

Best, et al. v. Grant County

Monitor's Report

Second Quarter, 2008

July 21, 2008

Submitted by Francisco Rodriguez, Settlement Monitor

Monitor's Activities

My goal is to visit Grant County at least once per month. During the second quarter of this year, I travelled to Ephrata on three separate occasions:

- April 7-8, 2008
- May 19-20, 2008
- June 23-24, 2008

While in Ephrata, I observed court proceedings, reviewed court files, and met with public defenders.

In addition to site visits, I maintain regular contact with supervisor Alan White. I also have periodic contact with individual defenders, investigators, and counsel for both parties.

Access to Information

The Settlement Agreement provides that the Monitor shall have broad access to information concerning the Grant County public defense system. Supervising Attorney Alan White and his assistant Aracely Yanez continue to be very cooperative in responding to my requests for information. The Grant County Superior Court Clerk's Office is always very accommodating in my requests for access to court files.

2007-08 Compliance

During the second quarter, I resolved disputes regarding the County's compliance during 2007 and 2008. With respect to 2007, I found that the County violated the Settlement Agreement in numerous areas including:

- Private practice by several full-time defenders
- Use of part-time defenders without approval

- Excessive use of part-time defenders
- Use of unapproved investigators
- Failure to hire a “full-time” Supervising Attorney
- Failure to provide representation to all indigent defendants at first appearance

I provided the County with recommendations to cure each of the violations.

With respect to 2008, I found that the County was again in violation the Settlement Agreement because several full-time defenders continued to engage in private practice and because the County failed to properly account for its defenders’ work on contempt cases. I provided the County with recommendations to cure these violations as well.

The County has implemented at least some of my recommendations. I understand that the County has objections to others and may still be working to implement the remainder.

Attorney Staffing/Caseloads

The County made several staffing changes in the second quarter. Case assignments this year have been running higher than the County expected. The County also lost one of its full-time defenders to health issues at the end of the first quarter. To address the shortfall caused by his absence as well as the increased case assignments, Supervising Attorney Alan White recommended that the County convert its two part-time defenders to full-time and hire an additional full-time defender. The County responded by converting Ryan Earl to full-time effective April 1 and Brett Billingsley to full-time effective May 1. In addition, the County hired a new defender, John Perry, and he began working full-time on June 1.

Unfortunately, it appears that the third quarter will bring more staffing changes. Ryan Earl recently resigned his position, and case assignments continue to exceed the County’s expectations. In addition, several full-time defenders have been engaging in private practice which will result in a reduction of their caseload limits by ten cases each. Based on these recent developments, the Supervising Attorney has recommended that the County add two more full-time defenders for the remainder of the year. The County has recently posted an advertisement for a full-time defender position and has already received several applications.

With Mr. Earl and Mr. Billingsley converted to full-time, the County is finally in compliance with the Settlement Agreement’s requirement that it hire only full-time defenders except as approved by the Monitor. I hope that the County will find a suitable candidate for its latest full-time opening. Full-time defenders tend to be more engaged in the defender program, visit clients more promptly and more frequently, and invest more

time in their Grant County cases. Nonetheless, if the County is truly unable to find qualified candidates willing to work full-time, I will consider approving the use of part-time defenders if necessary to avoid sacrificing the quality of representation.

The Settlement Agreement establishes an annual caseload limit of 150 case equivalents. The purpose of caseload limits is to ensure that defenders have a manageable workload and are able to provide effective assistance of counsel to each client. In order for annual limits to be meaningful, case assignments must be spread somewhat evenly throughout the year. Accordingly, the County has adopted additional monthly and quarterly caseload limits. During the second quarter, the County failed to comply with its monthly caseload limits with respect to four different defenders. The County also exceeded its quarterly limits for three defenders. At the midpoint of the year, almost half of the County's defenders are on pace to exceed their annual caseload limit of 150.

The County's failure to adhere to its monthly and quarterly limits had several causes. First, the County did not hire a sufficient number of defenders at the start of the year. I had previously recommended that the County hire enough public defenders to provide at least a 50 case cushion over projected needs. This cushion is necessary to accommodate normal increases in case assignments from year to year, caseload fluctuations during the year, and unanticipated developments such as staff turnover. For 2008, the County gave itself very little margin for error. The decision to maintain minimal staffing levels was particularly surprising in light of the myriad reasons to believe that 2007 case assignment statistics significantly underestimated the actual number of cases handled by the defenders. I have detailed those reasons in prior reports and will not repeat them here.

A second reason that the County was forced to overload its defenders is that the Court assigned an unusually large number of cases to the public defenders in May. Case assignments for May were almost 30 case equivalents higher than in any other month this year. The surge in case assignments was due in part to a large number of arrests during a Memorial Day music festival at The Gorge.

Finally, the sudden loss of one of the full-time defenders due to poor health left the County understaffed. Although the County was able to increase caseload capacity by converting its part-time defenders to full-time and hiring a new full-time defender, those adjustments came too late to prevent the existing defenders from exceeding monthly and quarterly limits.

In his most recent monthly report, Supervising Attorney Alan White projects that the County currently has the bare minimum staffing levels to cover anticipated case assignments for the remainder of the year. He notes, however, that his projections do not take into account the recent resignation of one of the full-time defenders or the reduced caseload limits for defenders who engaged in private practice. After adjusting the projections to incorporate these factors, the County could lose as many as 75 additional case equivalents in capacity. Hiring a new full-time defender to start August 1 would add only 62.5 case equivalents worth of capacity, and it seems unlikely that the County will be able to get a new full-time defender on board that quickly. Accordingly, the prudent

course would be to follow Alan White's recommendation to hire two additional full-time defenders for the remainder of the year.

By failing to protect against contingencies at the start of the year, the County has put itself in a difficult position in terms of hiring, however. Projected case assignments for 2009 based on assignments so far this year suggest that the County should have 9 full-time defenders on staff for 2009. Hiring two additional full-time defenders now would give the County ten full-time defenders on staff. Unless the County is able to hire one of these full-time defenders on a temporary basis for the remainder of the year, it may start 2009 significantly overstaffed.

Training

Training opportunities in Grant County are limited due to the relatively small number of local criminal defense attorneys and the difficulty in convincing speakers to travel long distances to speak at CLE sessions. Despite these challenges, Supervising Attorney Alan White has been successful in arranging CLE presentations on a fairly regular basis. He has been particularly diligent this year in seeking trainings from the Washington Defender Association (WDA) and the Washington State Office of Public Defense. During the second quarter, he arranged for WDA to offer a half-day CLE in Grant County covering such topics as search and seizure, working with investigators, and the immigration consequences of criminal cases.

Grant County has also been generous in its financial support for defenders interested in travelling outside the County to attend trainings. During the second quarter, the County sent one of its new full-time defenders to attend the two-week National Criminal Defense College (NCDC) in Macon, Georgia. NCDC provides intensive trial training and is recognized nationally as among the best training available for criminal defense attorneys.

Although the County has been successful in obtaining training for its defenders from outside sources, I continue to believe that the County should do more "in-house" trainings. The majority of the County's defenders have experience in other jurisdictions, and each is more than capable of providing training sessions for his or her colleagues. It would take little effort to organize presentations by the County's own defenders every month or two.

First Appearances

The Settlement Agreement requires that the County provide representation at initial appearances for all indigent defendants. To fulfill this obligation, the County assigns each of its defenders to cover first appearances for a week at a time on a rotating basis throughout the year. Over time, the defenders have become far more consistent in providing representation at first appearances.

In the past, the County has not consistently provided representation at first appearance for child support defendants and out-of-custody defendants. This problem resulted in part from the court's practice of proceeding with hearings regardless of whether counsel was present or not and in part from confusion among the defenders as to which hearings they were expected to cover. During the second quarter, the County remedied this problem by making clear to its defenders that they were to represent all defendants at first appearance, including those appearing on child support matters and in response to a summons. I have also observed more teamwork by the defenders who now jump in to assist defendants who have been called before the court without counsel.

In addition to representing defendants in court, the coverage attorney is expected to visit in-custody defendants prior to court in order to obtain the information necessary to make a bail reduction and/or release motion. These visits tend to be short, averaging 5 to 10 minutes for most defenders. During the second quarter of 2008, the Grant County defenders were generally diligent in making jail visits prior to first appearances. Indeed, defenders made 20 or more first appearance jail visits during 7 different weeks.

Although it was definitely the exception rather than the rule, some defenders seem to occasionally take a day off from the required jail visits. I found 5 days on which the assigned defender made no visits at all. I have notified the Supervising Attorney of my findings in this area and asked him to look into the matter further. It should be noted, however, that even when the attorneys do not visit defendants in jail, they do typically meet with the inmates prior to their hearings, either in the courtroom or in the secure hallway adjacent to the courtroom.

Jail Visits

Grant County requires its defenders to make contact with all new clients within a week of assignment. For in-custody clients, a jail visit is required. The County's written policy on client contact makes clear that meeting with the client in the courtroom or in hallway outside the courtroom is not sufficient. Moreover, the jail visit must take place prior to arraignment "if at all practicable."

Timely jail visits have been a persistent problem for the Grant County public defenders, and the second quarter was no exception. I reviewed more than 75 in-custody cases assigned from April through June of this year and found that the Grant County defenders visited their clients prior to arraignment only about a third of the time. Approximately 44% of those visits occurred on the day of arraignment. Within a week of assignment, defenders had visited about 46% of their in-custody clients. Thus, during the second quarter, defenders complied with the County's jail visit policy less than half the time.

	<u>April 2008</u>	<u>May 2008</u>	<u>June 2008</u>	<u>Average</u>
Visit before arraignment	37%	28%	40%	34%
Visit within 1 week	48%	39%	56%	46%

Although most in-custody defendants in Grant County eventually receive a visit from their attorneys, a surprising number do not. In reviewing cases from April and May 2008, I found 11 cases in which the Grant County defenders had not visited their in-custody clients at all. In 8 of these cases, the defendants pled guilty without ever receiving a jail visit from the assigned attorney. I found another 5 cases in which defendants had to wait more than three weeks for an attorney visit. Unfortunately, this is not an isolated problem. The 11 indigent defendants who never received a jail visit were represented by 5 different public defenders.

Part of the problem may be the County's reliance on attorneys who reside outside of Grant County.¹ Attorneys who commute 2-4 hours to Ephrata are unlikely to make a special trip just to visit a new client. Moreover, when these attorneys are in Grant County, their schedules are typically packed, and I suspect that when their other obligations take longer than expected, jail visits end up postponed until the next trip. Although I am convinced that commuting is a contributing factor to delays in jail visits, I do not believe that it is the primary cause of this problem. Indeed, one of the defenders with a lengthy commute has actually been the most diligent in making timely jail visits while another defender who resides in Grant County almost never manages to visit his clients prior to arraignment.

Several of the Grant County defenders simply do not appreciate the importance of visiting their in-custody clients. Some defenders note that they typically have a great deal of "dead time" in court and that it is more efficient to meet with their in-custody clients in and around the courtroom. They apparently view such meetings as a reasonable substitute for visiting clients at the jail. I strongly disagree. A system in which indigent defendants are expected to see their attorneys only in the hallways outside of court on the day of their hearing is not one that values the rights of those defendants. Indeed, such meetings are one of the hallmarks of substandard public defense.

While this practice of meeting with clients in the corridor may save the attorneys time, it does so at the expense of their clients. A criminal defendant is entitled to sit down with his attorney in a private setting to discuss his case at length, to ask questions about the evidence against him, his chances at trial, the punishment he faces, and how the process works. Each defendant should have at least one meeting with his attorney in which he need not be concerned about whether others can overhear the conversation or whether the attorney will be called away at any moment to handle another case. The average client who speaks with his attorney while sitting in the jury box or standing in the hallway outside the courtroom has no idea that will be his only opportunity to consult with counsel. He may not share critical information with his attorney because he assumes, quite reasonably, that his attorney will visit him at the jail for a more confidential meeting. Visiting in-custody clients early in the representation helps the attorney to earn the clients' trust, identify potential defenses and issues that need investigation, and even recognize subtle mental health issues that might not be apparent in brief hallway meetings.

¹ I recognize that the County has little choice but to rely on attorneys from other jurisdictions.

I have urged the County to make timely jail visits a priority. While the County has had a written policy in place for the last year, that policy has not been followed. Moreover, to the best of my knowledge, the County has not established any system for enforcing the policy or monitoring compliance. Unless and until the County takes this issue seriously, these problems are likely to continue.

Investigator Staffing

Grant County recently lost two of its five investigators. I suspended approval of one investigator after learning he was facing criminal charges in another jurisdiction. A second investigator suspended work because the County would not pay his bills.

In mid-June, I learned that the investigator I had approved approximately two months earlier was now being prosecuted in another County for: 1) Making a False Statement to a Public Servant; 2) Criminal Trespass - 2nd Degree; and 3) Stalking. After consulting with the parties and carefully considering the matter, I decided to temporarily suspend my approval of the investigator. Grant County strenuously objected to my decision and urged me to allow the investigator to keep working until the criminal charges against him were resolved. I ultimately concluded, however, that it would be inappropriate to put indigent defendants at risk by continuing to utilize the investigator in question.

Shortly afterward, a controversy over investigator invoicing that had been brewing for several months erupted into a full-blown crisis when the County refused to pay its investigators. The crux of the dispute is the conflict between the ethical rules requiring attorneys to protect confidential information and the County's need to fully account for the expenditure of public funds. Investigators in Grant County work under the direction of individual public defenders but submit their bills to the County through Supervising Attorney Alan White. Mr. White reviews each investigator's invoice to ensure that all charges are necessary and appropriate, approves the invoices for payment, and then forwards the information to the County. When submitting invoices to the County, however, Mr. White redacts client identifying information in order to avoid disclosure of confidential information. For each billing entry, the County is provided with the date, description of work performed, and the amount of time involved. Only information which would identify the client is redacted. Mr. White has concluded that redaction of confidential information is required by RPC 1.6 as well as WSBA Formal Opinion 183, Formal Opinion 195, and Informal Opinion 2185. I concur in Mr. White's assessment.

Until about March of this year, Mr. White had submitted investigator billing to the County without redactions. He changed this practice when representatives of the Grant County Prosecutor's office indicated that they would begin seeking restitution from indigent defendants for the costs of investigating their cases. Upon learning of this plan, Mr. White became concerned that in forwarding the unredacted investigator invoices to the County, he had been unintentionally revealing confidential information. He was particularly concerned that prosecutors could gain access to whatever he submitted to the

County. These fears appear to be well-founded in that the County insists that investigator billing information is subject to public disclosure, and the Grant County Prosecutor has demonstrated a propensity for gathering information about public defense using public disclosure laws. Accordingly, Mr. White concluded that he could not comply with the County's invoicing requirements without providing evidence against the very indigent defendants his staff represent.

The County has steadfastly maintained that it cannot pay invoices unless those invoices include not just the date, description of the work performed, and time spent on each activity, but also the client name, case number, and attorney. Although Mr. White has explained that he cannot compromise when it comes to the ethical rules, the County has repeatedly attempted to pressure him to comply with its invoicing requirements. The County's communications in this regard have been inappropriate. On more than one occasion, the County has contacted the defense investigators directly and indicated that Mr. White is to blame for the fact that they are not being paid. The first time this occurred, Mr. White specifically requested that the County "stop communicating directly with the investigators and telling them that I am holding up their compensation." Yet earlier this month, the County again wrote directly to the investigators that Mr. White "would rather you not get paid for your services – and have you stop working – than provide the BOCC with invoices that clearly show where public monies are going." The County then urged the defenders and investigators to "bypass Alan" and submit unredacted invoices. It is completely inappropriate for the County to undermine its Supervising Attorney in this way. The County does not seem to understand that Mr. White's position is a principled one and that he cannot violate the ethical rules even if it would be the expedient thing to do.

The investigator situation is now somewhat desperate. One investigator has already stopped work on Grant County cases until his invoices for past work are paid. Another has indicated that he plans to give priority to his other cases until the billing dispute is resolved. Even if the other two investigators continue to work, the County has lost 40-50% of its capacity. Only one of the remaining investigators is available to Grant County on anything approaching a full-time basis. The County recently asked that I approve three additional investigators, but even if approved, the new investigators will face the same problems getting paid as the current group.

It is essential that all involved work expeditiously to resolve this matter. I have proposed two potential compromises that I hope the County will consider. My recommendation is to ask investigators to submit aggregate billing. The investigators could detail the date, work performed, and time spent but combine the information for multiple cases. The case names and numbers could be listed at the top of the invoice, and so long as individual activities are not tied to a particular case, client confidentiality would be protected. The other alternative I have proposed is to submit investigator billing to the court for approval. The court could then enter an order to seal the invoices in the court file. This would protect confidential information so long as the invoices and payment process were carefully designed to avoid inadvertently revealing client confidences. Indeed I suspect that the reason confidentiality issues don't create similar problems in

other jurisdictions is that investigator payment is handled through the court or a quasi-judicial public defense administrator or agency.

Investigation Rates

For 2008, the overall rate of investigation has been 30%. The rate of investigation is down approximately 5% from last year. Despite the overall decrease, most defenders appear to make appropriate use of investigators on their cases.

Two defenders, however, rarely employ investigators, requesting investigation in only 11 out of 112 cases assigned to them. They investigate 8% and 11% of their cases respectively. This level of investigation is unacceptable and raises serious questions about the quality of the representation these defenders provide. A third defender has requested investigation in only 19% of cases which I also consider low. By comparison, the range for the remaining five defenders was 31% to 57%. I have asked Supervising Attorney Alan White to again meet with the defenders with low rates of investigation to ascertain the reasons for their failure to investigate more cases and to stress the importance of investigation.

Experts

The Settlement Agreement requires that public defenders request experts via *ex parte* motion and that the records relating to experts be sealed. The Settlement Agreement further specifically provides that “[u]nder no circumstances may members of the Grant County Prosecuting Attorney’s Office be given access to motions for the appointment of experts or to invoices submitted by experts to the County for payment.”

In reviewing court files during the second quarter, I found three cases in which Grant County public defenders sought experts. In one case, the documents relating to the expert were appropriately sealed in the court file, and as a result, I was unable to learn anything about the expert in that case. In the two other cases, however, defenders did not properly seal their expert pleadings.

In the first instance, the defender did request that the expert papers be sealed in the court file. The problem appears to have been a procedural one. The defender submitted a motion and order to seal but failed to identify the documents to be sealed with sufficient specificity. As a result, although the court signed the order to seal, it was not clear to the clerk’s office which documents were to be sealed. An order to seal must contain the exact title of the document(s) to be sealed and must be clearly be marked in the caption with the phrase “[CLERK’S ACTION REQUIRED].” Because the order to seal in this case was carelessly drafted, confidential information about the client’s defense is available to anyone who reviews the public court file.

In the second instance, the defense filed what was termed an “*Ex Parte* Motion for Formal Examination of Defendant’s Mental Condition.” Neither the motion nor the resulting order was sealed. It appears that no motion to seal was ever filed. The request itself is confusing because it appears that rather than appointment of an expert, the defense was actually requesting that the defendant be evaluated by Eastern State Hospital. Although the motion is identified as *ex parte*, the prosecutor seems to have had notice of the motion as he signed the resulting order. The declaration in support of the motion indicates that the defendant was having hallucinations, identifies the medication he had been taking, and relates that the defendant had previously been diagnosed as a “borderline sociopath.” The declaration itself states that the attorney had permission to disclose these facts, but presumably the client’s authorization was limited to only those disclosures necessary for his defense. The defense attorney should have sought to submit this declaration under seal or make oral representations in camera. Moreover, I cannot imagine a scenario in which a diagnosis of “borderline sociopath” could possibly be helpful to the defense. Because no effort was made to protect the client’s private medical information, the details of his mental health issues are now part of the public record.

Motions Practice

In reviewing court files, I again found several written motions filed by the defenders, though not as many as I found last quarter. I reviewed two suppression motions, a motion to compel discovery, and a motion to reduce bond. The suppression motions could have been better tailored to the individual cases. The motion to compel discovery was very basic, but the issues involved did not call for anything more. Finally, I was pleasantly surprised to find a written bond motion as that is fairly unusual to see in a public defense case.

To improve their motions practice, the defenders need to file motions more often and do so earlier in the case. I routinely see legal issues that could form the basis for strong suppression or Knapstad motions but are never formally raised. Perhaps the defenders simply aren’t recognizing the issues, but the problem is more likely one of approach. With a motions hearing typically set shortly before trial, the defenders rarely file written briefs early in the case and almost never prior to the pre-trial hearing at which most cases are resolved. As a result, many defendants plead guilty before their motions can be litigated, particularly defendants who have the opportunity to be released from custody. The defenders may not be able to persuade many clients to stay in jail an extra week or two to argue a potentially winning motion, but they can improve their negotiating posture by simply filing a brief. Filing a brief, a substantive brief tailored to the case, not a generic throw-away brief, tells the prosecutor that the defense is serious about the motion. Even if the defense attorney knows he or she will never have the opportunity to argue the motion, the prosecutor does not. As a result, the prosecutor must at least consider the possibility that the defendant actually intends to pursue the motion, could win it, and in any case will cost the prosecutor valuable time and effort that could be better spent on other cases.

Overall Quality of Representation

The quality of representation provided to indigent defendants in Grant County remains inconsistent. Overall quality has improved but there are still vast differences in the representation provided from defender to defender and from case to case.

First and foremost, some of the Grant County defenders need to focus on the basics. Visit clients. Investigate cases. File motions. Some defenders do seem to appreciate the importance of these tasks. Others seem stuck in a mindset more appropriate to misdemeanor level practice where overwhelming caseloads often force public defenders to deal with cases on the fly.

There are, however, signs of progress. The most promising indicator of improved representation in Grant County is the trial rate. The Grant County public defenders had 5 jury trials in the second quarter. For the year, the defenders have already had 11 trials, surpassing the total for all of 2007. Five of the current defenders have gone to trial so far this year, two defenders who returned from last year and three who are new to the program. I am extremely pleased that the defenders are going to trial more frequently than in the past and hope that the trend continues. More than anything else, a willingness to fight for clients by going to trial when appropriate tends to raise the defender's level of practice, helps to compensate for any inadequacies that may exist in other areas, and eventually improves outcomes for all clients.

As in previous quarters, I had concerns about the quality of representation provided in a number of specific cases I reviewed. In one such case, a 51 year old man with no felony history was charged with Forgery, based on his possession of a forged Permanent Resident Card, and two misdemeanors. The court file in this matter revealed a host of problems. The statement of probable cause contained several potential suppression issues that were never raised. The defendant, who had no formal education and needed an interpreter to understand the proceedings against him, ultimately pled guilty as charged to his first felony. During his 32 days in custody, his attorney had never bothered to visit him in jail, never requested an investigator. Indeed, court records suggest that the assigned attorney paid little attention to the case. The attorney not only pled him guilty to the felony but also to both misdemeanors, including one that was actually dismissed at sentencing. The plea form contained no recommendation at all from the prosecutor. The space for the prosecutor's recommendation was blank. At the time he pled guilty, the defendant's motions hearing was only ten days away. The defendant had an immigration hold and was thus unlikely to be released upon pleading guilty regardless of the sentence imposed. This defendant had very little to lose by going to trial.² Filing a suppression

² If the defendant had wanted to simply get the criminal case over with so that he could deal with his immigration issues, the defense attorney should have noted a motion for change of plea much earlier in the case. Perhaps if he had visited the client at some point, that is precisely what would have occurred. Regardless of whether this should have been an early guilty plea or a trial, this client was not well served by his public defender's decision to do little to nothing on the case except show up for court.

motion and/or threatening trial may very well have resulted in a misdemeanor offer. If not, this case should have gone to trial.

In addition, I found several other cases in which defendants pled guilty to felony charges even though the cases against them were weak or overcharged, and they had nothing to lose by going to trial or at least threatening to do so. In one case, the defendant entered a guilty plea to a felony six days after being assigned counsel. His sentencing range was 2-5 months, and he was sentenced to 3.5 months. The case was weak, and had he waited, it seems very likely that the defendant would have received a misdemeanor offer. If not, the case should have gone to trial. In another case, the facts presented in the statement of probable cause to support a drug possession charge were likely insufficient to survive a Knapstad motion. The defendant pled guilty to the felony and received a 7 month sentence. No motion was ever filed. The case should have been dismissed, resolved as a misdemeanor, or taken to trial.

Despite my misgivings about the cases described above, the improved trial rate for Grant County defenders is a very positive sign. I hope that the defenders will continue to embrace a more aggressive style of representation, including both frequent trials and an active motions practice.

Supervising Attorney

The Settlement Agreement requires the Monitor to oversee and evaluate the performance of the Supervising Attorney. While I still have reservations about Mr. White's managerial skills, overall, I continue to be satisfied with his performance as Supervising Attorney. He is very well-liked, a good administrator, and is generally available to and supportive of the defenders he supervises. Moreover, he is always receptive to constructive criticism and seems eager to improve as a supervisor.

Mr. White's primary weaknesses relate to monitoring attorney performance and enforcing discipline. At the start of the year and again after the first quarter, I identified several recurring problems in the defender program and asked Mr. White to make addressing these issues a priority. More specifically, I asked Mr. White to monitor attorney performance on jail visits, investigation, and motions practice, and to take steps to correct any deficiencies he discovered. My goal was to give Mr. White clear notice as to the criteria I would be using to evaluate him.

Over the last two quarters, I have been disappointed in Mr. White's efforts to address these persistent problems. He has good intentions, but so far, his follow through has been lacking. He has not monitored attorney performance in any systematic way and does not have a good sense of which attorneys are visiting clients, investigating cases, and filing motions and which are not. This must change. The Supervising Attorney should know the quality of representation being provided by his defenders. He should know their strengths and weaknesses and work to help them improve their practices.

In the future, I hope that Mr. White will take a more proactive and systematic approach to evaluating attorney performance. I have discussed with him a number of specific ideas about how this can be accomplished, and I am optimistic that he will devote more attention to these issues in the third quarter. The County recently hired a separate supervisor for juvenile and district court, allowing Mr. White to focus his efforts exclusively on the Superior Court defender program. This change in responsibilities is a very positive development and should allow Mr. White more time to mentor defenders as well as monitor the problem areas described above.

Client Complaints

Alan White maintains a toll-free telephone line for client complaints. Instructions on how to contact Mr. White to make a complaint are posted in several locations at the jail and included in a flyer distributed to out-of-custody defendants at arraignment. Calls to the complaint line are logged by Mr. White's assistant and referred to Mr. White or the assigned defender for follow-up. Many calls to the complaint line are not complaints at all. Defendants often call with requests for information or messages for their assigned attorneys. When complaints are more substantive, Mr. White investigates the matter, including visiting the defendant at the jail if necessary, and occasionally writes formal reports to the County detailing the results of his investigation.

The County has had ongoing problems with the complaint line due to the configuration of the jail phone system. Those issues now appear to have been resolved. In the fourth quarter of 2007, there were 143 calls to County complaint line in which inmates were unable to leave a message or even their names. In the first quarter of this year, the number of such calls was down to 47 as the County made adjustments to the jail phone system mid-quarter. This quarter, these calls were eliminated completely.

During the second quarter, calls to the complaint line generally fell into the following categories:

<u># Calls</u>	<u>Nature of call</u>
19	Trying to contact attorney/request for attorney contact information
14	Request to speak with Alan White/Alan White took call
9	Request for name of assigned attorney
9	Substantive Complaint
8	Request for attorney contact/visit
5	Request for a new attorney
5	Message for assigned attorney
5	Question about case

Some of the calls fell into more than one category. For example, 4 of the callers with substantive complaints also requested a new attorney. In addition, many clients called more than once with the same or similar complaints. As a result, the figures above should be used only to understand the types of calls received and not as a measure of

client satisfaction. Overall, the number of dissatisfied clients appears to have been relatively small in the second quarter.

The one caveat to this assessment is that when clients do complain about their representation, the current system does not adequately track the precise nature of the complaint or how it was resolved. For calls to Alan White, the complaint log rarely reflects the substance of the client's concern. Mr. White usually speaks to the client directly either by phone or in person at the jail. It would be helpful to have more details about these calls. Similarly, the calls raising substantive complaints about the representation as well as calls with requests for a new attorney are often recorded as vague statements like "[Attorney X] is not doing what he can" or "[Attorney Y] lied to him." Again, it would be helpful if some more detailed record were kept of the nature of the complaint.

Conflicts of Interest

The Settlement Agreement requires both the Supervising Attorney and each defender to have a conflicts-check system. These procedures must be approved by the Monitor. Alan White recently submitted his conflicts check system along with that of several of the defenders for my approval. I have not yet had the opportunity to review those conflicts check procedures.

Conclusion

In my last report, I concluded by writing:

In the next quarter, I hope to see substantial improvement with respect to jail visits, greater use of investigation by some defenders, and more defenders bringing motions and going to trial.

The progress I had hoped for simply did not materialize this quarter. Nonetheless, I remain optimistic that performance will improve in the coming months.