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Lancaster County Public Defender Workload Assessment July 2008

**Elizabeth Neeley, PhD
University of Nebraska Public Policy Center**



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EXECUTIVE SUMMARY

Workload

The Lancaster County Public Defender's Office was short approximately 3.48 attorneys in 2007.

- The greatest deficit is in the felony division (1.93 FTE), followed by the misdemeanor division (.90). The juvenile division is short approximately one half an attorney (.53 FTE), and the civil division is short .12 FTE.

This deficit can be addressed by:

- Adequately staffing the office;
OR
- Giving the office less work by:
 - Establishing Caseload Standards. Cases surpassing the recommended caseload standards should be appointed to privately assigned counsel.
 - Reassessing crimes which receive jail time (rethinking the crimes for which the Lancaster County Public Defender office could be appointed) and expanding juvenile diversion opportunities.

Caseloads

Based on attorney availability and case weights that have been tested for statistical reliability over time for the current level of staffing (10 felony attorneys, 3 county misdemeanor attorneys, 1 city misdemeanor attorney, 3 juvenile attorneys, and 1 civil attorney) the Lancaster County Public Defender Office should adopt the following Annual Caseload Standards: 1,230 felony cases (approximately 1,007 core felonies and 223 ancillary felonies); 1,562 county filed misdemeanor cases; 1,349 city filed misdemeanor cases; 1,128 juvenile cases; and 859 civil cases.

Impact

Public defenders indicate that they do not have *sufficient and reasonable* time to devote to performing many of the essential functions of effective representation. Their qualitative descriptions of time constraints indicate a negative impact on the quality of services they can provide, their professional development, and their quality of life.

Staff

Comparisons of paralegal and support staff indicate differences between prosecutors and defense attorney resources. In accordance with the *Ten Principles of a Public Defense Delivery System*, there should be "parity between defense counsel and the prosecution with respect to resources."

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¹ Because of concerns with separation of powers issues, Judge Nelson chose not to take a position on the recommendations in this report one way or the other.

I. INTRODUCTION

Just outcomes in the criminal justice system require capable counsel for both the state and the defendant. As caseloads rise, attorneys can and do work faster. However, there ultimately is a cost: Rising caseloads ultimately mean attorneys will spend less time on each case. Spending less time will inevitably have an adverse impact on defendants and the legal system, in terms of just outcomes for defendants and in defendant and public perceptions of fairness and their confidence in the judicial system. At some point, there is a question of whether ethical and/or constitutional provisions are being violated.

The number of felony, misdemeanor, and juvenile cases assigned to the Lancaster County Public Defender has increased substantially over the past five years while the number of attorneys has not kept pace (See Table 1).² Between 2003 and 2007, there was a 14% increase in the number of new felonies, a 56% increase in the number of new misdemeanor cases and a 14% increase in the number of new juvenile cases.

Table 1: Lancaster County Public Defender Cases Over Time

	2003	2004	2005	2006	2007	% Increase
Felonies	1383	1427	1526	1510	1577	14%
Misdemeanors	2749	3157	3551	4101	4291	56%
Juvenile Cases	1331	1467	1417	1520	1517	14%

The problem of increasing caseloads is a nationwide issue, and as a recent ethics opinion issued by the American Bar Association indicates, simply asking attorneys to shoulder larger caseloads without being able to spend appropriate time with clients is not acceptable (see Appendix A).³ It is, therefore, important to assess caseloads to make sure that attorney workload does not undermine the delivery of quality services to the clients they represent. However, simply because more cases come before a legal office is not, in and of itself, evidence that attorneys' caseloads are too large. What needs to be determined is whether the caseload is appropriate in light of the complexity of the caseload.

The challenge for the Lancaster County Public Defender's Office is to provide attorneys sufficient time to meaningfully meet constitutional guarantees for effective assistance of counsel. The present assessment provides two distinct products. First, the assessment provides a measure of workload for the Lancaster County Public Defender Office. This will serve as a template for assessing current (and future) caseloads and provide a sound and methodologically consistent basis to determine resource needs. The second product of the assessment is a set of recommended caseload standards, designed to ensure that attorneys have sufficient time to meet constitutional guarantees for effective assistance of counsel.

² A half attorney position was added to the felony division in 2006. At that time, Lancaster County Public Defender Dennis R. Keefe advised the County Commissioners that, based upon the continuing increase in felony cases, they should expect to add an attorney position to the felony division approximately every three years.

³ American Bar Association: Standing Committee on Ethics and Professional Responsibility. (May, 2006). "Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation." *Formal Opinion 06-441*.

This study was based on Public Defender Workload Assessments conducted by the National Center for State Courts.⁴ This assessment included a time study of the Lancaster County Public Defender's workload (Section II) and established caseload standards for the Lancaster County Public Defender Office (Section III). A time sufficiency survey and focus group discussions with public defense attorneys were also conducted to provide context for interpreting raw numbers and caseload recommendations (Section IV). The research project had oversight by an Advisory Committee consisting of members of the Lancaster County Indigent Defense Advisory Committee, the Lancaster County Chief Administrative Officer, and Lancaster County judges from the district, county, and juvenile courts.

⁴ Ostrom, Brian, Matthew Kleiman, and Christopher Ryan. (2005). *Maryland Attorney and Staff Workload Assessment*. Williamsburg, VA: National Center for State Courts; Hall, Daniel. (June, 2007). *A Workload Assessment for the New Mexico Trial Court Judiciary, New Mexico District Attorneys' Offices, and the New Mexico Public Defender Department*. Williamsburg, VA: National Center for State Courts.

II. TIME STUDY OF THE LANCASTER COUNTY PUBLIC DEFENDER WORKLOAD

INTRODUCTION

According to the National Center for State Courts, a time study allows public defender offices to develop a set of initial case weights that are both reliable and a valid representation of current practice. Case weights are important to the study because they capture the reality that different types of cases require different amounts of time. Focusing on raw case counts without allowing for differences in the amount of work associated with each case type creates an opportunity for the misperception that equal numbers of cases opened for two different case types result in an equivalent amount of work.

Nationally, when public defender offices conduct workload assessments they are typically required, for several months, to keep track of the time they spend on each type of case, in order to estimate annual workload. For over twenty years, the Lancaster County Public Defender's Office has required its attorneys to track the time spent on each case. These data can be used to indicate the average time spent by case type, across attorneys, and across years. The Lancaster County Public Defender's data, therefore, allows researchers to improve on the National Center for State Court's model in two important ways. First, the data allow a determination of whether the average time spent on cases in 2007 is statistically reliable over time (i.e., was the time spent on 2007 cases typical or significantly higher or lower than in previous years?). Second, and related, because recording time has been a typical practice for Lancaster County Public Defenders for over twenty years and because data were analyzed retroactively, there is confidence that behavior and recording practices were not altered because attorneys knew they were taking part in an assessment (this is one of the few criticisms of the National Center for State Courts' model).

Attorney workload was estimated by establishing and then comparing: 1) case weights: the average amount of time, by case type, an attorney needs to reasonably represent a client, and 2) attorney year values: the amount of time per year that a well-trained and efficient attorney has to do case-related work. An explanation of this process and the results are provided below.

CASE WEIGHT COMPONENTS

Case Types

The first step in the process is determining which types of cases should be examined. In order to capture the most accurate measure of workload, all case types for which the Lancaster County Public Defender tracks time were included in the analysis, but condensed into meaningful and statistically reliable categories. The seventeen case types that were examined are presented below in Table 2.

Table 2: Case Types

Case Types	Includes
Higher Court Appeals	Court of Appeals and Supreme Court
Higher Court Excessive Sentence	Court of Appeals and Supreme Court, Excessive Sentence
District Court Appeals	District Court Appeals: Excessive Sentence and Other
Felony Drug and Property	Felony Drug and Felony Property
Felony Violent and Other	Violent Felony and Other Felonies
Felony Sex	Felony Sex
Juvenile Drug Court	Juvenile Drug Court
Juvenile Cases	Law Violations, Status Offenses and Juvenile Reviews ⁵
Felony Death	First Degree Murder, Child Abuse resulting in Death, Second Degree Murder
Felony Serious I	Attempted First and Second Degree Murder
Felony Serious II	Kidnapping, Manslaughter
Mental Commitments	Mental Commitments and Mental Commitment Reviews
Child Support/Paternity	Child Support Contempt and Paternity
Misdemeanor City	Misdemeanors, City Attorney Filed
Misdemeanor County	Misdemeanors, County Attorney Filed
Miscellaneous	Interstate Compact, Fugitive from Justice, Represent a Witness, etc.
Post-Conviction Action	Review of Insanity Verdict, Felony Drug Court, Revocation of Probation

Case Weights

To obtain an accurate measure of workload, it is desirable to use the most recent year as the basis for developing case weights (calendar year 2007). Single sample t-tests were conducted for each case type to ensure that the average time spent per case in 2007 was not significantly different than in the past seven years.⁶ Again, case weights represent the average amount of time an attorney spends representing a client for certain types of cases. Case weights are presented in Table 3 below:

Table 3: 2007 Case Weights⁷

Case Types	Case Weight in Hours
Higher Court Appeals	29.1
Higher Court Excessive Sentence	5.9
District Court Appeals	4.1
Felony Drug and Property	11.2
Felony Violent and Other	13.5

⁵ Law Violation and Status offense cases are closed by the public defender's office at the first disposition. The office then opens a "Review" file to record activity between and during the six month (sometimes more often) review hearings in the juvenile court.

⁶ In instances where a case type was not filed in 2007 or when the average time spent on a case in 2007 was significantly different than the previous years, the next statistically reliable year available was used (e.g., 2006).

⁷ A case weight was not established for capital cases. In the event that the Lancaster County Public Defender Office is appointed to a capital case, "the workload of attorneys representing defendants in death penalty cases must be maintained at levels that enable counsel to provide high quality representation in accordance with existing law and evolving legal standards. This should specifically include the ability of counsel to devote full time effort to the case as circumstances will require. Counsel must not be assigned new case assignments that will interfere with this ability after accepting a capital case. See *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised 2004), Guideline 6.1 and 10.3." *American Council of Chief Defenders Statement on Caseloads and Workloads*, p 1).

Felony Sex	37.0
Juvenile Drug Court	14.3
Juvenile Cases	3.5
Felony Death	317.1
Felony Serious I	192.9
Felony Serious II	39.7
Mental Health Commitments	1.2
Child Support/Paternity	2.2
Misdemeanor City	1.1
Misdemeanor County	2.9
Miscellaneous	2.1
Post-Conviction Action	5.6

Weight for Conflict/Retained Other Counsel Cases

Some cases that are initially assigned to the Lancaster County Public Defender office are ultimately removed because of a conflict of interest or because the defendant hires a private attorney. In 2007, there were 1,271 conflict cases resulting in approximately 1,749.1 hours of work for the Lancaster County Public Defender's office. Table 4 below presents conflict weights by case types.

Table 4: Weights for Conflicts/Retained Counsel

Case Type	Weight for Conflicts/Retained Counsel
Appeals	1.5
Felony	2.6
Misdemeanor County	0.5
Misdemeanor City	0.3
Juvenile	2.5
Civil	2.1
Miscellaneous	0.5

ATTORNEY AVAILABILITY COMPONENTS

Attorney Year Value

The attorney year value represents the amount of time per year that attorneys have available to do case-related work. These values are developed by determining how many days per year attorneys have to handle cases. Each attorney starts with 260 days (52 weeks * 5 days per week). The average number (based on 2007 figures) of holidays (8), used vacation days (13), used sick days (7), used personal days (3), and used continuing legal education days (4), were deducted from the total for each attorney, resulting in an attorney year standard of 225 days per year per attorney (see Table 5).⁸

Table 5: Attorney Year Value

Total Days Per Year	364
Non-Working Days	
Weekends	104
Holidays	8
Personal Days	3
Vacation	13

⁸ In comparison, the attorney year value (working days per year) for the Maryland Public Defender Office was 216 days. The attorney year value for the New Mexico Public Defender Office was 233 working days per year.

Sick Leave	7
CLE	4
Total Working Days Per Year	225

Attorney Hours Value

The standard work day is 9 hours. One hour was deducted for lunch and breaks, leaving 8 total work hours per day.

Table 6: Attorney Work Hours Per Day

	Hours
Total Hours Per Day	9
Subtract Lunch and Breaks	-1
Total Work Hours Per Day=	8

The work day is divided into case-related and non-case-related blocks. This distinction gives recognition to the fact that not every minute of the day can be devoted to handling a case. Although attorney time available for case-related work will vary each day, the typical day will include the number of hours in the workday (8), minus time spent on basic non-case related events, such as staff meetings, administrative tasks, travel, and meeting with law clerks. Because the Lancaster County Public Defender's Office does not currently track non-case related time, this figure was based on attorneys' response to an online survey that is discussed in Section IV.

Table 7: Case Related and Non-Case Related Work Hours Per Day

	Hours
Total Work Hours Per Day	8
Case Related Work	7
Non-Case Related Work	1

As Table 7 shows, the Lancaster County Public Defender's Office reported only 1 hour per day of non-case related work. In comparison, the New Mexico Public Defender office reported 1.75 hours of non-case related work each day (of an 8 hour work day) and Maryland's Public Defender Office reported 1.5 hours of non-case related work each day (of an 8 hour work day).⁹ Coincidentally, the time sufficiency survey and focus group discussions reveal that at present, Lancaster County public defenders do not sense that they have sufficient and reasonable time for non-case related work (see page 13).

Supervision Weight

Three attorneys have supervisory duties for the Lancaster County Public Defender's office. Supervisors are expected to: review all closed case files for their division; periodically review the work in open files; determine when a conflict of interest occurs and when to file affidavits asking to be relieved of those appointments. Because their time supervising other attorneys is time that cannot be spent on cases, this is deducted from the total amount of available attorney time (225 available attorney days per year * 1.6 hours per day * 3 supervising attorneys= 1,080 hours).

⁹ *Supra* note 4.

RESULTS

The time study results indicate that the Lancaster County Public Defender's Office had a combined total of attorney availability of 27,270 hours (approximately 1,575 hours per attorney and 1,215 hours per supervising attorney)¹⁰ and a cumulative workload of 32,754 hours of work in 2007 (see calculations in Appendix B). This creates a difference in supply/demand of 5,483.69 hours, indicating that the Lancaster County Public Defender's Office was short 3.48 attorneys in 2007 ($5,483.69/1,575 = 3.48$ attorneys).

Where is the need for additional resources the greatest? Table 8 estimates the deficits by division. The greatest deficit is in the felony division (1.93 FTE), followed by the misdemeanor division (.90). The juvenile division is short approximately one half an attorney (.53 FTE) and the civil division is short .12 FTE.

Table 8: Deficits by Division

Division	Deficit
Felony	1.93
Misdemeanor County	.62
Misdemeanor City	.28
Juvenile	.53
Civil	.12
Total	3.48

OPTIONS

Given the fact that the Lancaster County Public Defender Office has significantly more work than current staffing levels allow, there are several options for rectifying the situation: 1) adequately staff the office; 2) give the office less work. There are two ways to address the latter option. One, the Lancaster County Public Defender office can establish caseload standards based on attorney availability and case weights that have been tested for statistical reliability over time for the current level of staffing (this is presented in Chapter III). Cases surpassing the recommended caseload standards should be appointed to privately assigned counsel. The second option is to take alternate steps to reduce the caseload. For example, one approach is to ask the Legislature and the Lincoln City Council to reassess the misdemeanor crimes that require incarceration, thereby triggering the right to court appointed counsel and to use caution in creating new crimes and reclassifying crimes, because there is an impact on the costs for county justice systems. For example, later in the report it is explained that in 2007 the Lancaster County Public Defender office opened 260 new felony cases that would not have been defined as felonies 5 years ago. In Juvenile Court, the Lancaster County Attorney could be encouraged to expand the use of diversion for juvenile offenders, especially second time offenders who are of low to moderate risk, and

¹⁰ The Spangenberg Group conducted a study of the Lancaster County Public Defender Office in 1991. Their calculation of available attorney time in 1991 was 1,664 hours per year compared to 1,575 hours per year for the present study. There are several factors that account for this difference. The Spangenberg Group's calculation utilized a similar number of annual attorney work days but their study assumed only approximately 30 minutes per day for non-case related work. Additionally, the Spangenberg Groups calculations did not differentiate between attorneys with supervisory duties and regular attorneys. See The Spangenberg Group. (March, 1991). *Study of the Current Operation of the Lancaster County Public Defender Office: Final Report*.

with programming that is affordable and involves interventions that are matched to the risk. This option was identified in the *Evaluation of the Lancaster County Juvenile Justice System*¹¹ which found that the “efficiency suffers in the current system when juveniles who are unlikely to persist in offending or who pose a manageable threat to community safety are prosecuted. Such cases unnecessarily tax the time and resources of the juvenile court, public defender, Guardian ad Litem, and possibly probation and OJS.”

¹¹ T. Hank Robinson. (September, 2007). *Evaluation of the Lancaster County Juvenile Justice System*. Juvenile Justice Institute.

III. ESTABLISHING LANCASTER COUNTY PUBLIC DEFENDER CASELOAD STANDARDS

INTRODUCTION

Caseload standards for public defender offices were originally developed by the National Advisory Commission on Criminal Justice Standards and Goals (NAC)¹² and were subsequently adopted by the American Bar Association, the National Legal Aid and Defender Association, and the American Council of Chief Defenders. These national standards recommend that a single, full-time attorney should handle no more than:

- 150 felonies per year
- 400 misdemeanors per year
- 200 juvenile cases per year

However, the American Council of Chief Defenders has “recognized that caseload standards should be carefully evaluated by individual public defender organizations, and consideration should be given to adjusting the caseload limits to account for the many variables which can affect local practice.” Indeed, the majority of states and jurisdictions that have conducted workload assessments have adopted caseload standards different than those proposed by the NAC (see Appendix C).

BUILDING CASELOAD STANDARDS

Caseload standards represent the maximum annual number of cases an attorney can carry if that attorney handles only that type of case. The number of cases per division is calculated by dividing the attorney year values by the case weight. The case weights provided on pages 4 and 5, however, do not include the amount of time spent on conflicts and cases where the client ultimately retained a private attorney. To adjust for this, the amount of hours consumed by conflict cases and those where private attorneys were retained was subtracted from attorneys’ available time. Then the remaining attorney year value was divided by the case weight. The calculations for each division are provided below.

Felony Division

Given the number of hours attorneys are available annually (15,030) minus the number of hours spent on conflict cases (990.5), the felony division has 14,039.5 combined hours to devote to case-related work. The felony division’s workload is divided into two categories: core felonies and ancillary felonies. Approximately 92.7% of all of the division’s work falls into the category of core felony work which includes the following types of cases: higher court appeals, drug felonies, property felonies, violent felonies, other felonies and sex felonies. The remaining work (7.3%) falls into the ancillary felony work category which includes the following case types: excessive sentence appeals, miscellaneous case types (such as fugitive from justice cases), post-conviction case types (such as felony drug court and revocations or probation). The case weight for core felony work is 12.9 hours. The case

¹² National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, 1973, *Courts*. Washington, DC: National Advisory Commission, 186.

weight for ancillary felony work is 4.7 hours. The remaining attorney availability divided by the felony case weights means that the felony division has enough time for approximately 1,230 cases per year (1,007 core felony cases and 223 ancillary felony cases).

Table 9: Caseload Standards for the Felony Division

Felony Division	Total	Core Felony	Ancillary Felony
Attorney Availability (8 non-supervisory attorneys + 2 supervisory attorneys)	15,530.0		
Average Time on Conflicts	990.5	954	36
Remaining Attorney Availability	14,039.5	12,991	1,048.5
Combined Case Weight for Felonies		12.9	4.7
Annual Caseload Given Available Time	1,230	1007	223

County Misdemeanor Division

Given the number of hours attorneys are available annually (4,725) minus the number of hours spent on conflict cases (195), the county misdemeanor division has 4,530 combined hours to devote to case-related work. The case weight for county filed misdemeanor cases is 2.9 hours. The remaining attorney availability (4530 hours) divided by the county misdemeanor case weight (2.9 hours) means that the county misdemeanor division has enough time for approximately 1,562.1 cases per year (this does not include cases that are closed for conflict or when private counsel is retained).

Table 10: Caseload Standard for the County Misdemeanor Division

County Misdemeanor Division	
Attorney Availability	4725.0 (3 non-supervisory attorneys * 1575 hours)
Average Time on Conflicts	195.0 hours
Remaining Attorney Availability	4530.0 hours
Case Weight for County Misdemeanors	2.9 hours
Annual Caseload Given Available Time	1562.1 cases for the entire division

City Misdemeanor Division

Given the number of hours attorneys are available annually (1,575) minus the number of hours spent on conflict cases (91.5), the city misdemeanor division has 1483.5 hours to devote to case-related work. The case weight for city filed misdemeanor cases is 1.1 hours. The remaining attorney availability (1,483.5 hours) divided by the city misdemeanor case weight (1.1 hours) means that the city misdemeanor division has enough time for approximately 1,349 cases per year (this does not include cases that are closed for conflict or when private counsel is retained).

Table 11: Caseload Standard for the City Misdemeanor Division

City Misdemeanor Division	
Attorney Availability	1575.0 (1 non-supervisory attorney * 1575 hours)
Average Time on Conflicts	91.5 hours
Remaining Attorney Availability	1483.5 hours
Case Weight for City Misdemeanors	1.1 hours
Annual Caseload Given Available Time	1349 cases for the entire division

Juvenile Division

Given the number of hours attorneys are available annually (4,365) minus the number of hours spent on conflict cases (417.5), the juvenile division has 3,947.5 combined hours to devote to case-related work. The case weight for juvenile cases is 3.6 hours (this includes law violation, status offenses, juvenile review and juvenile drug court cases). The remaining attorney availability (3,947.5 hours) divided by the juvenile case weight (3.5 hours) means that the juvenile division has enough time for approximately 1,128 cases per year (this does not include cases that are closed for conflict or when private counsel is retained).¹³

Table 12: Caseload Standard for the Juvenile Division

Juvenile Division	
Attorney Availability	4365.0 hours (2 non-supervisory attorneys + 1 supervisory attorneys)
Average Time on Conflicts	417.5 hours
Remaining Attorney Availability	3947.5 hours
Combined Case Weight for Juvenile Cases	3.5 hours
Annual Caseload Given Available Time	1128 cases for the entire division

Civil Division

Given the number of hours attorneys are available annually (1,575) minus the number of hours spent on conflict cases (54.60), the civil division has 1,520.4 hours to devote to case-related work. The case weight for civil cases is 1.8 hours (this includes paternity, child support, mental health and mental health review cases). The remaining attorney availability (1,520.4 hours) divided by the civil case weight (1.8 hours) means that the civil division has enough time for approximately 859 cases per year (this does not include cases that are closed for conflict or when private counsel is retained).

Table 13: Caseload Standard for the Civil Division

Civil Division	
Attorney Availability	1575.0 hours (1 non-supervisory attorney *1575 hours)
Average Time on Conflicts	54.60 hours
Remaining Attorney Availability	1520.4 hours
Case Weight for Civil Cases	1.8 hours
Annual Caseload Given Available Time	859 cases for the entire division

CONCLUSIONS

Based on attorney availability and case weights that have been tested for statistical reliability over time, Table 14 presents the recommended caseload standards for the Lancaster County Public Defender Office given their current level of staffing (10 felony attorneys, 3 county misdemeanor attorneys, 1 city misdemeanor attorney, 3 juvenile attorneys, and 1 civil attorney). If additional staff is allocated to address the 3.48 deficit in attorney resources, caseload limits would increase.¹⁴

¹³ In meetings with the Advisory Committee, it was noted that in June of 2008, the Lancaster County Juvenile Court Judges decided not to automatically appoint counsel for status offenses cases. This policy change will likely have a slight impact on reducing the juvenile public defender caseloads.

¹⁴ This can be modeled, depending on where attorney resources are allocated.

**Table 14: Recommended Annual Division Caseloads
for the Lancaster County Public Defender Office**

Case Types	Division Caseloads
Core Felony	1007
Ancillary Felony	223
County Misdemeanor	1562
City Misdemeanor	1349
Juvenile	1128
Civil	859

How do the current caseloads compare to the recommended guidelines? Table 15 presents the difference between the 2007 division caseloads and the recommended caseloads. The felony division would have 117 fewer core felony cases and 49 fewer ancillary felony cases. The misdemeanor division would have 311 fewer county filed misdemeanors and 390 fewer city filed misdemeanors. The juvenile division would have 186 fewer cases and the civil division would have 118 fewer cases.

Table 15: 2007 Caseloads vs. LCPD Recommended Standards

Division	LCPD 2007 Closed Cases by Division	LCPD Recommended Standards	Difference
Core Felony	1124	1007	117
Ancillary Felony	272	223	49
County Misdemeanor	1873	1562	311
City Misdemeanor	1739	1349	390
Juvenile	1314	1128	186
Civil	977	859	118

The following table provides caseload guidelines for the Lancaster County Public Defender in disseminating workload to each attorney by division. It should be noted that the Lancaster County Public Defender will utilize discretion (relying on caseload statistics) to make any necessary adjustments to individual attorney caseload. For example, an individual caseload would need to be decreased if an attorney were appointed to a serious felony case such as a homicide.

Table 16: Recommended Annual Caseload Guidelines Per Attorney

Division	Caseload Standards for Attorneys	Supervising Attorneys
Felony	127	108
County Misdemeanor	521	
City Misdemeanor	1349	
Juvenile	395	338
Civil	859	

IV. INPUT FROM LANCASTER COUNTY PUBLIC DEFENDERS

INTRODUCTION

A time sufficiency survey, based on the survey used by the National Center for State Courts for public defender workload assessments, was conducted (see Appendix D). The survey was revised to more accurately reflect the practice of law in the Lancaster County Public Defender office with input from the supervising defenders and the Advisory Committee. The primary purpose of this survey was to determine whether the time currently available to attorneys is sufficient to handle the specific activities and functions essential to providing effective representation. Attorneys were asked to evaluate whether they *have sufficient time to perform tasks in a reasonable and satisfactory way*. Responses were offered using the following scale: almost never (1); seldom (2); 50% of the time (3); frequently (4); almost always (5); or not applicable/not my job (6). Each of the tasks represents activities associated with quality representation. An average response score was determined for each task. Because providing effective assistance of counsel requires that attorneys have sufficient time to conduct these tasks, average response scores of less than 4.0 were used to identify areas that attorney feel they *almost never, seldom, or only half of the time* have enough time to complete in a reasonable and satisfactory way.

In addition, focus groups with public defenders (by division) were conducted. The first purpose for conducting the focus groups was to share with defenders some of the preliminary figures and obtain their reaction and explanations to the data obtained and conclusions drawn. The second purpose was to provide public defenders with the opportunity to discuss other factors (internal and external) that affect the practice of law and efficient management of their caseload.

SURVEY RESULTS

The surveys indicated the attorneys felt that they do not have sufficient time to represent their clients (see Table 17).

**Table 17: Sufficient Time to Reasonably and Satisfactorily
Perform Essential Functions of Effective Representation (N=17)**

Functional Areas for Effective Representation	Mean Score on Scale of 1-5
Bail Review Detention Hearings	3.68
General Preparation	3.92
Client Contact	3.45
Investigation and Discovery	3.13
Legal Research	2.90
Pretrial Hearings	3.80
Exploring Disposition w/o trial	4.06
Trial/Contested Adjudication	3.50
Post disposition hearings	3.08
Sentencing Disposition	2.81
Post trial Activities	2.81
Non-Case Related Activities	2.02

Four areas received scores of less than 3, indicating that attorneys are able to perform these tasks in a reasonable and sufficient way less than 50% of the time. Seven areas received scores between 3 and 4, indicating that attorneys are able to perform these tasks in a reasonable and sufficient way more than 50% of the time. Only one area received a mean score of more than 4, indicating that they frequently are able to devote reasonable and sufficient time to performing the tasks. Focus group discussions confirm that the areas with the lowest mean scores (e.g., client contact, non-case related activities, legal research, etc.) were the areas in which attorneys feel that they must cut effort in order to have time for more essential functions (see below).

QUALITATIVE PERCEPTIONS

To provide additional context into the time challenges faced by public defenders, perceptions and explanations from the on-line surveys and focus groups are provided below (in alphabetical order).¹⁵

External Factors

Attorneys were asked to explore what the external factors that might have led to the current situation of constrained time. Public defenders that have been in the office for several decades were able to provide a historical perspective. The following factors are among those cited by attorneys: Misdemeanor crimes are of higher consequence than they were years ago. Attorneys perceive that more juveniles and adults are being detained (pretrial). Court transitions have also affected the public defender's office. For example, the transition to the "country docket" (circa. 1999-2000) has impacted felony attorneys and the addition of a 4th juvenile court judge has made it difficult for the three juvenile attorneys to cover four courtrooms. Attorneys are also concerned about the impact of new legislation on their office for example, in 2007 the Lancaster County Public Defender office opened 260 new felony cases that would not have been defined as felonies 5 years ago.

Impact of Increased Caseload

Attorneys were asked to provide examples of the impact of the increased caseload. Attorneys responded that they very seldom have time to research, meet with clients, complete non-case related work or seek advice from other attorneys within the office on cases. Taking work home to complete it is an everyday and weekend occurrence. Other themes related to impact are presented below:

Impact on Clients

Throughout the focus groups and on-line survey, attorneys used the word "triage" to explain their situation: "One has to triage in order to survive and doing so means you focus on what has to be done first and constantly reorganize your priorities. Unfortunately, that also means that sometimes basic job duties are not preformed to the same level of excellence/minimal competence. You do the best you can with what you have."

Several attorneys recognize and lament the impact on clients: "Triage-that's it. [For example,] everyone is going to prepare for evidentiary hearings. Is there sufficient time to prepare as well as we'd like? No. You do what you can, with the limited time you have. At

¹⁵ Perceptions and explanations focusing on internal/management issues were presented to the Lancaster County Public Defender directly, rather than in this inquiry regarding caseload issues.

some point there must be recognition that the limited time we have is adversely impacting the representation our clients are receiving.” Or as another attorney elaborates: “I don't feel like there is adequate time in the day (and in the night - and I do take work home and do it) to get everything done the best I can. I feel like I am pushing paper and moving around half-assed, instead of addressing the legal issues/analyzing case law/trying to make a difference. I don't feel comfortable pushing cases through the system, but it sure feels like that's what I end up doing.”

Professional Development

Several attorneys noted the size of their caseload inhibits their professional development (e.g., they would like to learn how to use certain software applications or other technologies to improve their skills but do not have the time to invest in learning new things, keep up to date on Nebraska Supreme Court and Court of Appeals opinions, etc.). As one attorney explains, “As for CLE, we are able to clear off our calendars for CLE training but the work does not go away or get handled by someone else, it just means we come back from the CLE with twice as much to do, and must triage all the more.” Public defenders also compare their experience with the perception of opportunities available to their county attorney counterparts: “There is no extra time in the week for [our office] to learn new ways to visually present arguments. Due in large part to drug forfeiture money and free national level training provided to county prosecutors by the federal government, the county attorneys go to numerous seminars that allow them the opportunity to have hands on experiences with new technology.”

Public Trust and Confidence

Clients recognize the limited amount of time with their attorney and can sense the amount of time being spent on their case. As one attorney explained in the on-line survey, “There is absolutely no time to build any rapport with clients. As that time has eroded, the ability to keep a civil working relationship with the clients has been severely impacted. The time is simply not available to spend the time that I believe would help clients gain a satisfactory level of trust in our office.”

Quality of Life

Finally, several attorneys lamented the extent to which their work impacts their personal and family life. One attorney wrote, “I have the time to do my job because I make the time. That takes a significant toll on me and my family... I am gone from home for 12 hours a day every day.... I feel I am here too much and that this job takes a physical, emotional, and mental toll on me. I suspect others feel similarly.” Another noted, “I think what is lost in this type of survey is the impact this line of work has on the individual. This job tends to corrode the finer things of life. You become disillusioned, mean-spirited, unhealthy, and impatient. I am certain that working here is shortening my life span and having an impact on my physical and mental health. I lose sleep when I think of the impact my work will have on my clients.”

Attorneys explained the pressure within the office. If one person is absent, it creates a “cog in the wheel.” Because of this, some attorneys feel they can only take vacation time when their primary courtroom is closed.

Support Staff

In general, public defenders appreciate their support staff and sense that they too have high workloads: "Support staff do not have enough time to do their jobs, which trickles down to the paralegals and attorneys, and the backlog is ultimately the attorneys' problem-- going to court without a file/reports etc.... All staff would benefit from making sure the support staff have enough time/resources to do their work. There is no question that the support staff are working hard and efficiently."

A comparison of staff support of the Lancaster County Attorney Office, the Lincoln City Attorney Office, and the Lancaster County Public Defender Office (see Table 18) indicates disparities in staffing. While the Lancaster County Attorney Office has one paralegal for every 2.8 attorneys, the Lancaster County Public Defender Office has one paralegal for every 3.8 attorneys. The Lancaster County Attorney Office has one support staff for every 1.3 attorneys, compared to one support staff for every 1.66 attorneys in the City Attorneys Office, and one support staff for every 4.75 attorneys in the Lancaster County Public Defender Office. Overall, the ratio for support staff (including paralegals) for the Lancaster County Attorney Office is nearly 1:1, for the Lincoln City Attorney Office it is 1:1.5, and for the Lancaster County Public Defender Office it is 1:2.1.

Table 18: Comparisons of Paralegal and Other Staff Support

	County Attorney	City Attorney	Public Defender
Attorneys	31	15	19
Paralegals	11	1	5
Support Staff	23	9	4
Ratio of paralegals to attorneys	1 to 2.8	NA	1 to 3.8
Ratio of support staff to attorneys	1 to 1.3	1 to 1.66	1 to 4.75
Ratio of para/support to attorney	1 to 0.9	1 to 1.5	1 to 2.1

Legitimate arguments could be made that additional support staff is needed in the Lancaster County Attorney Office because of their additional obligation to collect child support. Even if child support staff, paralegals and attorneys are removed from the equation (see Table 19), the Lancaster County Public Defender has fewer support staff and paralegals available per attorney.

Table 19: Comparisons without Counting Child Support Attorneys and Staff

	County Attorney	City Attorney	Public Defender
Attorneys	29	15	18.5
Paralegals	4	1	4.5
Support Staff	12	9	4
Ratio of paralegals/support staff to attorney	1 to 1.8	1 to 1.5	1 to 2.2

CONCLUSIONS

Public defenders indicate that they do not have *sufficient and reasonable* time to devote to performing many of the essential functions of effective representation. Their qualitative descriptions of time constraints indicate a negative impact on the quality of services they can provide, their professional development, and their quality of life. Comparisons of paralegal and support staff indicate differences between prosecution and public defense resources.

VI. RECOMMENDATIONS

1. Lancaster County Public Defender annual caseloads should not exceed the recommendations provided in the table below. Cases surpassing the recommended caseload standards should be appointed to privately assigned counsel. These recommendations are based on attorney availability and case weights that have been tested for statistical reliability over time for the current level of staffing (10 felony attorneys, 3 county misdemeanor attorneys, 1 city misdemeanor attorney, 3 juvenile attorneys, and 1 civil attorney). If additional staff is allocated to address the 3.5 deficit in attorney resources, caseload limits would increase.¹⁶

Table 20: Recommend Annual Division Caseload Standards

Case Types	Division Caseloads
Core Felony	1007
Ancillary Felony	223
County Misdemeanor	1562
City Misdemeanor	1349
Juvenile	1128
Civil	859

The following table provides caseload guidelines for the Lancaster County Public Defender in disseminating workload to each attorney by division. It should be noted that the Lancaster County Public Defender will utilize discretion (relying on caseload statistics) to make any necessary adjustments to individual attorney caseload. For example, caseloads would be adjusted if an attorney were appointed to a serious felony case such as a homicide.

Table 21: Recommended Annual Attorney Caseload Guidelines

Division	Caseload Standards for Attorneys	Supervising Attorneys
Felony	127	108
County Misdemeanor	521	
City Misdemeanor	1349	
Juvenile	395	338
Civil	859	

2. In accordance with the *Ten Principles of a Public Defense Delivery System*, there should be “parity between defense counsel and the prosecution with respect to resources.” In this vein, **the Lancaster County Public Defender’s Office should have a comparable ratio of attorneys to support staff to that of the county attorney’s office.** It should be noted that if support staff for the Lancaster County Public Defenders office were increased this would affect the average time spent on cases (case weights) and caseload standards would increase (attorneys would be able to handle more cases).

3. The Advisory Committee encourages the Lancaster County Attorney to explore expanding the use of diversion for juvenile offenders, especially second time offenders who are of low to moderate risk, and with programming that is affordable and involves

¹⁶ This can be modeled, depending on where attorney resources are allocated.

interventions that are matched to the risk. This recommendation is consistent with the *Evaluation of the Lancaster County Juvenile Justice System*¹⁷ which found that that “efficiency suffers in the current system when juveniles who are unlikely to persist in offending or who pose a manageable threat to community safety are prosecuted. Such cases unnecessarily tax the time and resources of the juvenile court, public defender, Guardian ad Litem, and possibly probation and OJS.”

4. Finally, **the County Board should urge the City Council to review the city ordinances and the penalties provided under those ordinances.** It is possible that some of these minor crimes may not necessitate the appointment of counsel.

¹⁷ *Supra* note 11.

APPENDIX A

AMERICAN BAR ASSOCIATION

STANDING COMMITTEE ON ETHICS AND PROFESSIONAL RESPONSIBILITY

Formal Opinion 06-441

May 13, 2006

**Ethical Obligations of Lawyers Who Represent
Indigent Criminal Defendants When Excessive
Caseloads Interfere With Competent and Diligent Representation**

All lawyers, including public defenders and other lawyers who, under court appointment or government contract, represent indigent persons charged with criminal offenses, must provide competent and diligent representation. If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments. Once the lawyer is representing a client, the lawyer must move to withdraw from representation if she cannot provide competent and diligent representation. If the court denies the lawyer's motion to withdraw, and any available means of appealing such ruling is unsuccessful, the lawyer must continue with the representation while taking whatever steps are feasible to ensure that she will be able to competently and diligently represent the defendant.

Lawyer supervisors, including heads of public defenders' offices and those within such offices having intermediate managerial responsibilities, must make reasonable efforts to ensure that the other lawyers in the office conform to the Rules of Professional Conduct. To that end, lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by the individual lawyers.

In this opinion,¹ we consider the ethical responsibilities of lawyers, whether employed in the capacity of public defenders or otherwise, who represent indigent persons charged with criminal offenses, when the lawyers' workloads prevent them from providing competent and diligent representa-

1. This opinion is based on the Model Rules of Professional Conduct as amended by the ABA House of Delegates through August 2003. The laws, court rules, regulations, rules of professional conduct and opinions promulgated in the individual jurisdictions are controlling.

tion to all their clients. Excessive workloads present issues for both those who represent indigent defendants and the lawyers who supervise them.²

Ethical responsibilities of a public defender³ in regard to individual workload

Persons charged with crimes have a constitutional right to the effective assistance of counsel.⁴ Generally, if a person charged with a crime is unable to afford a lawyer, he is constitutionally entitled to have a lawyer appointed to represent him.⁵ The states have attempted to satisfy this constitutional mandate through various methods, such as establishment of public defender, court appointment, and contract systems.⁶ Because these systems have been created to provide representation for a virtually unlimited number of indigent criminal defendants, the lawyers employed to provide representation generally are limited in their ability to control the number of clients they are assigned. Measures have been adopted in some jurisdictions in attempts to control workloads,⁷ including the establishment of procedures for assigning cases to lawyers outside public defenders' offices when the cases could not properly be directed to a public defender, either because of a conflict of interest or for other reasons.

2. For additional discussion of the problems presented by excessive caseloads for public defenders, see "Gideon's Broken Promise: American's Continuing Quest For Equal Justice," prepared by the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants 29 (ABA 2004), available at <http://www.abanet.org/legal-services/sclaid/defender/brokenpromise/fullreport.pdf> (last visited June 21, 2006).

3. The term "public defender" as used here means both a lawyer employed in a public defender's office and any other lawyer who represents, pursuant to court appointment or government contract, indigent persons charged with criminal offenses.

4. U.S. CONST. amends. VI & XIV.

5. The United States Supreme Court has interpreted the Sixth Amendment to require the appointment of counsel in any state and federal criminal prosecution that, regardless of whether for a misdemeanor or felony, leads or may lead to imprisonment for any period of time. See generally, *Alabama v. Shelton*, 535 U.S. 654, 662 (2002); *Strickland v. Washington*, 466 U.S. 668, 684-86 (1984); *Scott v. Illinois*, 440 U.S. 367, 373-74 (1979); *Argersinger v. Hamlin*, 407 U.S. 25, 30-31 (1972); *Gideon v. Wainwright*, 372 U.S. 335, 342-45 (1963); *Johnson v. Zerbst*, 304 U.S. 458, 462-63 (1938).

6. Most states deliver indigent defense services using a public defender's office (eighteen states) or a combination of public defender, assigned counsel, and contract defender (another twenty-nine states), according to the Spangenberg Group, which developed a report on behalf of the ABA Standing Committee on Legal Aid and Indigent Defendants. See The Spangenberg Group, "Statewide Indigent Defense Systems: 2005," available at <http://www.abanet.org/legal-services/downloads/sclaid/indigentdefense/statewideinddef-systems2005.pdf> (last visited June 21, 2006).

7. See generally, National Symposium on Indigent Defense 2000, *Redefining Leadership for Equal Justice, A Conference Report* (U.S. Dep't of Justice, Bureau of Justice Assistance, Wash. D.C.) 3 (June 29-30, 2000), available at <http://www.ojp.usdoj.gov/indigentdefense/symposium.pdf> (last visited June 21, 2006) (common problem in indigent defense delivery systems is that "lawyers often have unmanageable caseloads (700 or more in a year)").

Model Rules of Professional Conduct 1.1, 1.2(a), 1.3, and 1.4 require lawyers to provide competent representation, abide by certain client decisions, exercise diligence, and communicate with the client concerning the subject of representation.⁸ These obligations include, but are not limited to, the responsibilities to keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; communicate effectively on behalf of and with clients; control workload so each matter can be handled competently; and, if a lawyer is not experienced with or knowledgeable about a specific area of the law, either associate with counsel who is knowledgeable in the area or educate herself about the area. The Rules provide no exception for lawyers who represent indigent persons charged with crimes.⁹

8. Rule 1.1(a) provides that “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

Rule 1.2(a) states:

[A] lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Rule 1.3 states that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.”

Rule 1.4(a) and (b) states:

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client’s informed consent, as defined in Rule 1.0(e), is required by these Rules;
(2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

9. See ABA Formal Opinion Op. 347 (Dec. 1, 1981) (Ethical Obligations of Lawyers to Clients of Legal Services Offices When Those Offices Lose Funding), in *FORMAL AND INFORMAL ETHICS OPINIONS, FORMAL OPINIONS 316-348, INFORMAL OPINIONS 1285-1495* at 139 (ABA 1985) (duties owed to existing clients include duty of adequate preparation and a duty of competent representation); ABA Informal Op. 1359 (June 4, 1976) (Use of Waiting Lists or Priorities by Legal Service Officer), *id.* at 237 (same); ABA Informal Op. 1428 (Sept. 12, 1979) (Lawyer-Client Relationship Between the Individual and Legal Services Office: Duty of Office Toward Client When Attorney Representing Him (Her) Leaves the Office and Withdraws from the Case), *id.* at 326 (all lawyers, including legal services lawyers, are subject to mandatory duties owed by lawyers to existing clients, including duty of adequate preparation

Comment 2 to Rule 1.3 states that a lawyer's workload "must be controlled so that each matter may be handled competently."¹⁰ The Rules do not prescribe a formula to be used in determining whether a particular workload is excessive. National standards as to numerical caseload limits have been cited by the American Bar Association.¹¹ Although such standards may be considered, they are not the sole factor in determining if a workload is excessive. Such a determination depends not only on the number of cases, but also on such factors as case complexity, the availability of support services, the lawyer's experience and ability, and the lawyer's nonrepresentational duties.¹² If a lawyer believes that her workload is such that she is unable to meet the basic ethical obligations required of her in the representation of a client, she must not continue the representation of that client or, if representation has not yet begun, she must decline the representation.¹³

A lawyer's primary ethical duty is owed to existing clients.¹⁴ Therefore, a

and competent representation). *See also* South Carolina Bar Ethics Adv. Op. 04-12 (Nov. 12, 2004) (all lawyers, including public defenders, have ethical obligation not to undertake caseload that leads to violation of professional conduct rules).

The applicability of Rules 1.1, 1.3, and 1.4 to public defenders and/or prosecutors has been recognized by ethics advisory committees in at least one other state. *See* Va. Legal Eth. Op. 1798 (Aug. 3, 2004) (duties of competence and diligence contained within rules of professional conduct apply equally to all lawyers, including prosecutors).

10. Principle 5 of *The Ten Principles of a Public Defense Delivery System* specifically addresses the workload of criminal defense lawyers:

Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.

Report to the ABA House of Delegates No. 107 (adopted Feb. 5, 2002), *available at* <http://www.abanet.org/legalservices/downloads/sclaid/10principles.pdf> (last visited June 21, 2006) (emphasis in original).

11. *Id.*

12. *Id.* *See also* Attorney Grievance Comm'n of Maryland v. Ficker, 706 A.2d 1045, 1051-52 (1998) (supervising lawyer violated Rule 5.1 by assigning too many cases to supervised lawyer, assigning cases day before trial, and assigning cases too complex for supervised lawyer's level of experience and ability).

13. Rule 1.16(a) states that "a lawyer shall not represent a client or, where representation has begun, shall withdraw from the representation of a client if the representation will result in violation of the Model Rules of Professional Conduct or other law."

14. *See* ABA Formal Opinion Op. 96-399 (Jan. 18, 1996) (Ethical Obligations of Lawyers Whose Employers Receive Funds from the Legal Services Corporation to their Existing and Future Clients When Such Funding is Reduced and When Remaining Funding is Subject to Restrictive Conditions), in *FORMAL AND INFORMAL ETHICS OPINIONS 1983-1998* at 369 (ABA 2000); ABA Formal Opinion Op. 347, *supra* note 9.

lawyer must decline to accept new cases, rather than withdraw from existing cases, if the acceptance of a new case will result in her workload becoming excessive. When an existing workload does become excessive, the lawyer must reduce it to the extent that what remains to be done can be handled in full compliance with the Rules.

When a lawyer receives appointments directly from the court rather than as a member of a public defender's office or law firm that receives the appointment, she should take appropriate action if she believes that her workload will become, or already is, excessive. Such action may include the following:

- requesting that the court refrain from assigning the lawyer any new cases until such time as the lawyer's existing caseload has been reduced to a level that she is able to accept new cases and provide competent legal representation; and
- if the excessive workload cannot be resolved simply through the court's not assigning new cases, the lawyer should file a motion with the trial court requesting permission to withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients.¹⁵

If the lawyer has sought court permission to withdraw from the representation and that permission has been denied, the lawyer must take all feasible steps to assure that the client receives competent representation.

When a lawyer receives appointments as a member of a public defender's office or law firm, the appropriate action to be taken by the lawyer to reduce an excessive workload might include, with approval of the lawyer's supervisor:

- transferring non-representational responsibilities within the office, including managerial responsibilities, to others;
- refusing new cases;¹⁶ and
- transferring current case(s) to another lawyer whose workload will allow for the transfer of the case(s).¹⁷

15. Whenever a lawyer seeks to withdraw from a representation the client should be notified, even if court rules do not require such notification. See Rule 1.4.

16. It should be noted that a public defender's attempt to avoid appointment or to withdraw from a case must be based on valid legal grounds. Rule 6.2(a) provides, in pertinent part, that "[a] lawyer *shall not seek to avoid* appointment by a tribunal to represent a person *except for good cause*, such as representing the client is likely to result in violation of the Rules of Professional Conduct or other law." (Emphasis added). Therefore, a public defender should not claim an excessive workload in an attempt to avoid new cases or to withdraw from current cases unless good cause objectively exists.

17. It is important to note that, for purposes of the Model Rules, a public defender's office, much like a legal services office, is considered to be the equivalent of a law firm. See Rule 1.0(c). Unless a court specifically names an individual lawyer within a public defender's office to represent an indigent defendant, the public defender's office should be considered as a firm assigned to represent the client; responsibility for handling the case falls upon the office as a whole. See ABA Informal Op. 1428, *supra* note 9 (legal services agency should be considered firm retained by client; responsibility for handling caseload of departing legal services lawyer falls upon office as whole rather than upon lawyer who is departing). Therefore, cases may ethically be reassigned within a public defender's office.

If the supervisor fails to provide appropriate assistance or relief, the lawyer should continue to advance up the chain of command within the office until either relief is obtained or the lawyer has reached and requested assistance or relief from the head of the public defender's office.

In presenting these options, the Committee recognizes that whether a public defender's workload is excessive often is a difficult judgment requiring evaluation of factors such as the complexity of the lawyer's cases and other factors.¹⁸ When a public defender consults her supervisor and the supervisor makes a conscientious effort to deal with workload issues, the supervisor's resolution ordinarily will constitute a "reasonable resolution of an arguable question of professional duty" as discussed in Rule 5.2(b).¹⁹ In those cases where the supervisor's resolution is not reasonable, however, the public defender must take further action.²⁰

Such further action might include:

- if relief is not obtained from the head of the public defender's office, appealing to the governing board, if any, of the public defender's office;²¹ and
- if the lawyer is still not able to obtain relief,²² filing a motion with the trial court requesting permission to withdraw from a sufficient number of cases to allow the provision of competent and diligent representation to the remaining clients.²³

If the public defender is not allowed to withdraw from representation, she must obey the court's order while taking all steps reasonably feasible to insure that her client receives competent and diligent representation.²⁴

18. See note 12, *supra*, and accompanying text.

19. See Comment [2].

20. See, e.g., *Atty. Grievance Comm'n of Maryland v. Kahn*, 431 A.2d 1336, 1352 (1981) ("Obviously, the high ethical standards and professional obligations of an attorney may never be breached because an attorney's employer may direct such a course of action on pain of dismissal. . . .")

21. See Michigan Bar Committee on Prof. & Jud. Eth. Op. RI-252 (Mar. 1, 1996) (in context of civil legal services agency, if subordinate lawyer receives no relief from excessive workload from lawyer supervisor, she should, under Rule 1.13(b) and (c), take the matter to legal services board for resolution).

22. Rule 5.2 makes clear that subordinate lawyers are not insulated from violating the Rules of Professional Conduct and suffering the consequences merely because they acted in accordance with a supervisory lawyer's advice or direction unless it was in regard to "an arguable question of professional duty."

23. A public defender filing a motion to withdraw under these circumstances should provide the court with information necessary to justify the withdrawal, while being mindful of the obligations not to disclose confidential information or information as to strategy or other matters that may prejudice the client. See Rule 1.16 cmt. 3.

24. Notwithstanding the lawyer's duty in this circumstance to continue in the representation and to make every attempt to render the client competent representation, the lawyer nevertheless may pursue any available means of review of the court's order. See *Iowa Supreme Court Bd. of Prof. Ethics & Conduct v. Hughes*, 557 N.W.2d 890, 894

Ethical responsibility of a lawyer who supervises a public defender

Rule 5.1 provides that lawyers who have managerial authority, including those with intermediate managerial responsibilities, over the professional work of a firm or public sector legal agency or department shall make reasonable efforts to ensure that the other lawyers in the agency or department conform to the Rules of Professional Conduct. Rule 5.1 requires that lawyers having direct supervisory authority take reasonable steps to ensure that lawyers in the office they supervise are acting diligently in regard to all legal matters entrusted to them, communicating appropriately with the clients on whose cases they are working, and providing competent representation to their clients. As an essential first step, the supervisor must monitor the workloads of subordinate lawyers to ensure that the workload of each lawyer is appropriate. This involves consideration of the type and complexity of cases being handled by each lawyer; the experience and ability of each lawyer; the resources available to support her, and any non-representational responsibilities assigned to the subordinate lawyers.

If any subordinate lawyer's workload is found to be excessive, the supervisor should take whatever additional steps are necessary to ensure that the subordinate lawyer is able to meet her ethical obligations in regard to the representation of her clients. These might include the following:

- transferring the lawyer's non-representational responsibilities, including managerial responsibilities, to others in the office;
- transferring case(s) to another lawyer or other lawyers whose workload will allow them to provide competent representation;²⁵
- if there are no other lawyers within the office who can take over the cases from which the individual lawyer needs to withdraw, supporting the lawyer's efforts to withdraw from the representation of the client;²⁶ and finally,
- if the court will not allow the lawyer to withdraw from representation, providing the lawyer with whatever additional resources can be made available to assist her in continuing to represent the client(s) in a manner consistent with the Rules of Professional Conduct.

(Iowa 1996) ("ignoring a court order is simply not an appropriate step to test the validity of the order under our Code of Professional Responsibility"); Utah Bar Eth. Adv. Op. 107 (Feb. 15, 1992) (if grounds exist to decline court appointment, lawyer should not disobey order but should seek review by appeal or other available procedure).

25. See note 17, *supra*.

26. See *In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Public Defender*, 561 So.2d 1130, 1138-39 (Fla. 1990) (in context of inadequate funding, court stated that if "the backlog of cases in the public defender's office is so excessive that there is no possible way he can timely handle those cases, it is his responsibility to move the court to withdraw"); see also *In re Order on Motions to Withdraw Filed by Tenth Circuit Public Defender*, 612 So.2d 597 (Fla. App. 1992) (en banc) (public defender's office entitled to withdraw due to excessive caseload from representing defendants in one hundred forty-three cases).

When a supervised lawyer's workload is excessive and, notwithstanding any other efforts made by her supervisor to address the problem, it is obviously incumbent upon the supervisor to assign no additional cases to the lawyer, and, if the lawyer's cases come by assignment from the court, to support the lawyer's efforts to have no new cases assigned to her by the court until such time as she can adequately fulfill her ethical responsibilities to her existing clients.

In dealing with workload issues, supervisors frequently must balance competing demands for scarce resources. As Comment [2] to Rule 5.2 observes, if the question of whether a lawyer's workload is too great is "reasonably arguable," the supervisor of the lawyer has the authority to decide the question. In the final analysis, however, each client is entitled to competent and diligent representation. If a supervisor knows that a subordinate's workload renders the lawyer unable to provide competent and diligent representation and the supervisor fails to take reasonable remedial action, under Rule 5.1(c),²⁷ the supervisor himself is responsible for the subordinate's violation of the Rules of Professional Conduct.²⁸

27. Rule 5.1(c) states:

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

See also Rules 1.16 (a) and 8.4 (a).

28. See, e.g., Attorney Grievance Comm'n of Maryland v. Ficker, 706 A.2d at 1052, *supra* note 12); Va. Legal Ethics Op. 1798 *supra* note 9 (lawyer supervisor who assigns caseload that is so large as to prevent lawyer from ethically representing clients would violate Rule 5.1); American Council of Chief Defenders, Nat'l Legal Aid and Defender Ass'n Eth. Op. 03-01 (April 2003), available at <http://www.nlada.org/DMS/Documents/1082573112.32/ACCD%20Ethics%20opinion%20on%20Workloads.pdf> (last visited June 21, 2006) ("chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency's attorneys to provide competent, quality representation in every case.... When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency's attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases."); Wisconsin State Bar Prof. Ethics Comm. Op. E-91-3 (1991) (assigning caseload that exceeds recognized maximum caseload standards, and that would not allow subordinate public defender to conform to rules of professional conduct, "could result in a violation of disciplinary standards"); Ariz. Op. No. 90-10 (Sept. 17, 1990) ("when a Public Defender has knowledge that subordinate lawyers, because of their caseloads, cannot comply with their duties of diligence and competence, the Public Defender must take action."); Wisconsin State Bar Prof. Ethics Comm. Op. E-84-11 (1984) (supervisors in public defender's office may not ethically increase workloads of subordinate lawyers to point where subordinate lawyer cannot, even at personal sacrifice, handle each of her clients' matters competently and in non-neglectful manner).

Conclusion

The obligations of competence, diligence, and communication under the Rules apply equally to every lawyer. All lawyers, including public defenders, have an ethical obligation to control their workloads so that every matter they undertake will be handled competently and diligently. If a lawyer's workload is such that the lawyer is unable to provide competent and diligent representation to existing or potential clients, the lawyer should not accept new clients. If the problem of an excessive workload cannot be resolved through the non-acceptance of new clients or by other available measures, the lawyer should move to withdraw as counsel in existing cases to the extent necessary to bring the workload down to a manageable level, while at all times attempting to limit the prejudice to any client from whose case the lawyer has withdrawn. If permission of a court is required to withdraw from representation and permission is refused, the lawyer's obligations under the Rules remain: the lawyer must continue with the representation while taking whatever steps are feasible to ensure that she will be able to provide competent and diligent representation to the defendant.

Supervisors, including the head of a public defender's office and those within such an office having intermediate managerial responsibilities, must make reasonable efforts to ensure that the other lawyers in the office conform to the Rules of Professional Conduct. To that end, supervisors must, working with the lawyers they supervise, monitor the workload of the subordinate lawyers to ensure that the workloads are not allowed to exceed that which may be handled by the individual lawyers. If a supervisor knows that a subordinate's workload renders the lawyer unable to provide competent and diligent representation and the supervisor fails to take reasonable remedial action, the supervisor is responsible for the subordinate's violation of the Rules of Professional Conduct.

APPENDIX B

2007 TIME STUDY

Case Type Category	Case weight (hours)	# of Cases in 2007	Weight * Filings	Number before Conflicts in 2007	Difference pre and post conflicts	Conflict Weight	Conflicts Weighted
Higher Court Appeals							
Court of Appeals, Other	29.1	23	669	23	0	1.5	0.0
Supreme Court, Other Appeal	29.1	0	0	0	0	1.5	0.0
Higher Court Excessive Sentence							
Court of Appeals, Excessive Sentence	5.9	46	271	47	1	1.5	1.5
Supreme Court, Excessive Sentence	5.9	0	0	0	0	1.5	0.0
District Court Appeals							
District Court, Excessive Sentence	4.11	14	58	14	0	1.5	0.0
District Court, Other	4.11	18	74	18	0	1.5	0.0
Felony Drug and Property							
Felony Drug	11.2	321	3,595	452	131	2.6	340.6
Felony Property	11.2	359	4,021	475	116	2.6	301.6
Felony Violent and Other							
Felony Violent	13.48	224	3,020	283	59	2.6	153.4
Felony Other	13.48	166	2,238	212	46	2.6	119.6
Felony Sex							
Felony Sex	37	27	999	36	9	2.6	23.4
Juvenile Drug Court							
Juvenile Drug Court	14.3	17	243	18	1	2.5	2.5
Juvenile Cases							
Juvenile Law Violations	3.5	942	3,297	1084	142	2.5	355.0
Juvenile Status Offenses	3.5	166	581	176	10	2.5	25.0
Juvenile Review	3.5	189	662	203	14	2.5	35.0
Felony Death							
First Degree Murder, Child Abuse Death	317.1	3	951	7	4	2.6	10.4
Second Degree Murder	317.1	1	317	2	1	2.6	2.6
Felony Serious I							
Attempted First Degree Murder	192.9	0	0	0	0	2.6	0.0
Major, Attempted 2nd Degree Murder	192.9	0	0	0	0	2.6	0.0

APPENDIX C

Appendix 6: State-by-State Comparison of Maximum Number of Cases per Attorney

State	Felony	Misdemeanor	Juvenile	Authority
Arizona	150	300	200	<u>State of Arizona v. Joe U. Smith</u> , 681 P. 2nd 1374 (1984)
Colorado	241 *	598	310	The Spangenberg Group, "Weighted Caseload Study for the Colorado State Public Defender," November 1996.
Florida	200 *	400	250	Florida Public Defender Association, "Comparison of Caseload Standards," July 1986.
Georgia	150	400	200	Georgia Indigent Defense Council, "Guidelines of the Georgia Indigent Defense Council for the Operation of Local Indigent Defense Program," October 1989.
Indiana	200	400	250	Indiana Public Defender Commission, "Standards for Indigent Defense Services in Non-Capital Cases: With Commentary," January 1995.
Louisiana	200	450	250	Louisiana Indigent Defense Board, "Louisiana Standards on Indigent Defense," 1995.
Massachusetts	200	400	300	Committee for Public Counsel Services, "Manual for Counsel Assigned through the Committee for Public Counsel Services: Policies and Procedures," June 1995.
Minnesota	120 *	400	175	Minnesota State Public Defender, "Caseloads Standards for District Public Defenders in Minnesota," October 1991.
Missouri	40-180 **	450	280	Missouri State Public Defender System, "Caseload Committee Report," September 1992.
Nebraska	50 ***	—	—	Nebraska Commission on Public Advocacy, "Standards for Indigent Defense Services in Capital and Non-Capital Cases," May 1996.
New York (City)	150 *	400	—	Indigent Defense Organization Oversight Committee, "General Requirements for All Organized Providers of Defense Services to Indigent Defendants," July 1996.
Oregon	240	400	480	Oregon State Bar, "Indigent Defense Task Force Report: Principals and Standards for Counsel in Criminal, Delinquency, Dependence and Civil Commitment Cases," September 1996.
Vermont	150	400	200	Office of the Defender General, "Policy of the Defender General Concerning Excessive Workloads for Public Defenders," October 1987.
Washington	150	300	250	Washington Defender Association, "Standards for PD Services: Objectives and Min Requirements for Providing Legal Representation to Poor Persons Accused of Crime in WA," 1989.
ABA Standards	150	400	200	National Advisory Commission, Standard 13.12, 1973; adapted by ABA, <i>Providing Defense Services</i> , 3rd ed., 1990.
MD Managing for Results (Mod ABA)	180	480	240	MD Office of the Public Defender, Managing for Results.

Figure is a reproduction of a table found in *Keeping Defender Workloads Manageable*. Bureau of Justice Assistance Monograph [NJC 185631] prepared by The Spangenberg Group, Jan. 2001.

* Jurisdictions where caseload standards were developed through case-weighting studies.

** Missouri's caseload standards establish thresholds based on the severity of the felony charge. For Felony A and B cases, the public defender caseload standard is 40 cases per year. For Felony C and D cases, the public defender caseload standard is 180.

*** The Nebraska Commission on Public Advocacy has established a felony caseload standard for only the most serious category of felonies. The standard represents the number of violent crime cases (rape, manslaughter, 2nd degree murder, sexual assault).

APPENDIX D

Sufficiency of Time Survey

1. Introduction

Thank you for taking time to participate in this study of attorney workload. This questionnaire is being sent to all attorneys employed by the Lancaster County Public Defender Office. In order that the results of the study truly represent the workload of your office, it is important that each questionnaire be completed. Your response is important and appreciated.

In order to obtain quality data, we ask that you complete the questionnaire in its entirety. The questionnaire may take approximately 30 minutes to complete. Please complete the survey by April 15, 2008.

This survey asks about whether you have sufficient time to complete tasks in a reasonable and satisfactory way in 12 functional areas, such as client contact or pretrial hearings. This survey uses a six-point scale, from "Almost Never" to "Almost Always" in reference to whether you have time to do the specified tasks. Depending on your area of practice, some questions may not apply to you. In these instances, please indicate this by checking "Not applicable/Not my job."

When considering to what extent you have sufficient time to complete tasks, please use your typical work week (e.g., ____ hours per week), and your current level of support staff as your means of measuring.

Also, when considering to what extent you have sufficient time to complete tasks, please consider only cases for which the task is appropriate. For example, for the cases for which it is appropriate to visit the crime scene, I have sufficient time to do this _____.

Sufficiency of Time Survey

2. Sufficiency of Time Survey

1. Bail reviews/Detention Hearings: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Gather information and evidence for initial appearance bond settings including referrals to community corrections	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Gather information and evidence for bond review hearings or detention hearings including referrals to community corrections	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Seek timely review of a judge's detention order	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

2. General Preparation: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Research and prepare pretrial motions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Review the charging documents and any probable cause affidavits	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consult with other attorneys, if relevant to the case	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

Sufficiency of Time Survey

3. Client Contact: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
For clients in-custody, interview the client within 72 hours to determine all relevant facts known to the accused	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
For clients not in-custody, interview the client early in the case to determine all relevant facts known to the accused	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Speak with the client's family members or friends within the constraints of attorney-client privilege	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Inform the client of his or her rights at the earliest opportunity to build a rapport with the client that instills trust and confidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Keep the client informed of the developments in the case and respond to all client correspondence and telephone calls	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Review discovery materials, medical reports, and factual investigation materials	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Promptly explain to the client all significant plea proposals and engage the client in meaningful plea discussions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Explain to the client the meaning and consequences of the court's judgment and advise the client of post trial options	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Have adequate access to clients who are in custody	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

Sufficiency of Time Survey

3. Sufficiency of Time Survey Continued

4. Investigation and Discovery: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Visit the home, if necessary	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Visit the crime scene	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identify, locate and confer with appropriate independent experts or other professionals, if necessary	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct a prompt investigation of the circumstances of the case	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Direct the activities of investigative staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare and submit discovery requests	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identify and interview witnesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Take necessary depositions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Review the discovery package, confer with the prosecuting attorney regarding discovery and prepare and submit discovery requests including motions to compel discovery, when necessary	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identify and obtain background information such as mental health records, medical records, and drug and alcohol evaluations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Identify and review physical evidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

Sufficiency of Time Survey

5. Legal Research: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Conduct case-related research	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Request legal research from a law clerk and supervise their work product	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

6. Pretrial Hearings: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Prepare for and participate in competency hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in pretrial motion hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in motion to suppress hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in motions in limine/404 hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in other motion hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in arraignments	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in docket calls	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in continuance hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in preliminary hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in juvenile court transfer hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in motion hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

Sufficiency of Time Survey

7. Exploring Disposition Without Trial: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Engage in meaningful plea discussions with opposing counsel; including mitigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare the client for entry of a guilty plea, review appropriate waivers, plea consequences and potential sentencing consequences	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

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Sufficiency of Time Survey

4. Sufficiency of Time Survey Continued

8. Trial/Contested Adjudication: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Write trial briefs, including reply brief when necessary	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Review transcripts and take notes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Research legal and factual issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Develop a theory for a case and prepare for trial	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare and deliver an opening statement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for a contested disposition	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare and argue motions during trial	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare a closing argument	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Discuss potential stipulations with client, opposing counsel, and the court	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare and present mitigating circumstances	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare proposed jury instructions and argue for inclusion of appropriate instructions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Present the defense case	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for jury selection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare exhibits and other presentation materials for use during trial	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for direct and cross-examination of witnesses, including arranging for appearance of witnesses	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare client to testify and for cross examination	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Consult with other attorneys regarding trial strategies, evidence and issues	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

Sufficiency of Time Survey

9. Post Disposition Hearings: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Consult with appellate attorneys, post-conviction attorneys, and clemency attorneys to assist in the subsequent stages of litigation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare and file an appeal	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Participate in Review Hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare and file motions for re-hearing and motions for review	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare and file motions for client's release on bond pending an appeal	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

Sufficiency of Time Survey

10. Sentencing/Disposition: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Prepare and submit to the court a sentencing memorandum or letter on the client's behalf	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Contact witnesses and arrange for expert testimony for sentencing hearing	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Research and locate alternative sanction options and program placements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Review the determination of restitution	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Review the pre-sentence report and communicate with the client regarding its contents	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for sentencing (review file, determining potential sentence, prepare arguments)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

Sufficiency of Time Survey

11. Post Trial Activities: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Monitor the conditions of placement and the adherence to sentencing orders	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and investigate alleged probation violations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for sentencing hearings on motions to revoke probation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare and argue post trial motions before the court	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in juvenile review hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Prepare for and participate in drug court review hearings	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

Sufficiency of Time Survey

12. Non-Case-Related Activities: How often do you have sufficient time to do the following in a reasonable and satisfactory way:

	Almost Never	Seldom	50% of the Time	Frequently	Almost Always	N/A - Not My Job
Evaluate and provide testimony on pending legislation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Participate in public outreach and education (e.g., participation in related community programs, development and monitoring of programs which will affect OPD clients and their representation)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Assist with and participate in policy development	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Participate in the administration of the office (including the development of agency policies and priorities, meaningful committee work, program ideas, mentoring and supervising and evaluating staff)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Conduct general and legal research, including reading all slip opinions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Supervise and evaluate staff	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Maintain adequate records and close all files promptly	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Participate in continuing legal education and training	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Keep up with advances in data processing and technology	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Familiarize self with new ways to visually present arguments to the fact-finders on behalf of clients	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please use this space for any comments or to elaborate on any of your responses

Sufficiency of Time Survey

5. Sufficiency of Time

13. Thinking about your work over the past year, how many hours do you typically work in a week (e.g., 40 hours, 45 hours, etc.)

14. On average, about how much time per day do you spend on non-case related work (e.g., staff meetings, administrative tasks, supervising law clerks, travel, etc.)

15. In which division do you primarily work:

- ☐ Felony Division
- ☐ Misdemeanor Division
- ☐ Juvenile Division

16. Are you a division supervisor?

- ☐ yes
- ☐ no

17. If you are a division supervisor, about how many hours per week do you spend providing supervision to your division?

18. Is there anything else you would like to say about the time you spend working at the Lancaster County Public Defender's Office?