

**Indigent Legal Services Task Force
Meeting Minutes
10:00 a.m., March 31, 2023**

Roll was called

Task Force Members Present:

Dean Neil Fulton
Hon. Michael Day
Hon. Christina Klinger
Senator Jim Mehlhaf
Representative Will Mortenson
Brent Kempema
Wendy Kloepfner
Lori Stanford
Thomas Cogley
Eric Witcher
Randy Brown
Traci Smith

Also Present:

Chief Justice Steven Jensen
Greg Sattizahn
Aaron Olson
David Carroll
Aditi Goel

Judge Day gave an introduction then all task force members introduced themselves and briefly described their interest in indigent legal defense.

Chief Justice Jensen gave opening remarks.

- He began by thanking the members of the task force
- He explained the background that led to the creation of the taskforce

- He described the long-standing problems that he has heard about from counties, judges and attorneys. How it is becoming more and more difficult to find attorneys to take court appointments or to contract with the counties.
- Attorney compensation and travel reimbursement does not make it cost effective to take appointments in rural areas.
- There is no authority to set a fair rate.
- Counties can't afford to pay court appointed attorneys
- The state only reimburses approximately 3% back to the counties
- There is no oversight to make sure defendants are receiving effective representation
- He explained the five goals of HB 1064

Co-Chair Judge Day discussed the goals of the task force

- He talked about the difficulty of getting attorneys to travel great distances to fill court appointments
- He discussed the lack of training available for court appointed attorneys
- He talked about working toward a system that would create efficiencies in the process

Co-Chair Dean Fulton also discussed the goals of the task force

- He recommended looking at this as an opportunity, not an obligation.
- The task force has the chance to start with a blank page
- The task force should try to come up with recommendations without worrying about implementation or funding.

Greg Sattizahn, State Court Administrator, and **Aaron Olson**, UJS Budget and Finance Director, gave an overview of current indigent legal services in South Dakota

- A criminal defendant is guaranteed an attorney, regardless of ability to pay, unless there is no danger of prison or jail time.
- The duty falls on the county commissioners to provide legal services.
- That can be accomplished by a public defender office, contract with an attorney or appoint attorneys.
- Attorneys are also provided for criminal appeals, habeas, abuse and neglect cases for parents and child and juvenile cases.
- There is a statutory framework for establishing a public defender office.
- The speakers explained the catastrophic legal expense relief program.
- The speakers gave an overview of the funding of legal services in South Dakota.

Questions:

- There was a question regarding conflicts and whether attorneys are overly cautious with claiming a conflict.
 - o Appreciate that attorneys consider whether they have a conflict to avoid redoing the case or having to start over with new attorney.
 - o A and N's require several attorneys to prevent conflicts
 - o Witnesses in cases can also create conflicts.
 - o The ethical rules spell out what constitutes a conflict and they guide attorneys to know when they have a conflict.
 - o Judges and attorneys are good at policing themselves.
- General funds.
 - o Indigent legal defense is not funded by any general fund dollars. There is general fund money from the equal access to courts commission but that goes to the legal services entitles for civil cases only.

10 Minute Break

Traci Smith, Minnehaha County Public Defenders' Office gave an overview of her office.

- Total cost of indigent defense services in Minnehaha County in 2022 were approximately \$6.459 million. \$3.821 million was paid to the PDO.
- The office is organized into four divisions: violent felony, non-violent felony, misdemeanor and miscellaneous.
- The PDO works closely with Southeast Behavioral health to connect clients in need of mental illness services.
- The PDO also is actively involved with the problem solving courts to work with defendants that are in need of substance abuse or mental illness issues as an alternative to incarceration.

Eric Whitcher, Pennington County Public Defenders' Office gave an overview of his office.

- Pennington County funds the Public Defender's office, contracts with Dakota Plains Legal Services and appoints private attorneys.
- The office is governed by a five-member board
- The board appoints the public defender and recommends staffing and an operations budget.
- The office has an annual budget of approximately \$3.5 million.
- In the last ten years the number of cases handled ranged from 4,766 to a high in 2019 of 6,637.
- When the workload becomes too high, they will file motions to withdraw on a number of cases so that they can handle the new cases coming in.
- DPLS employs 2-3 attorneys and handle 500-600 cases a year.
- Total indigent services cost in 2022 was just over \$6.2 million.

David Carrol and **Aditi Goel**, Sixth Amendment Center, gave a presentation on their services and examples of models used by other states.

- South Dakota is one of the few states that do not fund indigent defense at the state level.
- The state is required to ensure that defendants have access to legal representation. If legal counsel is funded at the county level the state needs to ensure that the county is providing effective representation.
- The presenters gave an overview of the caselaw that held the right to counsel at different stages of a criminal case, i.e., arraignment, pretrial, sentencing, appeal etc.
- The presenters provided a handout (email attachment) describing the ABA ten principles of a public defense delivery system.
 - o Which included:
 - Early appointment of counsel
 - Qualified, attorneys, training and supervision.
 - Independence of the defense function
 - Sufficiency of time.

- The presenters also discussed the Michigan model:
 - o Independent commission
 - o Implemented standards
 - o State funding
 - o Expansion of public defender offices
 - o Abolished judicial control of direct services
- Questions
 - o Members requested the 6AC to provide overview of how states near South Dakota have handled this issue.
 - o Members requested an overview of states that implemented a system in the last ten years and whether the problems they were having have decreased due to the new system.
 - o Members requested data from other states regarding how competency is determined, especially in rural areas.
 - o Members requested information on areas where there are multiple arresting agencies and the effect that has on the governmental entity that has to pay the cost.

Discussion and next steps

- The task force requested additional information for the next meeting on similarly situated states for the group's consideration as discussed above.
- The task force will schedule regional meetings around the state to get additional input. Greg Sattizahn will propose a schedule for those meetings at the next meeting which is scheduled for April 26.
- Members were reminded to calendar the upcoming task force meetings
 - o April 26th- 10am-12pm CST via Zoom
 - o June 20th- 1-5pm CST (Sioux Falls and in-person)
 - o July 31st- 10am-12pm CST via Zoom
 - o August 29th- 10am to 12pm CST via Zoom
 - o September 25- 10am to 12pm CST via Zoom
 - o October 30- 10am-12pm CST via Zoom

Time was provided for public comment

- No one offered public comment

Judge Day moved to adjourn, second by Mehlhaff.

- All members present voted aye.