \$9.7 million went to the six contract programs that handle capital representation; and \$5.9 million went to salaries, training and other operations of the board, which is allotted 16 full-time positions.

In the last three fiscal years, the report said the districts received \$54.5 million and the six contract programs received another \$27.8 million.

Although the districts handle both capital and non-capital cases, the audit evaluated the board’s oversight of just the capital defense services. As of June 30, a total of 228 capital cases were handled by the 42 offices and the six contract programs.

The audit said that Louisiana statutes require the public defender board to “monitor the performance of all capital defense attorneys to ensure that each defendant is receiving high-quality legal representation,” but pointed out the board does not monitor the “ongoing performance by attorneys” in capital cases. Although the board reviews the performance of attorneys before they defend capital cases through a capital certification process and checks their performance after capital cases conclude, the public defender board “cannot ensure that the



LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

attorneys are providing high quality legal representation during capital case trials” that can last as long as two to four years.

The report said a case supervisor in each district is required to monitor defense lawyers in each case and report non-compliance to the board – but the audit quotes board staff as saying none of the 42 districts has a case supervisor “because of insufficient funding at the district level.”

Board staff is also supposed to monitor the performance of the contract attorneys involved in capital cases. According to LPDB management, however, “they have not reviewed any work products because LPDB does not have sufficient staff to fulfill this requirement.” As a result, LPDB “cannot ensure that contract programs are filing work products in a timely manner and providing high-quality legal representation.”

State law also requires the board to create mandatory performance standards for attorneys handling capital cases but that has not been done, and the report says they may not be in place until early 2015.

The report also said that because the public defender board does not track the cost of capital cases separately from non-capital cases in the 42 districts “it does not have the information needed to determine the cost of capital defense services. Without knowing the cost, LPDB cannot ensure that these services are adequately funded, as required by state law, and that they are being provided in a cost-effective and fiscally responsible manner.”

Auditors also said that the board does not require district offices to track the time lawyers spend on capital cases because it has not yet established standard time categories. It also has not set salary ranges for lawyers handling capital cases, the report said.

The report also said that the board had a staff turnover rate of almost 27 percent in 2012 and almost 43 percent in 2013. LPDB said this hinders its ability to properly oversee the district offices and the six contract programs. During the 2011-12 fiscal year, the report said, 29 of the 42 district offices operated at a deficit and had to use their fund balances, which consist of money left over from previous years, to cover expenses. “This will place an increasing financial burden on LPDB in the future” as state law requires the board to provide adequate funding for public defense services.

One reason district offices are operating at a deficit, the board told auditors, is that they may not be getting all of the local funding that is owed them. According to LPDB, the single largest local revenue source for district offices comes from court fees assessed on all traffic tickets and criminal convictions. LPDB pointed out that Louisiana is the only state that funds a large percentage of its public defense costs this way.



LOUISIANA LEGISLATIVE AUDITOR
DARYL G. PURPERA, CPA, CFE

Besides the \$18.2 million the local districts got from the state board in the 2012 fiscal year, the 42 offices received about \$30.1 million from local revenue sources in the same year, the report said – or about 61 percent of their revenues.

For each capital case, the Louisiana Supreme Court requires at least two certified attorneys, an investigator and a “mitigation specialist” who reviews the background of the defendants and identifies the need for expert assistance, regardless of the district’s budget at the time, according to the report.

If district offices continue to run deficits and the state board is called on for financial help, the report said, the LPDB will become more financially strapped because it must provide funds to local offices so they can continue to operate. If the statewide board cannot increase its financial help to district offices in need, the local offices “will have to go into service restriction, which may include not accepting new cases, delaying or halting current cases, reducing attorneys’ salaries or laying off attorneys,” the audit said.

For more information, contact:

Daryl G. Purpera, CPA, CFE
Legislative Auditor
225-339-3800

On Twitter: Public Defender Board does not adequately oversee capital defense services for death penalty cases.