



**Thomas A. Schweich**  
Missouri State Auditor

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# FOLLOW-UP REPORT ON AUDIT FINDINGS

## Missouri State Public Defender

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March 2013  
Report No. 2013-027



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<http://auditor.mo.gov>

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# Missouri State Public Defender

## Follow-Up Report on Audit Findings

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\*Includes selected findings



# THOMAS A. SCHWEICH

## Missouri State Auditor

Honorable Jeremiah W. (Jay) Nixon, Governor  
and  
Members of the Missouri General Assembly  
and  
Members of the Public Defender Commission  
and  
Cathy R. Kelly, Director  
Missouri State Public Defender  
Jefferson City, Missouri

We have conducted follow-up work on certain audit report findings contained in Report No. 2012-129, *Missouri State Public Defender*, issued in October 2012, pursuant to the Auditor's Follow-Up Team to Effect Recommendations (AFTER) program. The objectives of the AFTER program are to:

1. Identify audit report findings that require immediate management attention and any other findings for which follow up is considered necessary at this time, and inform the Missouri State Public Defender (MSPD) about the follow-up review on those findings.
2. Identify and provide status information for each recommendation reviewed. The status of each recommendation reviewed will be one of the following:
  - Implemented: Auditee fully implemented the recommendation, either as described in the report or in a manner that resolved the underlying issue.
  - In Progress: Auditee has specific plans to begin, or has begun, to implement and intends to fully implement the recommendation.
  - Partially Implemented: Auditee implemented the recommendation in part, but is not making efforts to fully implement it.
  - Not Implemented: Auditee has not implemented the recommendation and indicates that it will not do so.

Our methodology included working with the MSPD, prior to completion of the audit report, to develop a timeline for the implementation of corrective action related to the audit recommendations. As part of the AFTER work conducted, we focused on the Caseload and Resources finding and requested the MSPD provide a written status as to recommendations 1.1, 1.2, and 1.3. We also gave the MSPD the option of providing a written status to any of the other findings. We received and reviewed the MSPD's written responses and supporting documentation related to recommendations 1.1, 1.2, 1.3, 2.1, and 4.2. This report is a summary of the results of this follow-up work, which was substantially completed during February 2013.

A handwritten signature in black ink that reads "Thomas A. Schweich".

Thomas A. Schweich  
State Auditor

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# Missouri State Public Defender

## Follow-Up Report on Prior Audit Findings

### Status of Findings

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1. **Caseload and Resources** The Missouri State Public Defender (MSPD) lacked sufficient information to accurately determine the resources needed to manage caseloads. The MSPD's ability to accurately determine needed resources was further hampered by numerous MSPD processes that were not conducted efficiently.

In November 2007, the MSPD adopted the Caseload Crisis Protocol to determine if attorney resources are sufficient to manage caseloads and meet its statutory responsibility. The caseload protocol calculations were used to evaluate each district office's caseload monthly and certify those offices as having limited availability, as applicable, and to estimate additional attorney resources needed for annual budget requests.

Our review of the calculations and available data supporting the caseload protocol noted the MSPD lacked sufficient support for the data and methodology used for protocol calculations. As a result, the amount of resources needed to meet MSPD caseloads was unclear. Instead of tracking actual employee time spent by case type and using that data to estimate needed and available attorney hours, these amounts were determined through complex calculations based on various unsupported assumptions and estimates discussed below. In addition, the MSPD lacked adequate support for estimated support staff needed to assist attorneys in meeting caseload.

1.1 **Tracking and recording staff hours** The MSPD did not track staff time spent by case type; and as a result, the MSPD lacked detailed actual information to estimate staff hours per caseload. Although the MSPD conducted a time study in 2006, the time study results were not utilized to determine or estimate the number of staff hours needed to manage assigned caseload. Instead, as noted below, converted caseload standards were used in the caseload protocol calculations.

**Recommendation** The MSPD establish procedures to track and analyze staff hours by case type, and use that data to support significant management decisions including estimating staff hours needed to meet caseload.

**Status** **In Progress**

The MSPD indicated the new Time Log, by case type and task, was up and running for Trial and Capital Divisions as of March 1, 2013. The Appellate/Post-Conviction Relief Division will follow not long thereafter. A training webinar has been developed and the associated help documents have been prepared and placed in the MSPD Help database to assist staff in categorizing their work in the Time Log. The new system tracks time in 5 minute increments, and utilizes ten primary categories (e.g., in court, fact-finding, legal research and writing, etc.).



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1.2 Caseload protocol  
(attorneys)

Our review of the caseload protocol calculation procedures noted significant concerns with the methodology and data used to calculate the key components as well as the final calculation of whether maximum caseload had been exceeded. Of overall concern was the lack of assurance the components used in the calculation were comparable. While the number of needed attorney hours was calculated based on converted national caseload standards (developed in 1973) with the assumption attorneys work on cases 2,080 hours per year, the number of available attorney hours was calculated based on an estimation that the MSPD attorneys work on cases an average of 1,536 hours per year.

Recommendation

The MSPD perform and document a comprehensive analysis of the caseload protocol and make appropriate revisions to ensure calculations accurately estimate and compare needed and available staff hours. Periodic analysis of the caseload protocol should be performed and revisions made as necessary.

Status

**In Progress**

The MSPD indicated the American Bar Association's Indigent Defense Advisory Group has indicated a willingness to fund the cost of an outside auditing firm to oversee the MSPD's methodology for revising its protocol.

The MSPD plans to complete the time study to identify how its lawyers are currently spending time on cases, assess what tasks the attorneys cannot complete due to time constraints, and calculate the additional amount of time necessary to come up with a standard case weight. At least three well-respected private criminal defense attorneys have agreed to work with the MSPD in this phase of the project.

Periodic reviews and revisions as necessary will be part of the process and are built into the flexibility of the time keeping system's design.

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1.3 Support staff

The MSPD had not developed adequate procedures to measure the need for additional support staff. MSPD caseload protocol indicated, and the 2006 time study supported, that attorneys spent a significant amount of time performing tasks that could have otherwise been performed by support staff. While support staff time was tracked in the 2006 time study, this time had not been utilized in estimating support staff needed.

Recommendation

The MSPD develop procedures to accurately estimate support staff hours needed to assist attorneys in meeting caseload.

Status

**In Progress**

The MSPD indicated in its redesigned time-keeping study, the MSPD tracks tasks often performed by attorneys but generally performed by support staff in most law firms. Support staff will also track their hours by category and



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task. The MSPD plans to use this information to determine both the level of assistance currently provided and additional hours needed to cover those tasks identified as more appropriately handled by support staff. The MSPD anticipates seeking the input of private attorneys concerning ways in which private firms utilize support staff to leverage attorney time. This will provide useful information for the legislature in determining the most cost-effective way in which to staff the public defender system.

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2.1 Policies and procedures The MSPD lacked sufficient policies and procedures for determining defendant indigence.

**Recommendation**

The MSPD modify policies and procedures to provide clear guidance and training for performing indigence determinations. Policies should address verification of applicant financial status and data, and provide for supervisory review of indigence determinations.

**Status**

**In Progress**

The MSPD indicated four offices have volunteered to serve as a pilot program to track the time involved in independently verifying indigence for comparison to the benefits gained from that process to determine the cost-effectiveness of the process before imposing it across the system.

The MSPD is working with the Department of Employment Security to gain access to their records for indigence verifications; however, gaining live access to their system is not possible.

The MSPD has obtained the results of the survey conducted by the Washington University Law School clinic students on indigence guidelines and procedures used by other public defender systems around the country, as well as a similar project conducted by the South Carolina Public Defender. The MSPD intends to review both of these for suggestions as it re-examines its current indigence standards and determination process.

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4.2 Circuit Court Collections

Some circuit courts did not attempt to collect MSPD liens, and the MSPD did not monitor court collection efforts or encourage the courts to collect liens. Our discussions with the MSPD, Office of State Courts Administrator (OSCA) personnel, and court officials noted some courts did not include MSPD liens in amounts subject to court collection procedures. These procedures generally included payment plans, collection agencies, and/or conditions of probation.

**Recommendation**

The MSPD monitor circuit court lien collection rates and work with those courts which are not collecting liens in an effort to increase lien collections.



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**Status**

**In Progress**

The MSPD indicated it is exploring the possibility of having the collections company that handles all of OSCA's court cost collections take on the same responsibility for public defender liens as well. There is some concern about being able to collect from an indigent population, and the collections company will not undertake any collections from defendants who are incarcerated. The MSPD is committed to pursuing this route, although it appears that both the population and the relatively low amounts involved may present obstacles.

Another possibility is under discussion by some legislators this session: eliminating the separate lien procedure in favor of adding the public defender fee as another court cost in cases served by the MSPD. Under this approach, the fee would be collected in the same way, and as part of the same collection process as all other court costs, which would also avoid duplication of collection efforts.