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JUDICIAL BRANCH

OFFICE OF THE CHILD'S REPRESENTATIVE



SEPTEMBER 2018

PERFORMANCE AUDIT

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OFFICE OF THE STATE AUDITOR



September 6, 2018

DIANNE E. RAY, CPA

STATE AUDITOR

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Office of the Child's Representative. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government, and Section 2-7-204(5), C.R.S., which requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments for purposes of the SMART Government Act. The report presents our findings, conclusions, and recommendations, and the agency's responses.



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REPORT HIGHLIGHTS



OFFICE OF THE CHILD'S REPRESENTATIVE
PERFORMANCE AUDIT, SEPTEMBER 2018

JUDICIAL BRANCH

CONCERN

The Office of the Child's Representative (OCR) needs to strengthen its processes for selecting, monitoring, and paying its contract attorneys to ensure compliance with Chief Justice Directives (Directives) and OCR requirements. OCR also has not fulfilled its statutory responsibilities related to Court Appointed Special Advocate (CASA) programs, and needs to improve oversight over its staff's use of procurement cards.

KEY FINDINGS

- OCR lacks consistent and transparent processes for selecting attorneys for contracts. For example, OCR did not document the basis for its decisions to award or deny contracts for 20 of 23 sampled attorneys who applied in Fiscal Year 2017; OCR denied contracts to three attorneys who met its selection requirements and had qualifications similar to those who received contracts. OCR also did not obtain proof that 13 sampled attorneys completed required training or that 10 sampled attorneys had required professional liability insurance, but awarded contracts to these attorneys.
- OCR does not consistently monitor contract attorney performance and has no benchmarks to trigger action when they underperform. For example, during the 3-year contract period July 2014 to June 2017, OCR observed one sampled attorney in court only once, observed another attorney three times but all were within the same week, and observed another attorney 13 times. OCR also awarded contracts to attorneys with performance issues, including three sampled attorneys who did not meet with children within 30 days of being appointed to their cases, as required, and 20 attorneys with founded complaints against them.
- OCR has relinquished most of its statutory responsibilities related to local CASA programs to the nonprofit Colorado CASA, with no contract or monitoring by the State. OCR transfers about \$1 million annually to Colorado CASA, which retains \$130,000 for its own use and allocates the rest to local CASA programs without oversight by OCR.
- We identified about \$435,000 in OCR payments to contract attorneys between July and December 2017, which did not comply with Directives, OCR policies, or attorney contracts. For example, about \$137,000 in payments appeared to be for duplicate billings or for activities, such as administrative time, that were not allowed.
- Nine of OCR's 11 administrative and management staff have State procurement cards. From July to December 2017, OCR paid about \$5,400 for staff's card purchases that were not allowed by its policy, supported by documentation, or approved by a supervisor.

BACKGROUND

- In 2000, the General Assembly established OCR to ensure that uniform, high-quality legal representation is provided to children in Colorado who are involved in judicial proceedings related to child abuse, abandonment, or neglect.
- OCR oversees the attorneys who provide guardian ad litem and child's legal representative services. OCR selects, contracts with, trains, and evaluates these attorneys. In Fiscal Year 2018, OCR contracted with 255 attorneys and paid them a total of \$20.9 million.
- Statute charges OCR with duties related to supporting local CASA programs, including allocating funds to them annually.

KEY RECOMMENDATIONS

- Improve attorney selection and monitoring processes by clarifying application requirements; improving policies and procedures, including documenting the reasons applicants are approved or denied contracts; reviewing attorney performance throughout the contract period; and setting benchmarks to evaluate and address attorney performance.
- Comply with statute related to CASA programs by executing a contract to coordinate and support CASA activities, overseeing the contractor's use of state funds, and allocating state funds to local CASA programs.
- Improve controls for paying contract attorneys' expenses and monitoring OCR staff's use of procurement cards to ensure payments and purchases comply with applicable Directives, policies, and contracts.

OCR agreed with these recommendations.



CHAPTER 1

OVERVIEW

Colorado statute requires courts to appoint an attorney to represent the best interests of children in dependency and neglect cases that involve child abuse, abandonment, or neglect [Section 19-3-203(1), C.R.S.]. In addition, courts have discretion to appoint an attorney to represent children in cases involving juvenile delinquency, truancy, paternity, probate, and high-conflict divorce if the child is without a parent or guardian able to protect the child's best interests in the proceedings, or if the parent or guardian cannot afford representation [Section 14-10-116, C.R.S.]. The attorneys appointed to these cases are known as either guardians ad litem or child's legal representatives.

The Office of the Child's Representative (OCR) is the agency within the Judicial Branch which oversees the provision of guardians ad litem or child's legal representative services for children in Colorado's 22 judicial districts [Section 13-91-104(1), C.R.S.]. According to statute [Sections 13-91-102 and 104, C.R.S.], the General Assembly established OCR in 2000 for the purpose of ensuring the provision of uniform, high-quality legal representation and non-legal advocacy to children involved in judicial proceedings in Colorado, reduce needless expenditures, and establish enhanced funding resources for these legal and advocacy services. Statute [Section 13-91-105(1)(a), C.R.S.] requires OCR to enhance the provision of these legal services in Colorado by:

- Ensuring the provision of training to judges and appointed attorneys.
- Making recommendations to the Chief Justice of the Colorado Supreme Court on the duties of appointed attorneys and the standards to which they shall be held.
- Overseeing the attorneys to ensure that they comply with all relevant statutes, court orders, rules, Supreme Court Chief Justice Directives (Directives), policies, and procedures.
- Establishing payment rates to compensate appointed attorneys.

Statute also assigns OCR responsibilities related to the provision of Court Appointed Special Advocate (CASA) services in the state. CASA volunteers assist children with court proceedings and provide the court information on the children and cases. Colorado CASA, a nonprofit entity outside of state government, coordinates CASA programs throughout the state. According to statute, OCR is responsible for ensuring the development of local CASA programs in judicial districts and allocating appropriated monies to local programs [Section 13-91-105(1)(b), C.R.S.].

Directives require OCR to select and contract with attorneys to provide state-paid legal services [Directive 04-06(II)]. In Fiscal Year 2018, OCR contracted with a total of 255 attorneys to provide legal representation services in Colorado, and courts appointed the attorneys to about 17,000 cases.

ADMINISTRATION

OCR is led by an Executive Director and has a total of 29.5 full-time equivalent (FTE) employees—9.1 FTE at its Denver office and 20.4 FTE at its El Paso County office. The OCR Executive Director, who had been in place since 2009 and throughout the audit, retired in July 2018. OCR’s new Executive Director began service in August 2018.

A nine-member Child’s Representative Board (Board) is responsible for hiring OCR’s Executive Director and working with him or her to provide governance and fiscal oversight of OCR’s operating budget, participate in funding decisions related to CASA, and assist OCR with training [Section 13-91-104(3), C.R.S.]. The Colorado Supreme Court appoints the Board, which is composed of three attorneys with experience representing children as contract attorneys, three non-attorneys with experience advocating for children in the court system, and three citizens. Each of Colorado’s seven congressional districts must be represented, and up to five members may be from the same political party [Section 13-91-104(2), C.R.S.]. The Board meets quarterly in public meetings.

REVENUES AND EXPENDITURES

OCR’s revenues and expenditures are shown in EXHIBIT 1.1. OCR’s operating revenues are from the State’s General Fund. The majority of OCR’s expenditures are used to pay for contract attorneys who bill their case-related activities, such as time in court and travel, using OCR’s Colorado Attorney Reimbursement Electronic System (CARES).

EXHIBIT 1.1. OFFICE OF THE CHILD'S REPRESENTATIVE REVENUE AND EXPENDITURES (IN MILLIONS) FISCAL YEARS 2015 THROUGH 2018				
	2015	2016	2017	2018
Revenue and General Fund Appropriation ¹	\$24.5	\$24.7	\$25.7	\$27.0
Expenditures	\$23.1	\$23.1	\$24.5	\$25.5
Attorney Contracts	\$18.8	\$18.8	\$20.2	\$20.9
Staff Salaries and Benefits	\$2.7	\$2.8	\$2.9	\$2.9
Payment to CASA ²	\$1.0	\$1.0	\$1.0	\$1.1
Operations and Training	\$0.6	\$0.5	\$0.4	\$0.6
SOURCE: Office of the State Auditor analysis of Long Bills and supplemental appropriations and financial data from the Colorado Operations Resource Engine (CORE) for Fiscal Years 2015 through 2018.				
¹ Includes about \$1 million in annual CASA appropriations from the State General Fund and about \$26,000 annually in federal funds reappropriated from the Department of Human Services for foster care training costs incurred by CASA in Colorado.				
² OCR receives an annual appropriation for CASA programs, which OCR pays to Colorado CASA.				

AUDIT PURPOSE, SCOPE, AND METHODOLOGY

We conducted this performance audit pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of the state government, and Section 2-7-204(5), C.R.S., the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act. The audit was conducted in response to a legislative request that expressed concerns about OCR's processes and controls related to contracting with attorneys and conflicts of interest related to CASA programs. Audit work was performed from January through August 2018. We appreciate the assistance of OCR's management and staff during this audit.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The key objectives of the audit were to evaluate OCR's (1) processes to select qualified attorneys; (2) controls over expenditures, including

payments to contract attorneys; and (3) mechanisms to fulfill its statutory responsibilities related to CASA programs.

The scope of the audit did not include a review of court processes for assigning contract attorneys to cases or evaluate the decisions attorneys made when representing children on cases. The audit also did not test certain information technology controls of the CARES system, such as user access or system security.

To accomplish our audit objectives, we performed the following audit work:

- Reviewed applicable statutes, rules, Directives, Judicial Branch Fiscal Rules, Office of the State Controller travel reimbursement guidance, and OCR policies and procedures.
- Interviewed OCR staff, management, and Board members; Judicial Branch staff; Joint Budget Committee staff; and Colorado CASA management.
- Reviewed OCR's annual reports for 2013 through 2017 and the Colorado CASA annual report from Fiscal Year 2017.
- Reviewed Colorado CASA's financial statements from Fiscal Years 2015 through 2017, federal tax forms from Fiscal Years 2016 and 2017, and its Board meeting minutes from 2015 to 2018.
- Listened to archived audio recordings of legislative hearings on House Bill 00-1371, which created OCR and outlined its responsibilities related to CASA programs in Colorado.
- Analyzed data from OCR's attorney application database, list of contracted attorneys, and complaint data for Fiscal Year 2015 through January 2018.
- Reviewed Long Bills for Fiscal Years 2016 through 2018, and Colorado Operations Resource Engine (CORE) data and CARES attorney billing data for July through December 2017.

- Used the Attorney Regulation Counsel website to review the license status, professional liability insurance status, and disciplinary history for all 255 attorneys awarded contracts in Fiscal Year 2018.
- Reviewed the monthly statements for procurement card purchases made by OCR staff from July through December 2017.

We relied on sampling techniques to support our audit work as follows:

- **ATTORNEY SELECTION.** A nonstatistical, random sample of 23 out of the 171 attorneys who applied to be contractors in Fiscal Year 2017, including eight new applicants, 10 renewal applicants, and five denied applicants to assess OCR's processes for selecting attorneys for state contracts. For each sample, we reviewed all documentation that OCR had on file, including interview notes and surveys.
- **CONTRACT ATTORNEY PERFORMANCE.** A nonstatistical, random sample of 13 out of the 63 attorneys who had contracts with OCR for Fiscal Years 2015 to 2017 and whose contracts were renewed for Fiscal Year 2018, to assess how OCR evaluated their performance and monitored contracts. We estimated that the 13 sampled attorneys worked on approximately 500 cases in Fiscal Year 2017. For each attorney in the sample, we reviewed all performance documentation OCR had on file.
- **BILLING AND PAYMENTS.** A nonstatistical, random sample of 48 payments totaling \$16,095 (of the 517,599 payments totaling \$10.5 million) that OCR made to contract attorneys and their staff from July through December 2017, to evaluate whether payments complied with applicable Directives and OCR policies. For each item in our sample, we reviewed CORE and CARES financial data; documentation maintained by contract attorneys to support their billing such as time logs, notes, emails, and receipts; and case data from the Judicial Branch's ICON/Eclipse case system.
- **PROCUREMENT CARD TRANSACTIONS.** A nonstatistical, random sample of 22 procurement card transactions totaling \$13,879 (of the 220 transactions totaling \$33,910) that OCR staff made from July

through December 2017, to assess whether purchases complied with OCR policies and procedures and were reasonable and necessary for business purposes.

The results of our nonstatistical samples cannot be projected to their respective populations. However, the sample results are valid for assessing OCR's processes and controls related to our audit objectives and, along with the other audit work performed, provide sufficient, reliable evidence as the basis for our findings, conclusions, and recommendations.

We planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Our conclusions on the effectiveness of those controls, as well as specific details about the audit work supporting our findings, conclusions, and recommendations, are described in the remainder of this report.

A draft of this report was reviewed by OCR. We have incorporated OCR's comments into the report where relevant. The written responses to the recommendations and the related implementation dates are the sole responsibility of OCR. However, in accordance with auditing standards, we have included an Auditor's Addendum to responses that are inconsistent with the findings or conclusions, or that do not adequately address the recommendation.



CHAPTER 2

ATTORNEY SELECTION AND MONITORING

In accordance with Colorado Supreme Court Chief Justice Directives (Directives), the Office of the Child’s Representative (OCR) maintains a list of attorneys who are guardians ad litem (GAL) or child’s legal representatives (collectively referred to as “contract attorneys”), so that the list can be used by courts to appoint attorneys to represent children in dependency and neglect, delinquency, adoption, paternity, probate, and truancy cases (collectively referred to as “child representation cases”) [Directive 04-06(II)]. OCR executes a 3-year contract with each attorney it selects to be on the list of attorneys available for appointment to child representation cases. We evaluated OCR’s processes for selecting the attorneys with whom it contracts and for reviewing attorney performance to help ensure that they provide quality representation, as discussed in this chapter.

ATTORNEY SELECTION

OCR is responsible for selecting attorneys to serve as contract attorneys “...for the purpose of ensuring the provision of uniform, high-quality legal representation...to children involved in judicial proceedings in Colorado” [Section 13-91-104(1), C.R.S.]. OCR maintains an appointment eligibility list for each of the 22 judicial districts identifying those attorneys in the district with whom OCR has contracts; OCR distributes these lists to the courts and posts them on its website. Courts use these lists to appoint attorneys to cases. As of September 2017, OCR had 255 attorneys on the court appointment lists.

OCR has the following processes for selecting contract attorneys:

- **DETERMINE JUDICIAL DISTRICT NEEDS.** OCR staff reported that they review data on the cases filed in each district and communicate with contract attorneys, judicial officers, court staff, and other stakeholders throughout the year about the sufficiency of the current appointment list for the district, district needs, and any issues with existing contract attorneys.
- **SOLICIT AND REVIEW APPLICATIONS.** In March of each year, OCR solicits attorney applications and accepts some applications during the year if there is a need for additional attorneys in judicial districts. Applicants apply to work in specific districts and for certain types of cases, such as dependency and neglect or truancy cases. The application form asks whether the attorney is licensed to practice in Colorado, has experience in child welfare law, is in compliance with Directive requirements, has malpractice insurance coverage, and has any disciplinary history. New applicants also submit references and a resume.
- **CONDUCT INTERVIEWS.** OCR interviews all attorneys who want to renew existing contracts and selects new applicants for interviews based on district needs. OCR interviews each applicant in person and looks for candidates with experience who can meet the necessary practice and training requirements.

OCR executes a 3-year, at-will contract with the attorneys it selects, and most contracts start in July. The contract outlines the attorney's duties and OCR's responsibilities. Attorneys who are not offered a contract are sent a form letter stating that they did not receive a contract.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We reviewed Directive requirements, Colorado Supreme Court continuing legal education (CLE) rules, OCR contract requirements, and OCR policies and procedures related to attorney selection and contracting. We reviewed OCR's application data for Fiscal Years 2015 through 2017 and documentation on file for a random sample of 23 applications submitted in Fiscal Year 2017—eight from new applicants who were awarded contracts, five from new applicants who were denied contracts, and 10 from contract attorneys whose contracts were renewed. For each sampled applicant, we reviewed all documentation the attorney submitted and the documents and data used by OCR in the selection process. We also used the Attorney Regulation Counsel's website to research the current license status, professional liability insurance status, and disciplinary history for all 255 applicants awarded contracts for Fiscal Year 2018. We reviewed OCR's application process webinar, written application instructions, and denial letters sent to applicants, and interviewed OCR staff to understand the attorney selection process.

The purpose of the audit work was to determine whether OCR's attorney selection processes are consistent and comply with applicable requirements in the Directive, OCR contracts, and OCR policies and procedures.

HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

REQUIREMENTS RELATED TO TRAINING AND INSURANCE. OCR's application manual states that new applicants and contract attorneys seeking to renew their contracts must comply with the following:

- **OBTAIN TRAINING.** The Directive requires attorneys to have obtained "10 hours of OCR-sponsored or approved continuing legal education

courses,” and “provide [OCR] proof of compliance [with this requirement] with his/her application...” [Directive 04-06 (V)(A)(2)]. OCR’s standard contract requires contract attorneys to “[a]ttend at least 10 hours of training sponsored or approved by OCR during each year of the [c]ontract period...” OCR told us that its processes align with similar Colorado Supreme Court processes and CLE rules. Supreme Court rule [Rule 260.6(3)] states that attorneys should “submit an Affidavit showing the units of continuing legal education completed.” The Supreme Court’s affidavit includes the course identification, location, date, sponsor, and credits for each training and must be signed and dated by the attorney.

- **MAINTAIN LIABILITY INSURANCE.** OCR’s standard contract states that the “[c]ontractor shall maintain professional liability insurance for all work performed under [contract] and shall furnish a carrier’s certificate of such insurance upon execution of the [contract].”

DOCUMENTATION OF THE BASIS FOR SELECTION DECISIONS. As a state agency, OCR is subject to compliance with the State Measurement for Accountable, Responsive, and Transparent (SMART) Government Act, which states, “It is important that state government be accountable and transparent in such a way that the general public can understand the value received for the tax dollars spent by the state” [Section 2-7-201(1)(a), C.R.S.]. To achieve the intended accountability and transparency, we would expect OCR to have evidence that it applies attorney selection criteria in a fair and consistent manner, documents its decisions regarding the use of tax dollars to contract with attorneys, and communicates the basis for selection decisions to applicant attorneys in writing.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND WHY DO THEY MATTER?

Overall, OCR’s processes for selecting attorneys for contracts are not consistent or transparent, and did not fully comply with the Directive, its policies and procedures, and state statute. We found problems with some aspects of the selection process related to 20 of the 23 sampled applicants and renewals, as described below.

LACK OF DETAILED PROOF OF TRAINING. Of the 18 applicants in our sample with whom OCR executed contracts in July 2017, we found that OCR did not obtain detailed documentation showing that 13 applicants met the training requirement. The 13 applicants did not provide details, such as the name, location, date, sponsor, and credits for each training. When OCR does not obtain details about attorneys' training, it has less assurance that they are fully qualified and is not furthering its strategic goal to "ensure attorneys remain current in state and federal law and regulations, social science research, and evidence-based services."

When the legislation that created OCR, House Bill 00-1371, was debated, witnesses and the bill sponsor testified about the need for formal training for contract attorneys, and the Directive was developed to address the specialized training they need. Training is vital to the quality of representation an attorney can provide. A recent national study conducted from 2009 to 2016 by the National Quality Improvement Center on the Representation of Children in Child Welfare, a research collaboration project between the United States Children's Bureau and the University of Michigan Law School, found that children represented by attorneys who received training on child development, safety, and needs assessment; advocacy; and case planning were 40 percent more likely to be placed in a permanent home within 6 months.

LACK OF PROOF OF CURRENT PROFESSIONAL LIABILITY INSURANCE. OCR did not obtain any evidence that 10 of the 18 applicants in our sample who received contracts had current professional liability insurance. OCR relied on previously submitted proof of insurance that had expired prior to the contract date. The Office of Attorney Regulation Counsel's web-based database showed that all 10 of these attorneys reported that they had professional liability insurance as of May 2018; however, the database showed that one of the 255 attorneys awarded contracts for Fiscal Year 2018 did not have liability insurance. OCR's documentation showed that this attorney's insurance expired in January 2018, after a contract was executed, and OCR did not have current proof of the attorney's insurance at the time of the audit. OCR does not ask attorneys to provide current proof of insurance or check the database

to verify insurance. OCR also does not collect proof of insurance from attorneys after they sign their original contract.

When OCR does not enforce its contract requirement regarding proof of insurance, there is a risk that some contract attorneys may not have the required coverage. Verifying that contract attorneys carry liability insurance protects OCR in the event of claims or lawsuits being filed resulting from an attorney's work under the contract.

LACK OF DOCUMENTATION OF THE BASIS FOR SELECTION DECISIONS. OCR did not have documentation to support its decisions to contract with or deny 20 of the 23 applicants in our sample. As a result, we could not determine, and OCR could not demonstrate, whether OCR's decision-making process was consistent across all applicants. In addition, for three of the five sampled applicants who were denied contracts, OCR's documentation, including the letter sent to the applicants, did not explain the basis for the denials.

Without a documented evaluation and decision-making process, OCR's decisions are not transparent and do not demonstrate accountability for making decisions that are fair, consistent, and effective in accomplishing OCR's purpose. Based on our review of their application materials, three of the five denied applicants in our sample appeared to meet all OCR's requirements and had the same qualifications as those applicants who were approved. For example, one new applicant who was denied, had a prior contract with OCR as a GAL from 2007 through 2014, and another had 10 years of experience serving as a court-appointed special advocate for children. Additionally, without documenting the basis for contract decisions, OCR is relying on the institutional knowledge of its staff, which can make it difficult for OCR to ensure continuity of decisions and for future staff to understand the reasons for decisions when there is staff turnover.

Furthermore, when applicants are not informed of why they were denied a contract, they do not have the feedback needed to address weaknesses in their applications and improve future applications. This

is especially important in judicial districts where OCR management stated that it has a shortage of attorneys for appointment lists. We were unable to analyze whether OCR's selection process is designed to address shortages of attorneys in particular districts or practice areas due to the lack of documentation of OCR's decision-making process and its analysis of district needs.

WHY DID THESE PROBLEMS OCCUR?

OCR INSTRUCTIONS TO APPLICANTS DO NOT CLEARLY ALIGN WITH APPLICATION REQUIREMENTS. We found that in two cases, OCR's webinar and written instructions to applicants appear to contradict requirements in the Directive, Supreme Court rule, and the attorney contracts. First, OCR's webinar and written instructions to applicants do not indicate that applicants should provide detailed information as proof of their training; instead, the instructions state that applicants "...do not need to itemize trainings or upload [their] CLE transcript." The Directive does not specify the type of proof required, and OCR reported that it interprets "proof" to mean that the attorney responds "yes" to OCR's application question about whether they have met training requirements. This process is not consistent with the Supreme Court requirements for other types of training, where attorneys must report details on each training course, including the course identification, location, date, sponsor, and credits. Second, OCR's webinar and written instructions to applicants do not state that they should provide proof of insurance; instead, the instructions state that applicants "...are no longer required to upload insurance documentation or enter coverage dates." OCR told us that it made a deliberate decision to discontinue the practice of obtaining proof of insurance. However, the contracts OCR executed with attorneys in July 2017 still contained this requirement. OCR also does not have a process to ensure that contract attorneys have current insurance, which was a finding identified in our 2007 performance audit.

OCR DOES NOT HAVE WRITTEN POLICIES OR PROCEDURES OUTLINING HOW STAFF SHOULD DOCUMENT THEIR EVALUATION OF APPLICANTS AND THE BASIS FOR DECISIONS. The lack of documentation regarding the basis for contracting decisions is an ongoing issue. Our 2007 performance

audit also found that OCR lacked documentation to support contract renewal decisions; OCR had agreed that it would begin documenting and maintaining interview results and the results of other information it reviews to support contracting decisions by November 2007.

OCR reported to us that it has not consistently documented the reasons for denying applicants contracts or notified applicants of the denial reasons upon the advice of its Attorney General legal counsel representative. This advice is subject to attorney-client privilege, and OCR did not agree to waive this privilege. Therefore, we are unable to provide further details. Nonetheless, it is important that OCR have processes to consistently document the basis for its denial decisions and maintain the documentation so that attorneys denied contracts could be given feedback if requested.

RECOMMENDATION 1

The Office of the Child's Representative (OCR) should improve its attorney selection processes by:

- A Working with the Chief Justice to determine the intent of the requirement in the Directive for proof of continuing education, and aligning the application instructions and webinar with the intent of the Directive.
- B Revising contracts to reflect OCR's practices regarding requiring attorneys to provide proof of professional liability insurance and establishing a process for ensuring that contract attorneys have current insurance.
- C Improving written policies and procedures that outline the evaluation process and related documentation that should be generated and maintained related to all applications, including the evaluation of each applicant and the reasons why each applicant was denied or approved for a contract. This should also include working with the Attorney General to develop a process to provide denied applicants with feedback that OCR can legally provide them about the denial, if they request it.

RESPONSE

OFFICE OF THE CHILD'S REPRESENTATIVE

- A AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR currently requires attorneys to certify that they have met the 10-hour requirement during its annual verifications process, and it follows up with attorneys who have not met the requirement to ensure that they have done so prior to the upcoming fiscal year. OCR will work with the

Chief Justice to determine whether these current policies and procedures fulfill the intent of the CJD [Directive]. If not, OCR will either adjust its policies and procedures to align with the directive or work with the Chief Justice to clarify the directive.

B AGREE. IMPLEMENTATION DATE: MARCH 2019.

OCR has consistently collected a carrier's certificate of insurance upon the execution of its contract with all new attorneys and required attorneys to certify they have an active insurance policy during its annual verifications process. As the requirement that attorneys furnish a carrier's certificate of insurance exceeds the requirements of other state agencies that require attorneys to carry professional liability insurance, OCR intends to revise its contract. Specifically, the contract will continue to require that the attorney maintain professional liability insurance but will eliminate the requirement that the attorney furnish a certificate of insurance upon its execution.

OCR agrees to enhance its process for verifying continual coverage. Beginning in Fiscal Year 2019-2020, OCR's contracts will include an additional requirement that the attorney immediately notify OCR of any lapse in the attorney's insurance coverage. OCR will monitor this requirement by requiring attorneys to certify on an annual basis that they currently have an active insurance policy and that they have maintained an active insurance policy throughout the year. OCR will follow up with attorneys who do not make this certification.

C AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR maintains the following information sources for attorneys on an annual basis: open appointments; stakeholder feedback; cost per case and activity composition, certification of training and CJD [Directive] compliance; recent disciplinary history; and a 30-day visit report. For attorneys undergoing the three-year renewal process, OCR also maintains court observation and reference interview summaries, a writing sample, activity during timeframe data, and a renewal application. While OCR has documented the outcome of its

applications/verifications, it has not documented its review of each source. OCR will improve its written Applications, Evaluation, and Verifications Policies and Procedures manual to outline a process for consistently documenting its review of each source.

OCR attorney staff has engaged in a general practice of meeting with unsuccessful applicants upon request to explain the OCR's general selection criteria and ideas for becoming successful applicants in the future. OCR will develop a formal process for meeting with denied applicants upon request to provide this feedback and documenting those meetings in its applications database. OCR will work with the Attorney General to develop legally advisable policies for documenting and sharing additional information.

AUDITOR'S ADDENDUM

OCR's response does not indicate whether it will require documentation of the reasons why each applicant was denied or approved for a contract. The audit found that OCR did not document these reasons, making it unclear that OCR applies a fair and equitable contracting process for all applicants and awards state contracts in an objective manner.

Additionally, in contrast to its response here, during the audit OCR management stated that it did not have a process to provide applicants with feedback, either verbally or in writing, regarding why they were denied a contract, and we found that OCR did not have a process.

MONITORING CONTRACT ATTORNEY REPRESENTATION

OCR is responsible for evaluating and managing the performance of contract attorneys to ensure that they provide “uniform, high quality legal representation...to children involved in judicial proceedings in Colorado” [Section 13-91-104(1), C.R.S.]. In accordance with the Directive and OCR’s written procedures, OCR uses a number of sources of information about contract attorneys’ performance and compliance with requirements, as follows:

- **IN-COURT OBSERVATIONS** of contract attorneys’ court appearances. OCR reported that its goal is to observe attorneys in court three times during the last year of their 3-year contract.
- **INTERVIEWS** with children, parents, and caregivers about their experience with the contract attorney’s services on an OCR case. For each contract attorney, OCR attempts to interview at least one individual from each category—child, parent, and caregiver—from the attorney’s entire caseload (i.e., not one from each category for each case).
- **SURVEYS** about contract attorneys’ performance sent to judges, magistrates, county attorneys, attorneys representing the child’s parent, Colorado Department of Human Services staff, the child’s probation officers, and Court Appointed Special Advocate (CASA) volunteers.
- **COMPLAINT INVESTIGATIONS**, which are completed for all complaints that OCR receives about contract attorneys.
- **ACTIVITY REPORTS** from OCR’s Colorado Attorney Reimbursement Electronic System (CARES) that provide various data on contract attorneys. OCR reviews a 30-Day Visit report to identify when the

attorney first visited the child in the case and an Activity During Timeframe report to identify the number of hours the attorney spent on dependency and neglect case activities (such as time in court, traveling, and preparing for the case) during the first 45 days of the appointment and to identify attorneys who appear to be outliers in terms of their time charged to activities. OCR reviews an Activity report to determine the average percentage of total time the attorney spent on each activity for open appointments and a District Visit Analysis report to identify attorneys who appear to be outliers in terms of their number of case appointments and case costs.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed Directive requirements and written procedures in OCR's Application Manual related to how it evaluates contract attorney performance and compliance with requirements. We randomly sampled 13 of the 63 attorneys whose contracts were renewed in July 2017 (Fiscal Year 2018 contracts). We estimated that the 13 sampled attorneys worked on approximately 500 cases in Fiscal Year 2017. We reviewed all data and documentation that OCR had maintained on the sampled attorneys for Fiscal Years 2015 through 2017, including OCR's in-court observations, interviews, survey responses, and activity reports. We also reviewed OCR's complaint data for all attorneys with a contract between July 2014 and January 2018.

The purpose of the audit work was to assess OCR's policies and processes for fulfilling its responsibility for overseeing and being accountable for contract attorneys in accordance with statute and Directive, which establish the following expectations for OCR:

- **OVERSEE THE PERFORMANCE OF CONTRACT ATTORNEYS.** Statute specifies that OCR is responsible for "[o]verseeing the practice of [contract attorneys] to ensure compliance with all relevant statutes, orders, rules, directives, policies, and procedures" [Section 13-91-105(1)(a)(IV), C.R.S.]. The Directive [04-06, II.A.] echoes statute,

stating that, “OCR’s authority and responsibilities include but are not limited to...responsibility to provide oversight of and accountability for state-paid attorney services through evaluation of attorney services, investigation and resolution of complaints.”

- **TAKE ACTION BASED ON ATTORNEY PERFORMANCE.** The Directive [04-06, II.A and VII.B.] authorizes OCR to take action in response to problems with performance or compliance by contract attorneys. The Directive indicates that OCR has a range of actions available that include, but are not limited to: taking remedial action to improve the quality of the attorney’s work, placing the attorney on probationary status with regard to his or her contract with OCR, seeking a court order terminating the attorney’s appointment on an active case, and suspending or terminating the attorney’s contract with OCR.

To fulfill the responsibility to oversee and be accountable for contract attorneys, the OCR needs policies and processes to (1) evaluate attorney performance and compliance on an ongoing basis, (2) identify a range of remedial actions that may be taken to address inadequate performance and noncompliance, and (3) identify the types and severity of poor performance that will trigger different levels of remedial actions.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND WHY DID THEY OCCUR?

We found that OCR has established processes to collect a wealth of information from a wide variety of sources on the performance of contract attorneys. These processes are intended to allow OCR to monitor attorney performance and ensure that attorneys provide high quality services. However, we identified problems with OCR’s policies and processes that weaken its oversight of contract attorney performance as described below.

INCONSISTENT INFORMATION USED TO EVALUATE ATTORNEY PERFORMANCE. First, although OCR staff conduct in-court observations of contract attorneys, which can provide valuable information on their

performance, we found that the timing and frequency of the observations varies widely. Specifically, OCR observed one attorney in the Denver metropolitan area 13 different times during their July 2014 through June 2017 contract, and the observations occurred during a 10-month period, whereas another attorney outside the Denver metropolitan area was observed three times during the same 3-year contract period, but all observations occurred within the same week. OCR did not schedule observations in a manner that would provide consistent coverage of all contract attorneys during their contract period.

Additionally, although OCR often conducted three observations with the 13 attorneys in our sample during the 3-year period of their contracts, the range was between one and 13 observations of each. For example, one attorney in the Denver metropolitan area was observed in court only once during their July 2014 through June 2017 contract period, and the observation was in July 2016; whereas two other attorneys were observed at least four times each during the same 3-year period. These three attorneys worked in what OCR referred to as a “model office,” which had a single, blanket contract with OCR for all of its contract attorneys, rather than individual contracts with each attorney. OCR stopped contracting with the model office in June 2017.

We also found that OCR treated the four model office attorneys in our sample differently from each other and from other attorneys. Although all four attorneys had worked for OCR for at least 1 year, OCR treated one attorney like a returning contractor and the other three attorneys like new applicants for contracts. OCR had a contract with the one sampled model office attorney, and collected a writing sample and reviewed available activity reports to evaluate their performance. OCR did not have contracts with the other three attorneys—they provided services under the model office contract—and OCR did not collect writing samples from them or the information needed to produce activity reports. Further, for these three attorneys, OCR conducted stakeholder surveys and in-court observations, which it did not conduct for other new applicants. While OCR no longer contracts with model offices, if it chooses to obtain attorney services from offices in the

future, it would need to develop a process to ensure it evaluates all attorneys in a similar manner.

SOME PERFORMANCE INFORMATION GATHERED INFREQUENTLY. OCR interviews at least one child, parent, and caregiver that worked with a contract attorney, and reviews the Activity During Timeframe report, only once every 3 years. For each sampled attorney who had applied for a renewal contract in 2017, OCR had completed at least one interview each with a child, a parent, and a caregiver. However, by only conducting these interviews once every 3 years, and by not routinely interviewing more than one child, one parent, and one caregiver out of the attorney's entire caseload during the contract period, the information and impressions that OCR receives are likely to focus on recent experience with the attorney, rather than reflecting their performance over the entire 3-year period. In contrast, OCR annually solicits feedback about contract attorneys by surveying judges, magistrates, county attorneys, attorneys representing the child's parent, Colorado Department of Human Services staff, probation officers, and CASA volunteers.

Furthermore, by only conducting reference interviews, reviewing the Activity During Timeframe report, and making some in-court observations once every 3 years, OCR is not gathering information that it could use to correct performance problems on an ongoing basis—it can only address such problems when it learns of them near the end of each contract.

NO STANDARDS FOR QUANTITATIVE ASPECTS OF PERFORMANCE. Contract attorneys are responsible for a number of duties that can easily be measured, but OCR has not established quantitative benchmarks to gauge their performance, such as the number of instances of noncompliance that should be considered a problem requiring action by OCR. For example:

- For the Directive requirement that all attorneys meet with the child within 30 days of appointment to a dependency and neglect case, OCR has not established a noncompliance rate that will trigger some

type of action. We found that three of the 13 attorneys in our sample (referred to as Attorneys A, B, and C) did not fully comply with the requirement in 2016, according to the 30-Day Visit report. OCR took different actions with each attorney:

- ▶ Attorney A did not visit 28 of the 52 children (54 percent) being represented within 30 days, instead visiting them 34 to 104 days after the case appointment. From July 2016 through March 2017, Attorney A billed \$103,439 for 67 cases of the 195 cases (34 percent) in their assigned judicial district. In Fiscal Year 2017, this judicial district had seven contract attorneys. OCR reported that it discussed the noncompliance with Attorney A during the contract renewal process, began to monitor the attorney's visit dates, and in June 2017, renewed the attorney's contract to allow them to work on existing cases and only accept new cases in two counties to try to address the noncompliance problem. Ultimately, the attorney decided to terminate the recently renewed contract in July 2017.
- ▶ Attorney B did not visit six of 13 children (46 percent) being represented within 30 days, instead visiting them 51 to 68 days after the case appointment. From July 2016 through March 2017, Attorney B billed \$26,997 for 29 cases of the 195 cases (15 percent) in their assigned judicial district. In Fiscal Year 2017, this judicial district had seven contract attorneys and included Attorney A described above. During the contract renewal process in March 2017, Attorney B provided OCR with a report to explain each instance of noncompliance, and OCR reported to us that it accepted all explanations, renewed the attorney's contract to allow them to only work on existing cases, and began to monitor visit dates.
- ▶ Attorney C did not visit 13 of the 42 children (31 percent) being represented within 30 days. According to OCR, when it renewed Attorney C's contract, it discussed this noncompliance and determined that the dates recorded in CARES for nine of the 13 visits were incorrect or duplicated and that Attorney C had met

the requirement in these nine cases. The remaining four late visits that we found occurred between 48 and 146 days after case appointment. From July 2016 through March 2017, Attorney C billed \$67,311 for 72 cases of the 413 (17 percent) in their assigned judicial district. In Fiscal Year 2017, this judicial district had eight contract attorneys. OCR reported no further actions were taken to address Attorney C's noncompliance.

- When OCR reviews the Activity During Timeframe report for the number of hours an attorney spent on dependency and neglect case activities during the first 45 days of the appointment, it does not have a standard to compare the time against, such as a minimum number of hours the attorneys are expected to spend on each case, to assess performance. For example, in one judicial district in our sample, the time that attorneys spent traveling averaged 31 percent of total activities charged in the district, but one attorney in the district charged 40 percent of their time to travel. It is not clear whether OCR considered this an outlier. Furthermore, OCR has not established a standard, such as an average case cost, to identify outliers when reviewing the Activity or District Visit Analysis reports.

NO POLICIES OR GUIDELINES FOR QUALITATIVE ASPECTS OF PERFORMANCE. OCR collects a variety of qualitative information on attorney performance, but does not have any guidance for staff on how to use it to determine if performance is acceptable. For example:

- OCR has no written guidance on how to account for survey or interview feedback or the results of in-court observations. In our sample, the stakeholder surveys for two attorneys (referred to as Attorneys D and E), questioned the attorneys' ability to provide quality representation. For Attorney D, the survey respondents included a judicial officer and attorneys, one of whom said that the attorney "...doesn't know juvenile law and how to be a GAL." For Attorney E, the survey respondents included court staff, judicial officers, and CASA staff, one of whom said that the attorney was "[n]ot a good GAL" and was "...wishy washy. Doesn't ever take a stand on anything." OCR documented that it discussed these

concerns with Attorneys D and E and renewed their contracts in July 2017. In November 2017, OCR received feedback from a judge that she had “seen a huge improvement...and [both attorneys] have worked hard to address those concerns.” Based on this feedback, OCR did not modify the attorneys’ contracts.

- OCR has no guidance about how the results of the observations should be used to assess an attorney’s overall performance. We found eight attorneys in our sample who had repeated notations of problems during observations; specifically, that they did not provide current, independent information about the child, they did not state when they last contacted the child, or they did not state the child’s legal position. All eight attorneys received contracts, but it is unclear how OCR used this information in assessing overall performance.
- OCR uses complaint information to help it evaluate attorney performance, but does not have written policies or guidance on the types or severity of poor performance or noncompliance identified through a complaint that should be considered a problem requiring action by OCR. In reviewing aggregate information on complaints, we identified 20 attorneys, including one in our sample, with founded complaints filed between July 2014 and November 2017 that related to attorney noncompliance with the Directive. For example, in one complaint, OCR was not able to confirm whether the contract attorney met with the children being represented within 30 days. OCR had this attorney submit monthly visit reports for the remainder of their 2017 contract. For a complaint against another attorney, which was received in October 2015, OCR noted that the attorney had a “practice concern” and renewed the contract in July 2016. In December 2016, OCR received another complaint on the attorney, met with the attorney in March 2017 and told the attorney that they would be removed from the appointment list in July 2017; in April 2017, the attorney decided to terminate the contract. For all 20 attorneys we identified, we could not determine the reasons why OCR renewed contracts after investigating and confirming the complaints.

NO POLICIES OR GUIDANCE TO ADDRESS PERFORMANCE PROBLEMS. The Directive references OCR's responsibility and authority for resolving contract attorney performance concerns, indicating that OCR has a range of actions available that include, but are not limited to, taking remedial action to improve the quality of the attorney's work, placing the attorney on probationary status with regard to their contract with OCR, seeking a court order to terminate the attorney's appointment on an active case, and suspending or terminating the contract with OCR. OCR has no written policies or guidance on when each such action, or other remediation, should be taken to address various types and degrees of poor performance or noncompliance. OCR did take action with respect to Attorney A in our sample who failed to meet the 30-day visit requirement for more than half of the children they were representing, as described previously. When renewing the attorney's contract in July 2017, OCR only included two counties that could appoint the attorney to cases, down from six in the attorney's prior contract. OCR indicated that it made this change to help the attorney manage their caseload and improve their performance. However, OCR has not incorporated this, or any other type of remedial action, such as providing coaching or requesting a corrective action plan, into its policies.

Furthermore, OCR has not established a caseload standard, nor does it monitor caseloads, to determine when a contract attorney's caseload is excessive and when OCR may need to help the attorney manage their caseload to support quality representation. Statute charges OCR with making recommendations to the Chief Justice about establishing minimum practice standards which are to "include...a determination of an appropriate maximum-caseload limitation for [contract attorneys]" [Section 13-91-105(1)(a)(III)].

NO POLICIES TO DOCUMENT HOW INFORMATION IS COMBINED TO RESULT IN AN OVERALL EVALUATION OF EACH ATTORNEY. For all 13 sampled contract attorneys, we could not determine how OCR used the information that it gathered to evaluate attorney performance. For the 10 renewals sampled, each had a checklist OCR uses to ensure that they have all application components, but the checklist lacks information on

how OCR weighs these different components to make a final decision on whether to renew the attorney's contract. We also found that OCR staff are inconsistent regarding the degree to which they document their attorney interviews and how all of the information collected was assimilated to result in an overall evaluation of each attorney. OCR's Application Manual does not specify that staff must maintain their interview notes and gives staff discretion about whether to upload their interview notes to OCR's database. We found that the extent and clarity of the notes that were maintained varied significantly, and one staff did not upload their notes to the database but maintained them in hardcopy.

Our 2007 performance audit also identified problems with OCR's oversight of contract attorneys. While the audit report noted that OCR needed to evaluate whether to move from an annual contract renewal process to a staggered process over 2 or 3 years, the audit suggested that OCR review attorney performance throughout the year rather than in the 2 months prior to contract renewal. The audit also found that OCR lacked documentation supporting its contracting decisions. The audit identified attorneys who received negative performance evaluations and found that OCR did not have documentation to explain why the contracts were renewed, or whether there were mitigating factors that supported OCR's decision to renew the contracts. In its response, OCR stated that it would be difficult to move from an annual evaluation process, but that it would maintain sufficient documentation to support contract renewal decisions with an implementation date of November 2007.

WHY DO THESE PROBLEMS MATTER?

One of the primary functions of OCR is to contract with qualified, knowledgeable, and experienced attorneys to provide high-quality representation to children in the Colorado court system. The problems with OCR's current evaluation and oversight processes may lead it to contract with attorneys who do not provide such representation. As described in this finding, OCR had information indicating that 10 of the 13 contract attorneys in our sample, as well as 19 other attorneys on whom complaints had been filed, were experiencing performance

and/or compliance problems, including not visiting children within 30-days of their appointment, not performing as expected in the eyes of court officials, and not carrying out their legal duties as expected. Despite these concerns, we could not determine the reasons OCR renewed contracts for the attorneys we discuss in this finding.

Overall, the gaps in OCR's policies and processes prevent it from fulfilling its responsibility to oversee and be accountable for contract attorneys as well as it could. The combination of reviewing different information for some attorneys, not collecting some information on an ongoing basis, not having quantitative or qualitative standards to determine acceptable performance, and not having policies to guide appropriate action to address performance concerns result in the evaluation of contract attorneys being inequitable and allowing performance problems to continue without being identified or addressed in a timely manner. For example:

- When OCR conducts more frequent observations of some attorneys than others, it is not treating attorneys equitably and may miss practice concerns with some.
- When OCR does not review reports on an ongoing basis and seeks input from children, parents, and caregivers only once every 3 years, it may not be aware of performance problems that should be corrected. For example, Attorney A in our sample did not meet the 30-day visit standard in January 2016, but OCR did not identify this problem until it reviewed reports more than 1 year later, in March 2017. Furthermore, when OCR does not review reports on an ongoing basis, it does not monitor the number of cases handled or the number of children represented by an attorney to help it assess whether an attorney's performance is negatively affected due to caseload management issues. The attorneys in our sample reported that they were carrying as few as four cases and as many as 91 cases as of March 2017, but OCR currently has no means of determining whether any of the attorneys' caseloads should be adjusted.

- When OCR does not have standards to define acceptable performance, it lacks a consistent framework for measuring performance and identifying needed improvement and creates a risk that all contract attorneys are not being held to the same standards, which could result in some attorneys not providing high-quality legal representation for children. For example, nine of the 13 attorneys in our sample were not meeting in-court practice expectations according to court observations. OCR renewed all 13 contracts, including those for the nine attorneys who did not always meet expectations.
- Without documenting the processes and decisions for evaluating attorneys, OCR's decisions are not transparent and it cannot demonstrate that it is holding contract attorneys accountable in a fair, consistent, and effective manner.

Finally, OCR's processes may be creating inefficiencies. Court staff, other attorneys, Colorado Department of Human Services staff, and CASA volunteers take time to complete surveys; parents, caregivers, and children spend time in interviews; and OCR staff spend time reviewing reports, conducting complaint investigations, and compiling all the collected information. By not having a cohesive evaluation and oversight system that involves (1) collecting similar information for all attorneys, (2) assessing performance against established standards, (3) addressing performance concerns based on written policies, and (4) documenting how all of the information is used, OCR may be generating costs for all of those involved in the process without getting the value it intended.

RECOMMENDATION 2

The Office of the Child's Representative (OCR) should improve its policies and processes for evaluating, overseeing, and managing contract attorney performance by implementing written policies and procedures that:

- A Improve consistency of attorney evaluations by using similar information, including conducting at least the minimum number of observations per contract attorney.
- B Ensure information that OCR considers important in evaluating and overseeing attorneys' performance, such as data from reference interviews and activity reports, are obtained and reviewed periodically, rather than only once every 3 years. This includes using the activity reports to monitor caseloads and establish a caseload limit to recommend to the Chief Justice, as required by statute.
- C Establish benchmarks to evaluate quantitative aspects of contract attorney performance, such as identifying noncompliance rates with specific requirements that will trigger corrective action by OCR.
- D Establish guidance to evaluate qualitative aspects of attorney performance. This could include guidelines for how staff should weigh feedback from families and court officials, the results of in-court observations, and complaint investigations in evaluating an attorney's overall performance.
- E Establish guidance for using the information it collects to address performance issues in a timely manner, such as guidelines for the types of remedial actions that are appropriate for different types and degrees of performance or compliance problems.
- F Establish requirements for maintaining documentation of the performance evaluation process and how the evaluation supports OCR's decisions, such as contract renewals.

RESPONSE

OFFICE OF THE CHILD'S REPRESENTATIVE

A AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR agrees to continue to collect and review the same sources of information for each attorney, per its verification/renewal processes. This includes a minimum of three observations for all renewing attorneys, unless the Executive Director grants an exception due to an attorney's exceptionally small number of court appearances during the observation time period. OCR will ensure that any exceptions are narrowly tailored and well-documented. OCR understands the value of conducting multiple visits to observe court; however, staff resource limitations impede OCR's ability to travel to remote jurisdictions to observe multiple attorneys on multiple occasions. OCR will continue to strategize on how to maximize the breadth and depth of information available for each attorney.

Many exceptions identified in this finding resulted from unique circumstances pertaining to OCR's termination of its "model office" contracts. OCR made a policy decision to treat the managing attorneys of those model offices, with whom OCR had executed a contract, as existing contractors subject to the three-year renewal process and the associate attorneys, who had not signed a contract, as new contractors. While OCR does not intend to enter into any similar contracts in the future, any decision to do so would include the development of a process to ensure it evaluates all attorneys in a similar manner.

AUDITOR'S ADDENDUM

OCR's response does not indicate that it will implement written policies and procedures that improve the consistency of attorney

evaluations, as recommended. OCR's response states that it will "continue to collect and review the same sources of information for each attorney;" however, the audit found that OCR has not consistently collected or reviewed similar information when evaluating attorneys.

In addition, most of problems described in this finding related to OCR's standard practices for monitoring the performance of contract attorneys who did not work for model offices. For example, the problems related to the inconsistent frequency of in-court observations of attorneys, attorneys who did not visit children within 30 days of being appointed to cases, and complaints against attorneys, related to non-model office attorneys. The audit also found that OCR did not collect similar amounts of information for all attorneys when evaluating their performance. When OCR does not monitor all attorneys consistently, it may fail to identify and address performance issues in a timely manner.

B AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR's 2007 performance audit found that OCR's directives "mirror nationally recognized guidelines" and that OCR had "implemented a majority of the best practices for providing [GAL] services." OCR has significantly enhanced its attorney selection and oversight since that time by developing a centralized attorney database and many enhanced data sources. It also developed its current verifications/renewal process, which requires review of some performance measures on an annual basis along with a more in-depth review of each attorney's performance at least once every three years.

Beginning in FY 2018-19, OCR will enhance its annual verifications process by including some quantitative measures previously reviewed during the triannual contract renewal process, and, through the new CARES system referenced in RECOMMENDATION 4A, will develop reports to assist it in identifying performance issues throughout the year. OCR recognizes the limitations of its reference interviews of

children, parents, and caregivers but believes the interviews provide meaningful qualitative information during OCR's triannual renewal process. Through its Youth Empowerment and Engagement program, OCR continues to explore other means of obtaining randomized feedback from youth in a trauma informed manner.

OCR will work with the Chief Justice to institute a caseload limit consistent with national standards, and it agrees to use its verifications process and periodic reports to monitor caseload.

C AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR's enhancement of the Applications, Evaluations and Verifications Policies and Procedures manual, referenced in RECOMMENDATION 1C, will include a description of the purposes and limitations of each source of quantitative information, non-compliance benchmarks requiring the OCR to pursue additional information, and procedures and considerations for determining appropriate action.

D AGREE. IMPLEMENTATION DATE. FEBRUARY 2019.

OCR's enhancement of the Applications, Evaluations and Verifications Policies and Procedures manual, referenced in RECOMMENDATION 1C, will include a description of the purposes and limitations of each source of qualitative information, performance indicators requiring OCR to pursue additional information, and procedures and considerations for determining appropriate action.

E AGREE. IMPLEMENTATION DATE. FEBRUARY 2019.

Historically, OCR's Executive Director has overseen each complaint investigation and determined the appropriate course of action to follow up on each founded complaint. OCR attempted to achieve consistency by centralizing these decisions with one staff member and believes it employed appropriate follow up actions for founded complaints. However, OCR recognizes the benefits of outlining

guidance for determining appropriate follow up for founded complaints and other CJD [Directive] compliance issues, as well as documenting this information in OCR's centralized attorney data system. OCR will develop such guidance.

OCR will ensure this guidance allows sufficient flexibility to account for individual circumstances and district needs. For example, the reassignment of one attorney's cases to existing contractors in an attorney shortage area may not be immediately possible, given existing attorneys' caseloads and conflicts. Additionally, changing GALs for a child who has a longstanding relationship with a GAL may traumatize the child and set the case's progress back significantly. The guidance OCR develops will take into account the practice concern identified, the benefits of continuity of representation, and the impact on district needs.

F AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

As explained in RECOMMENDATION 1C, OCR's attorney database contains extensive documentation related to OCR's performance evaluation process. OCR staff also maintains additional information, such as interview notes and follow-up with the attorney regarding specific pieces of information; due to limited staff resources, this information was either uploaded on the database or filed in the attorney's physical file. With the approval of a full-time administrative assistant for FY 2018-19 (the OCR previously had a 0.5 FTE to provide support to all staff within OCR's Denver office), OCR has been able to standardize the uploading of all essential OCR correspondence into its database. OCR agrees to formalize its requirements for the uploading of such information.

OCR identifies the outcome of its processes in the database. Beginning with its FY 2018-19 applications cycle, OCR will require documentation of its review of each component of the application/verification and its completion of the follow-up procedures described in RECOMMENDATIONS 2C-2E. OCR will also

establish requirements for documenting its follow up actions and decisions to address performance and caseload issues indicated by its review of the periodic reports on attorney activity it will develop pursuant to RECOMMENDATION 2B.

OCR will work with the Attorney General to develop additional policies regarding the documentation of OCR's decision-making processes.



CHAPTER 3

FINANCIAL MANAGEMENT AND ADMINISTRATION

The Office of Child's Representative (OCR) was created to oversee the practice of attorneys who represent children in court and to have key responsibilities related to Colorado's Court Appointed Special Advocate (CASA) programs. In Fiscal Year 2018, OCR provided \$1.05 million to CASA programs, paid contract attorneys \$20.9 million, and had about \$3.5 million in office administrative expenses. We evaluated OCR's responsibilities related to CASA programs and its controls over spending, as discussed in this chapter.

OCR RESPONSIBILITIES RELATED TO CASA PROGRAMS

In 1996, the General Assembly passed legislation to authorize the operation of CASA programs in Colorado to train volunteers to advocate for the best interests of children in dependency and neglect and truancy cases [Section 19-1-202, C.R.S.]. CASA volunteers gather information about the children and their families, monitor cases and court orders to help children understand court proceedings, and provide the court with independent and objective information about the children and case developments. Local CASA programs are established in judicial districts around the state and are coordinated by Colorado CASA, which is a nonprofit entity outside of state government. According to Colorado CASA, CASA volunteers served about 4,500 children through 18 local programs in Fiscal Year 2018.

CASA programs began receiving public funding in 2001 with the passage of House Bill 00-1371, codified in Section 13-91-102, *et seq.*, C.R.S., which also established OCR in the Judicial Branch. In Fiscal Year 2019, OCR received an appropriation for CASA programs (referred to as the “CASA appropriation”) of \$1.55 million in state general funds.

WHAT AUDIT WORK WAS PERFORMED, WHAT WAS THE PURPOSE, AND HOW WERE THE RESULTS MEASURED?

We reviewed statutes, Long Bills, and Colorado CASA’s Fiscal Years 2015 through 2017 annual reports and financial statements, interviewed OCR and Colorado CASA management, and reviewed data in the Colorado Operations Resource Engine (CORE) related to OCR’s disbursement of the CASA appropriation. We also listened to legislative hearing recordings for House Bill 00-1371. The purpose of this work was to evaluate OCR’s operations against the expectations described below.

OCR’S STATUTORY ROLE RELATED TO CASAs. In HB 00-1371, the General Assembly stated that OCR would be established in the state judicial department “to reduce needless expenditures, establish enhanced funding resources, and improve the quality of representation and advocacy provided to children in the Colorado court system.” The legislative declaration of HB 00-1371 further expands on the purpose of creating OCR, stating that “the representation of children necessitates significant expertise as well as a substantial investment in time and fiscal resources,” but that “the state has been sporadic, at best, in the provision of qualified services and financial resources to this disadvantaged and voiceless population.” Accordingly, the bill assigned OCR with duties and authority related to CASA programs that the State had not previously had, and began providing state funds for CASA programs to address the findings in the legislative declaration. Specifically, HB 00-1371:

- Charges OCR to work with a contract entity to “ensure the development of local CASA programs in...judicial districts” and serve “as a resource to the contract entity” [Section 13-91-105(1)(b)(I) and (VI), C.R.S.]. Statute defines the “contract entity” as a nonprofit entity under contract with the Judicial Branch for the coordination and support of CASA activities in the state [Section 13-91-103(2), C.R.S.]. There is no nonprofit entity under contract with the Judicial Branch; however, Colorado CASA coordinates and supports statewide CASA activities.
- Directs OCR to ensure that high-quality training is available to CASA volunteers, judges, and magistrates [Section 13-91-105(1)(b)(V), C.R.S.].
- Requires OCR to allocate “moneys appropriated...for CASA programs to local CASA programs based upon recommendations made by the contract entity” [Section 13-91-105(1)(b)(IV), C.R.S.].
- Instructs OCR to seek new funding from private sources for CASA programs and efforts by: (1) “seeking to...develop private-public partnership funding” [Section 13-91-105(1)(b)(II), C.R.S.]; (2)

“studying the availability of or developing new funding sources [Section 13-91-105(1)(b)(III), C.R.S]; and (3) “accepting grants, gifts, donations, and other nongovernmental contributions” [Section 13-91-105(1)(b)(VII), C.R.S.].

CONTRACTING FOR SERVICES. Because of OCR’s relationship with Colorado CASA, we also reviewed OCR’s policies relating to procurement of and contracting for services, and standards from a number of sources on state employee ethics and conflicts of interest when procuring goods or services. We used the information obtained from these reviews to guide our assessment of how OCR interacts with Colorado CASA. First, OCR policy establishes the following requirements for the purchase of services:

- “Contracts are required for all purchases exceeding \$50,000.”
- “Three price quotes are required for...services exceeding \$25,000.” The policy goes on to specify three exceptions to this requirement: (1) “If...only one vendor can provide the goods/services, the Executive Director may waive this three-quote requirement with a written explanation of the basis for such waiver;” (2) “[i]f it is not possible to obtain three quotes, the Executive Director may waive the requirement, documenting in writing the circumstances surrounding the waiver;” or (3) if OCR used “any other procurement mechanism available to Executive Branch or other governmental agencies” for a procurement.

Second, because OCR has very limited policies on conflicts of interest, we looked to the Colorado Constitution [Article XXIX, Section 1], which states that government employees should carry out their duties for the benefit of the people and avoid conduct that violates the public trust. We also looked to state statutes and guidance related to procurement conflicts of interest. OCR is not subject to these requirements, but we used them as general guidance in reviewing the potential for conflicts of interest in the relationship between OCR and Colorado CASA. According to statute and the Judicial Branch Code of Conduct, which is part of Chief Justice Directives (Directives), a conflict of interest occurs when an employee:

- Has an interest in any contract made by him or her in his or her official capacity or by any agency of which he or she is an employee [Section 24-18-201(1), C.R.S.]. Further, if a state employee acts despite a conflict of interest, it could result in a breach of fiduciary duty [Section 24-18-108(1), C.R.S.].
- Engages in any activity or business that creates a conflict of interest or has an adverse effect on the confidence of the public in the integrity of the judicial system [Directive 08-06].

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND WHY DID THEY OCCUR?

We found that OCR has not fully taken on the responsibilities related to CASA programs that are assigned to it in statute. OCR has worked with a nonprofit entity, Colorado CASA, since 2001 in developing 18 local CASA programs and has supported high-quality training in part by providing training on legal issues in child welfare cases to CASA volunteers. However, these are the only aspects of the governing and guiding role that OCR had carried out at the time of our audit. Instead, OCR has relinquished most of its responsibilities, including allocating state funds and seeking non-public funding for CASAs, to Colorado CASA with no oversight processes. Specifically:

OCR DOES NOT ALLOCATE STATE FUNDING TO LOCAL CASA PROGRAMS. Rather than allocating the CASA appropriation to local CASA programs, as required by statute, OCR transfers the entire amount appropriated to Colorado CASA each year. Colorado CASA retains a portion of the state funds for its own operations, and then allocates the remainder to local programs based on a formula it developed and that was approved by its board of directors (Colorado CASA Board). The formula distributes 35 percent of the funds equally to all local CASA programs and allocates the remaining 65 percent to each program based on caseload estimates. OCR management told us that it interprets statute to allow it to “pass through” the CASA appropriation to Colorado CASA without any direction by OCR and that this interpretation has been supported by two factors. First,

OCR told us that it is not involved in Colorado CASA's budget process; Colorado CASA contacts Joint Budget Committee (JBC) staff directly on budget requests. Second, OCR stated that they believed that the OSA had agreed that OCR was allowed to pass through the funds through the issuance of financial reports from 2002 to 2009. However, none of these reports reviewed OCR's management of the CASA appropriation, including whether OCR had the authority to pass through funds to Colorado CASA. Further, the OCR's Executive Director during the audit told us that because contract attorneys and CASA volunteers could have different recommendations in child welfare cases, it is inappropriate for OCR to allocate funding to local CASA programs. However, statute directs OCR to allocate this funding and provide oversight.

OCR HAS NOT UNDERTAKEN ANY SIGNIFICANT EFFORTS TO IDENTIFY FUNDING FROM NON-PUBLIC SOURCES FOR CASA PROGRAMS. While OCR has advocated to enhance existing state funding for CASA programs, the only means by which OCR has been involved in identifying or accessing new, non-public funds for CASA programs is through its Executive Director's membership on the Colorado CASA Board, which identifies and pursues grant opportunities from businesses and other nonprofit organizations. OCR management told us that it does not have enough staff or expertise to research funding sources.

PAYMENT FOR SERVICES WITH NO CONTRACT. The State provides funding to Colorado CASA without a contract to specify what services the State is to receive in exchange for the funds. Fundamentally, OCR has turned over the responsibilities for allocating the CASA appropriation and seeking non-public funding for CASA programs to Colorado CASA without a written agreement outlining the amount of state funds OCR provides to Colorado CASA or the specific activities Colorado CASA should carry out in return. OCR management stated that it believes that no contract is needed because CASA Colorado does not exchange goods or services with OCR and OCR does not direct any of Colorado CASA's activities. However, OCR has provided state funding to Colorado CASA each year since 2012 by transferring its entire CASA appropriation to the nonprofit; by allowing Colorado

CASA to decide how the funds will be used, the nonprofit has kept \$130,000 for its own operations each year. For Fiscal Year 2019, Colorado CASA increased this amount to \$230,000. This arrangement violates OCR's policy that requires a contract to obtain services exceeding \$50,000. Further, OCR did not carry out a bid process, or a similar procurement process, before establishing its relationship with Colorado CASA.

CONFLICT OF INTEREST. OCR management told us that one of the means by which it believes OCR fulfills its statutory duties related to CASA programs is through the OCR Executive Director's membership on the Colorado CASA Board. OCR's Executive Director has been a member on that Board since 2012 and retired from OCR and the Board in July 2018. As a member of the Board, the Executive Director participated in approving the formula for allocating state funds to local CASA programs, and is involved in the Board's efforts to obtain non-public funding through grants and to offer training to CASA volunteers and others in the court system. During the audit, the OCR Executive Director indicated that her role on the Board allowed her to oversee CASA programs, but serving on the board of an entity that receives state funds under the Executive Director's control creates a conflict of interest. OCR's Executive Director has a fiduciary responsibility to both the State and Colorado CASA that may come into conflict for two reasons. First, as a state employee, the Executive Director has control of the CASA appropriation, which is used in part to help fund Colorado CASA's operations. The Executive Director's duty to the State dictates that he or she seek to pay the lowest price to obtain quality services from Colorado CASA. At the same time, as a Colorado CASA board member, the Executive Director has a duty to maximize the funding available to the nonprofit to carry out its mission. Second, because Colorado CASA petitions JBC staff directly for funding its programs, it essentially competes with OCR for state funds. In general, employees of any agency of state government are considered to owe a duty of loyalty to that agency, which should not conflict with other responsibilities or activities.

OCR has a conflict-of-interest policy for employees that addresses only the potential for conflicts with court cases. However, the policy reflects an intent that employees should avoid conflicts with their duties to the OCR, stating that, “The OCR will strive to avoid any conflicts of interest in connection to past, present and future cases.... The employee shall avoid any involvement in the processing of the matter before the court or probation.” The policy does not address other types of possible conflicts, nor does it provide any guidance on how conflicts should be identified, avoided, or mitigated.

At the end of the audit, OCR told us that it believed that it is not appropriate for it to have a role in overseeing or allocating funds for CASA programs and that there should be legislative change to remove OCR’s statutory responsibilities related to CASA programs. However, OCR reported that it has not sought legislative change regarding its role.

WHY DO THESE PROBLEMS MATTER?

Without a contract with Colorado CASA, OCR is not exercising oversight of the coordination and support of CASA activities, as statute intends, and has no mechanism to either guide or hold Colorado CASA accountable for spending the state funds it retains. Statute is clear that the General Assembly intended for OCR to direct the state funding for CASAs and participate in the development and oversight of CASA programs.

In addition, when OCR does not carry out its statutory charge of allocating funding to CASA programs, OCR is not using the allocation process to help accomplish the legislative purpose for which it was created: reducing needless expenditures, enhancing funding, and improving the quality of advocacy provided to Colorado children in the court system. Instead, OCR is relinquishing this responsibility to an outside entity without an oversight mechanism, such as a contract, and when the OCR Executive Director has a conflict of interest related to that entity.

Finally, because OCR has not sought to develop funding from private sources or studied the availability of new funding sources for CASA

programs, these programs continue to be heavily dependent on public funding. The General Assembly has more than tripled its appropriation of state funds to OCR for CASA programs since Fiscal Year 2010, as shown in EXHIBIT 3.1.

EXHIBIT 3.1. OCR APPROPRIATIONS FOR CASA PROGRAMS FISCAL YEARS 2010 THROUGH 2019	
FISCAL YEAR	APPROPRIATION AMOUNT
2010	\$520,000
2011	\$520,000
2012	\$475,000
2013	\$520,000
2014	\$1.02 Million
2015	\$1.02 Million
2016	\$1.02 Million
2017	\$1.02 Million
2018	\$1.05 Million
2019	\$1.55 Million
TOTAL	\$8.715 Million
SOURCE: Office of the State Auditor analysis of CORE data and Long Bills from Fiscal Years 2010 through 2019 for the Judicial Branch, which includes OCR.	

RECOMMENDATION 3

The Office of Child's Representative (OCR) should fulfill its statutory role related to Court Appointed Special Advocate (CASA) programs in Colorado by:

- A Executing a contract with a nonprofit entity to coordinate and support CASA activities and processes to oversee the contract. OCR should follow its procurement policies in selecting a contractor. The contract should reflect the amount of state funds provided to the contractor and the expected activities and deliverables.
- B Implementing a process to allocate state funds to local CASA programs, with the recommendation of the contractor.
- C Implementing a means of enhancing non-public funding for CASA programs.
- D Implementing written conflict-of-interest policies that address potential employee conflicts other than those arising from court cases. This should include policies that prevent any OCR staff from participating in activities that create conflicts with their duties to the State, such as participating on the board of an entity that receives state funds through OCR.

RESPONSE

OFFICE OF THE CHILD'S REPRESENTATIVE

- A AGREE. IMPLEMENTATION DATE: JANUARY 2019.

OCR has historically transferred its CASA appropriation to Colorado CASA for allocation to local CASA programs, a transparent practice reflected in OCR's legislative reports, Joint Budget Committee documents, and previous audits. While this

practice has been understood by OCR and relevant stakeholders to be consistent with OCR's enabling legislation, OCR understands the issues identified by this audit.

Upon further review of the underlying statutes, OCR believes the statute contains significant ambiguity, diverges from its generally understood purposes, and may create significant conflicts of interests. OCR will seek statutory change to rectify these issues. Until such change is effectuated, OCR will comply with the statute as written by executing a contract in accordance with its procurement policies. This contract will reflect the amount of state funds provided to the contractor and the expected activities and deliverables of the contractor.

Colorado's statutes seem to point to only one "non-profit entity with which the Judicial Department may contract for the coordination and support of CASA activities in the state of Colorado," § 13-91-103 (2), and that is Colorado CASA. The Children's Code clearly intends for Colorado CASA to be this entity, as §19-1-202 requires local programs to be in good standing with Colorado CASA and adhere to its guidelines and §19-1-205 requires each CASA program to adopt regulations consistent with Colorado CASA.

B AGREE. IMPLEMENTATION DATE: JUNE 2019.

OCR recognizes this allocation is required under the current statute. However, OCR continues to have concerns over the myriad of actual, potential and apparent conflicts that may arise from OCR controlling funding for local CASA programs given the separate roles, required independence, and potentially competing goals. For one example, local programs are required by statute to aid the court by providing independent and objective information. §13-91-103. There may be times when the recommendation of the local CASA volunteer conflicts with the recommendation of the GAL about the best interests of the child(ren). Beholding the local programs to OCR for their allocation of state funds could call into question the independence and objectivity of these programs and their volunteers.

OCR has already distributed the FY 2018-19 CASA funds to Colorado CASA. In the 2019 legislative session, OCR will seek statutory changes to address its concerns about conflicts. OCR will establish a process to allocate CASA funds in FY 2019-20 to local CASA programs in a manner that complies with its statutory obligations.

C AGREE. IMPLEMENTATION DATE: JANUARY 2019.

OCR agrees enhancing funding sources is required under the current statute. Traditionally, while OCR seeks and receives continuation of state general funds for CASA through its annual budget request, Colorado CASA has independently sought budget increases from the JBC and from other funding sources. While OCR has supported CASA in accessing federal Title IV-E funding for its training programs and supported CASA's private fundraising efforts through its Executive Director's board membership, OCR acknowledges the statute may require a more active role in accessing private funding sources. As in OCR's response to Recommendation 3B, OCR believes this statutory requirement creates potential conflicts, as such fundraising may put the agency in an untenable position of competing with CASA for funding its attorneys, training, and advocacy. OCR will seek statutory change to address these concerns. Until statutory change is achieved, OCR will comply with the statute by meeting with Colorado CASA to determine what other activities OCR can perform to help enhance CASA funding and by engaging in appropriate funding enhancement activities. OCR may seek to dedicate a portion of the CASA allocation to fund this work "relating to the enhancement of CASA programs." § 13-91-106(2).

D AGREE. IMPLEMENTATION DATE: NOVEMBER 2018.

OCR's Executive Director originally joined the Colorado CASA Board in an attempt to fulfill OCR's statutory responsibilities regarding CASA programs. Now that OCR intends to issue a contract pursuant to Recommendation 3A, OCR agrees such board membership presents a conflict of interest. OCR's Executive Director is no longer on the Colorado CASA Board as of August 2018, and OCR will enhance its conflict of interest policies for all staff.

ATTORNEY BILLING AND CASE PAYMENTS

OCR pays its contract attorneys and any of those attorneys' staff, such as paralegals, for their time and expenses related to work on child representation cases. OCR allows contract attorneys and their staff to bill for a range of case activities, including spending time in court, drafting motions, visiting the children they represent, meeting with others involved in the case, traveling for certain case activities, and administrative tasks, such as documenting notes about the visits and meetings, reading case documents, writing emails, and making phone calls. Contract attorneys and their staff may also bill for costs, such as legal copies and meals for children.

Contract attorneys and their staff bill OCR through two mechanisms. Expenses for expert witnesses, transcripts, interpreters, discovery costs such as medical records and depositions, and traveling out of state to visit a child are billed by submitting hard copy reimbursement forms and receipts to OCR. All other expenses (e.g., time spent on case activities and administration) are billed by entering them into the Colorado Attorney Reimbursement Electronic System (CARES). All bills are reviewed and approved for payment by OCR's attorney billing manager and OCR's accountant and Chief Operating Officer.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We reviewed aggregate data from OCR's CARES system for 517,599 bills totaling \$10,537,569 that contract attorneys and their staff submitted for 10,820 cases, and aggregate data from CORE showing payments totaling \$10,417,486 that OCR made during July through December 2017. We selected a random sample of 48 of the payments totaling \$16,095 related to 59 cases—40 expenses billed in CARES and eight billed through reimbursement requests. For each sampled payment, we reviewed documentation that contract attorneys

maintained to support their billing, including time logs, notes, emails, and court documents. We also reviewed data from the Judicial Branch's ICON/Eclipse case system (court data system) on the 59 cases related to the sampled payments. We reviewed OCR's attorney billing policy, the CARES billing manual, the CARES user manual, the terms of the attorney contracts, Directives, and Judicial Branch Fiscal Rules (Fiscal Rules) related to attorney travel. We interviewed OCR management and staff and other Judicial Branch staff.

The purpose of the audit work was to evaluate OCR's controls to ensure contract attorneys billed and OCR paid in accordance with Directives and OCR policies.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND HOW WERE THE RESULTS MEASURED?

Overall, we found that OCR did not consistently follow Directives, its own policies and procedures, or the terms of the attorney contracts when paying contract attorneys and others. Altogether, we identified problems with \$435,486 in payments made during the 6-month review period for 4,869 cases.

POTENTIAL DUPLICATE BILLINGS. In the aggregate data, we identified 12,934 instances in which contract attorneys appeared to bill more than once for a single case activity. These entries were identical to at least one other entry in CARES, having the same activity name, case, date, duration, and payment amount. OCR paid \$111,692 for these entries. OCR's attorney billing manual specifies that a contract attorney should not enter an activity in CARES more than once because it results in duplicate billing. Examples of the potential duplicate bills that we identified include one attorney who had 10 identical entries in CARES on 1 day; all of the entries were for the same case, the same duration, and the same activity (i.e., a 12-minute phone call), which resulted in a \$150 payment. Another attorney billed twice for 3.5 hours of travel on 1 day on one case, resulting in a payment of \$525. According to OCR,

these billings may be legitimate entries of unique activities, such as an attorney making calls to various individuals involved in a case (e.g., a caseworker, court staff, and relatives), on the same day. However, OCR could not verify that all of these entries were for discrete activities, rather than instances of a specific activity being entered multiple times, because OCR could not access the notes attorneys may enter into CARES that provide detail about the activity. OCR reported that the CARES system allows the potential for duplicate billing and its staff may research entries that appear to be duplicates by contacting the attorney, but there is no evidence that any of these 12,934 entries were researched by staff before OCR paid them.

After we asked OCR about these entries that appeared to be duplicates, it researched 25 of them and determined that 24 entries, including the 3.5 hours of travel, were for unique activities, but one entry was a duplicate. OCR has not reviewed the remaining payments to verify which were duplicates.

ADMINISTRATION TIME EXCEEDING THE LIMIT. In the aggregate data, OCR paid \$20,525 for 932 bills for contract attorneys' administration time that exceeded the 12-minutes-per-activity limit. OCR's attorney billing manual states that a contract attorney or their staff should not bill for more than 12 minutes of administrative time related to any billable activity because administrative time "is to be used only for jotting down notes directly before/after [an] activity," such as a meeting or visiting a child. Examples of these payments included one attorney who billed 65 times for administration time exceeding 12 minutes, totaling \$5,520.

CASES THAT APPEAR TO BE NON-EXISTENT, NOT FILED WITH THE COURT, OR NOT HAVING EVIDENCE THAT THE ATTORNEY WAS APPOINTED. OCR paid \$6,118 to contract attorneys for these cases, as follows:

- In the aggregate CARES data, we identified eight cases for which attorneys billed \$6,113, although the case numbers or appointments were not in the Judicial Branch's court data system. According to

OCR's attorney billing policy, OCR pays "attorney services as authorized by Chief Justice Directive (CJD) 04-06..." Cases that are not in the case system are not authorized by the Directive. Of the eight cases, seven did not appear in the court data system. The eighth case had two different attorneys billing for it in CARES, but the court data system showed that only one of these attorneys was appointed to the case. After we brought these eight cases to OCR's attention, it researched them and told us that all were real cases, but the case numbers had been entered incorrectly in CARES. However, at the time OCR paid the billed activities, the bills were not associated with legitimate case numbers. Paying bills without ensuring that they are accurately associated with a real case could result in overpaying for a case or paying for activity that is not related to a case.

- Two cases for which an attorney billed nominal amounts of \$5 for activities that appeared to have occurred before the cases were filed in court. The attorney contracts state that attorneys will be compensated only for representation activities occurring after being appointed to a case, which can only occur after the case has been filed with the court. For these two cases, an attorney billed for activities in December 2017, but the cases were not filed in court until January 2018. After we brought these cases to OCR's attention, it contacted this attorney and told us that the attorney stated that the December activities should have been billed under a different case number. However, OCR paid these bills without verifying that they were for activities occurring after the cases were filed.

UNALLOWED TRAVEL-RELATED COSTS. OCR paid \$579 in attorney and attorney staff costs for travel that was not authorized in OCR policies. Specifically:

- In the aggregate data, OCR paid \$384 for 15 bills that appear to be for social workers' and paralegals' travel time to court. OCR's attorney billing policy states that social workers and paralegals may not bill for travel time to court.

- In our 48 sampled payments, OCR paid \$195 for bills from a contract attorney and attorney staff for out-of-state travel costs that were not allowed. This consisted of:
 - ▶ \$56 for parking (\$48 for the attorney and \$8 for attorney staff), although OCR's billing policy prohibits paying for parking. OCR told us that it paid these bills because parking is a legitimate travel expense, despite the prohibition in policy.
 - ▶ \$79 for mileage billed by a contract attorney while traveling in a rental car. Judicial Branch Fiscal Rules (which OCR follows for travel) state that a "traveler may request mileage reimbursement" for the use of a privately owned vehicle [Judicial Branch Travel Fiscal Rule 5.1]. In this case, OCR paid mileage on a rental car, not the driver's privately owned vehicle. Furthermore, mileage costs are typically included in rental charges.
 - ▶ \$60 for meals billed by attorney staff on days they did not work. Judicial Branch Fiscal Rules state that "costs incurred primarily for the benefit or convenience of the traveler that are not specifically related to [OCR's] business shall not be reimbursed." [Judicial Branch Fiscal Rule 1.2] Since these meals occurred on non-working days, they were not specifically related to OCR business.

LACK OF DOCUMENTATION TO SUPPORT BILLS THAT WERE PAID. OCR paid \$407 for five of the 48 sampled payments, although the contract attorneys did not have documentation to substantiate the bills. Directive 04-06 IV.B.3 states, "Attorneys shall maintain records of all work performed relating to court appointments..." and OCR policy states that an attorney "must substantiate his/her billing...by records or documents including, but not limited to, calendars; case logs, time sheets, and/or time records; mileage logs; notes; phone messages; letters; and email." OCR also requires receipts to reimburse contract attorneys for travel costs, such as lodging. The five bills that lacked documentation consisted of:

- One bill of \$90 for 72 minutes spent visiting children for a case and

related administrative time, but the attorney had no documentation to support the time billed.

- One bill of \$113 for 90 minutes spent visiting the children for a case, but the attorney's handwritten notes stated the visit was 60 minutes, so the attorney overbilled and OCR overpaid \$38. This attorney also did not document how much time was spent reviewing case documents, but billed \$23 for the activity.
- One bill of \$189 for a hotel stay from an attorney who traveled out of state to visit a child and lacked a receipt showing the actual cost of the hotel.
- Two bills totaling \$67 for which the attorneys did not have documentation to support the cost of copies, phone calls, or general legal activities.

LACK OF APPROVALS. In our sample, we found that OCR paid an expert \$400 more than it should have to conduct a mental health evaluation on a child. According to OCR policy, it follows Directive 12-03 that states that agencies of the Judicial Department may not pay expert witness more than \$1,000 for such evaluations without the court's prior approval. For this expert, OCR paid \$1,400 without court approval for the excess amount.

In the aggregate data, we identified 302 cases that exceeded the established maximum fee during the 6-month review period, and for 19 of these cases (6 percent), OCR paid the attorneys a total of \$3,704 without documentation that the excess had been preapproved. Directives require OCR to set "the maximum total fees...for all OCR [contract attorney] appointments and the procedures for approval of excess fees" [Directive 04-06 IV.B.2]. OCR's attorney billing policy sets the maximum fees for each case type and requires contract attorneys to obtain OCR's preapproval to exceed the maximum fee for a case. These individual cases exceeded the caps by amounts ranging from \$5 to \$1,453. In addition, the staff person who approved most of the excess

fee requests also processes the attorney payments, which creates a lack of separation of duties for the approval and payment of excess fees.

LATE BILLS. In our review of the sample and the aggregate data, OCR paid \$292,061 for 14,308 billed activities submitted late by attorneys and their staff without any documentation that OCR granted exceptions to the billing deadlines. According to OCR's attorney billing policy, the CARES billing manual, the CARES user manual, the attorney contract terms, and interviews with management and staff, contract attorneys must bill for their activities within 30 days of incurring the expense, although OCR may grant exceptions to this requirement in "extenuating circumstances." OCR management told us that the intent of this policy is to help it manage its budget and monitor expenditures. The attorneys and their staff billed for these expenses between 31 and 259 days after the activity occurred, and OCR did not have documentation that it granted exceptions according to its policy.

WHY DID THESE PROBLEMS OCCUR?

Overall, OCR does not have adequate controls over billing and payments.

OCR LACKS POLICIES ON MONITORING CONTRACT ATTORNEY BILLS. We found that OCR lacks written policies related to the routine review of attorney bills upon submission, as well as intermittent, in-depth reviews to substantiate bills. First, OCR does not have a written policy for routine review of submitted bills that:

- Identifies which staff positions are responsible for approving bills. For example, policies/Directive indicate that OCR can approve the payment of case fees over the maximum, but they do not indicate which position or level of staff is authorized to make such approvals. OCR should ensure that its policies allow for the separation of approval and payment responsibilities.
- Guide staff in evaluating compliance with the OCR billing policies. OCR has not established criteria defining what is reasonable; therefore, the OCR staff member who reviews bills reported that they

use their own experience and judgment to determine if bills seem reasonable. Due to the lack of written guidance, staff do not check that bills are submitted within 30 days and are not duplicates, administrative time does not exceed the 12-minutes-per-activity limit, all bills are submitted by attorneys who had been assigned to an OCR case at the time of the activity billed for, attorney and attorney staff travel is supported by receipts, and that OCR approves attorneys to exceed maximum case fees and obtains court approval for excess expert costs.

- Specify how staff should document their reviews and approval for payment so that management can verify the approvals.

Second, OCR does not have a policy to conduct any type of periodic review of attorney documentation as a control measure. Although policies do require attorneys to maintain documentation to substantiate their bills, policies do not require the documentation to be submitted to OCR. Currently, OCR does not conduct risk-based reviews of contract attorney documentation to substantiate a sample of bills on a routine basis. OCR does review reports in CARES on attorneys who bill 12 or more hours of activities in 1 day, more than the overall average total case fees charged by all contract attorneys, or for time waiting to appear in court. OCR management reported that these reviews allow them to investigate when attorneys bill outside the norm and obtain repayment of bills that were improper. However, these reviews would not identify the billing problems we found, since they do not look for compliance with specific requirements and they are not done on a regular basis.

OCR'S POLICIES ARE NOT CURRENT WITH SOME PRACTICES. We identified three areas, based on our audit work, where OCR's policies do not reflect the practices OCR intends staff to follow, indicating that the policies should be updated. First, OCR paid bills for airport parking because it considers this to be a legitimate travel expense, although OCR's attorney billing policy states that it will not pay for parking. OCR should update the policy to clarify that some parking (i.e., airport parking) is allowed. Second, OCR management told us that, in practice, OCR paid bills that

were up to 2 days past the 30-day deadline to account for holidays, while OCR staff who processed bills said that they allowed contract attorneys up to a 5-day grace period past the deadline because they did not want to penalize attorneys for submitting bills a few days late. However, OCR policies and contracts do not allow a grace period, and OCR could not explain why it paid so many bills after a 5-day grace period. For example, 1,868 of the billed activities were submitted more than 35 days after the activity date.

Third, OCR's policy states that it follows Directive 12-03 regarding paying expert witnesses, but OCR told us that, in practice, it does not follow the Directive and OCR's attorney billing policy states that OCR can approve expert witness fees above the \$1,000 limit established in the Directive. However, this Directive requires a "prior order of the court" to exceed the fee limit and requires the court order to accompany the payment request. OCR stated that the intent of the billing policy was to allow OCR to approve fees over the limit in the Directive, rather than requiring a court order for excess fees. This intent is not clear from the language in the policy.

OCR'S POLICIES AND PROCEDURES FOR BILLING ARE NOT CENTRALIZED. OCR's billing guidance for contract attorneys is located in three different documents—the attorney billing policy, which OCR reports is the official guidance; the CARES billing manual; and the CARES user manual. While some OCR requirements, such as how to bill administrative time and not submitting duplicate billing for activities are only found in the billing manual, other requirements, such as entering billing within 30 days of the activity, are repeated among these documents. Unless contract attorneys and attorney staff are familiar with all three documents, they may miss some of the billing guidance that is in only one document. Centralizing the policies into a comprehensive written policy could help attorneys adhere to requirements more consistently.

OCR'S BILLING DATABASE HAS LIMITED FUNCTIONALITY. The CARES system that OCR used through April 2018, was not programmed to

prohibit or flag activity entries that were noncompliant with OCR policies, such as entries of administrative time in excess of 12 minutes and entries for paralegals' and social workers' costs for travel time to court. At the end of the audit, OCR informed us that its new CARES system should have improved functionality to help staff identify noncompliance.

In addition, although the CARES billing manual states that CARES has a control that prevents attorneys from entering the same activity more than once, this control did not function appropriately or consistently; it did not prevent the entries we identified that appeared to be duplicates. Reviewing all bills manually to identify problematic entries is likely impractical and time prohibitive. However, OCR could more efficiently and effectively prevent overpayments if it prevented attorneys from making multiple identical entries in CARES or flagged entries outside of established parameters, such as paralegals' and social workers' travel time to court. In addition, since CARES does not interface with the state court database, attorneys must manually enter the case numbers into CARES according to OCR's specified format. The manual entry of case numbers increases the likelihood for error, and OCR has no process to verify that cases are legitimate.

WHY DO THESE PROBLEMS MATTER?

OCR's primary function is to contract with attorneys for the work they perform in providing legal representation to children, and OCR processes thousands of attorney bills each month, which is a process that should have strong controls. Thus, OCR has a responsibility to ensure that state funds are used effectively and efficiently, and in compliance with Supreme Court Directives, to provide representation to children. In its Fiscal Year 2019 budget request, OCR stated that it is accountable to the State to achieve its mission of providing competent and effective legal representation "in the most cost-efficient manner without compromising the integrity of services or the safety and well-being of children..." OCR's attorney billing policy states that, "Attorney payments are funded exclusively by taxpayer dollars. As such, the OCR maintains the highest level of accountability for the payment of these funds..."

The lack of controls over billing and payments that we found resulted in OCR paying about \$435,000 to contract attorneys that should not have been paid if OCR had been strictly following its own policies and Directives. These payments represent 4 percent of the \$10.4 million in contract attorney payments that we reviewed. When OCR does not clearly establish staff responsibilities for reviewing and approving bills (such as in a written policy), conduct periodic monitoring to ensure attorneys maintain required documentation to substantiate their expenses, and ensure its policies accurately reflect current expectations for billing and review, it creates a risk of improper billing and erroneous payments, including the potential for fraud or misuse that is not identified and addressed, as well as funds not being used to provide attorney services to children in the court system.

During the 2018 legislative session, the General Assembly approved increasing the hourly rate for contract attorneys and support staff and appropriated an additional \$1.3 million (6 percent) in OCR's budget for Fiscal Year 2019 for this purpose. This increase in the budget heightens the importance of OCR strengthening its billing and payment controls to ensure that these funds are appropriately spent to help children involved in the court system.

RECOMMENDATION 4

The Office of the Child's Representative (OCR) should improve its controls over contract attorney billings and payments by:

- A Implementing written policies that identify which OCR staff positions are responsible for review and approval of bills, specify that reviewers should verify compliance with all applicable policies and directives, and require staff to document their reviews and that amounts approved comply with OCR's requirements.
- B Expanding monitoring by implementing policies to conduct periodic, risk-based reviews of documentation substantiating attorney bills, including verifying case numbers, and recover payments made in error.
- C Updating policies to reflect the Chief Justice Directive and practices that OCR intends staff to follow, including those related to parking expenses, billing deadlines, excess fee requests for approval, paying expert witnesses, and requiring that approvals and exceptions to the policy to be documented.
- D Implementing written policies that establish separation of duties between the approval and payment of bills, which ensure timely payment of bills, and establish a process for a documented approval if OCR continues to allow the payment of bills submitted late.
- E Centralizing attorney billing policies and guidance in a single document.
- F Ensuring that edits are implemented in the new CARES system to flag or prohibit noncompliant bills.

RESPONSE

OFFICE OF THE CHILD'S REPRESENTATIVE

A AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR will update its policies to clarify which positions are responsible for review and approval and that reviewers are verifying compliance with policies. Policies will also require staff to document their review and approval.

After several years of efforts to improve its previous system and analysis of strategies to achieve a more robust, functional, user-friendly and secure billing and case management system, OCR requested and received funding for a new system through its FY 2017-18 budget process. OCR contracted with a software development company and designed a new system which was implemented April 1, 2018. OCR shares many of the concerns identified by the auditors and has completely changed its attorney billing process after receiving funding in its FY 2017-2018 budget. For example, OCR no longer selects attorney activities for payment. Rather, contract attorneys enter their activities in the new software and create/submit invoices monthly for the billable activities from the prior month. All invoices must be approved by OCR's Billing Manager as well as either OCR's Accountant or Chief Operating Officer. Furthermore, OCR is in the process of designing reports to be reviewed regularly to assist in monitoring compliance with policies and procedures.

B AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR agrees with the recommendation and will develop reports in its new billing/case management system and review a sample of attorney bills on a quarterly basis, including verification of documentation from attorneys and verification of cases in the court data system.

OCR is in the process of designing reports to be reviewed regularly to assist in monitoring compliance with policies and procedures. While OCR has not yet finalized its reports (and it will continue developing new reports as the need arises), they may include an analysis of: individual activities of 4 hours or more, travel time, and paralegals and/or other staff billing for travel time to court.

OCR designed its new case management/billing system to allow it to apply credits for disputed billing items. If OCR identifies activities not allowed but paid, duplicate activities, errors, etc. as a result of its analysis, those amounts will be recovered as a credit on a subsequent invoice. Furthermore, the new system does not allow users to bill for activities prior to the start date of the court appointment.

C AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR has updated and will continue to update its policies to clarify items including, but not limited to, parking expenses, billing deadlines, requests for additional funds, and payment of expert witnesses. OCR is incorporating the approval process for exceptions (e.g., additional funds requests, travel, expert witnesses) in its new case management/billing system. Contract attorneys are already able to request additional funds within the system. Once approved by an OCR Staff Attorney, the approval is documented and the maximum billing allocation is automatically updated. Furthermore, any activities on cases that have reached their maximum billing allocation cannot be invoiced by the contract attorney until additional funds have been approved.

OCR acknowledges its weakness in documenting approvals for various billing exceptions in the previous billing system. The new case management/billing system is deliberately designed to address most of these weaknesses, and, for those unable to be included in the system, OCR will implement processes to better document those approvals.

D AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR will clarify its policies establishing adequate separation of duties and will establish a process to document the approval of invoices submitted outside of the timelines.

As discussed in previous responses, OCR's attorney payment process has been completely revised to require contract attorneys to submit monthly invoices (through the case management/billing system) for payment of case-related activities. Attorneys have until the 15th of the following month (the next business day if the 15th falls on a weekend). Any invoices submitted after the deadline require Executive Director approval and documentation of such approval.

E AGREE. IMPLEMENTATION DATE: APRIL 2018.

OCR has updated and consolidated its Billing Policies and Procedures document available online and provided to all new contract attorneys, and it has developed a user guide for its new case management/billing system. OCR will continue to incorporate billing guidance through updates to its Billing Policies and Procedures.

F AGREE. IMPLEMENTATION DATE: JULY 2018.

OCR has implemented edits in its new CARES case management/billing system to flag certain billing anomalies. Additionally, it has eliminated Administrative Time as a billable activity. If OCR has funding in the future to make significant improvements to CARES, it will continue to consider new flags and skip logic.

As indicated in previous responses, OCR is in the process of developing various reports to monitor compliance, cost, efficiency, etc. OCR is committed to developing meaningful reports to identify noncompliant bills and recover any overpayments through the CARES credit functionality.

AUDITOR'S ADDENDUM

The audit found that billing system edits were needed to prevent duplicate billing and paying for paralegals' and social workers' travel time to court. OCR's response does not indicate that it will implement edits in its billing system to address these problems unless it obtains funding in the future. As such, the problems identified in the audit may continue unless OCR implements robust review processes to compensate for the lack of billing system controls.

USE OF PROCUREMENT CARDS

Procurement cards are credit cards that are used by an agency typically to pay for small purchases for the State. OCR uses state procurement cards, which it refers to as “credit cards,” to purchase goods and services and pay for other expenses, such as travel, training materials and catering, and office telephone and internet services. OCR issues the cards to select employees and the charges are billed to OCR. OCR has issued the cards to nine of its 11 staff who have administrative and management responsibilities. OCR’s administrative assistant reconciles the receipts to the monthly account statement showing all procurement card purchases, and provides the receipts and statements to OCR’s Chief Operating Officer and staff accountant for a second review and payment. For the 6-month period we reviewed, July through December 2017, OCR staff spent \$33,910 using procurement cards.

WHAT AUDIT WORK WAS PERFORMED AND WHAT WAS THE PURPOSE?

We analyzed data from CORE and reviewed the monthly procurement card statements for \$33,910 in total procurement card purchases that OCR staff made from July through December 2017. We selected and reviewed a random sample of 22 procurement card purchases totaling \$13,879 (41 percent of purchases) to determine whether the purchases were reasonable and necessary in accordance with OCR’s financial policy and determine how the purchases were approved. We reviewed OCR’s policy to understand the guidance staff receive regarding using procurement cards and Judicial Branch Fiscal Rules and Office of the State Controller (State Controller) guidance for state employee travel reimbursement. We also interviewed OCR management and staff to understand how they use the procurement cards and process card payments. The purpose of this audit work was to evaluate OCR’s internal controls over the use of procurement cards.

WHAT PROBLEMS DID THE AUDIT WORK IDENTIFY AND HOW WERE THE RESULTS OF THE AUDIT WORK MEASURED?

Overall, we found that OCR paid purchasing card expenses that were not allowed by its policy, not substantiated, and not approved. We identified problems with 13 of the 22 purchases in our sample totaling \$4,845 (35 percent of the \$13,879 tested through the sample), and with an additional \$533 in purchases outside our sample through our review of OCR's financial data in CORE and procurement card statements (3 percent of the \$20,031 tested from aggregate data). We found the following with card purchases:

LACK OF DOCUMENTATION OF REASONABLE AND NECESSARY

- A purchase of \$260 for 10 gift cards in our sample and 11 purchases totaling \$79 for OCR staff parking outside of our sample had no documentation to support that they were reasonable and necessary expenses for OCR. OCR policy states that purchases, including those made with procurement cards, are for OCR's "reasonable and necessary" expenses. None of the receipts for these purchases had any notations about the purpose of the purchase or explanations of why they were reasonable and necessary expenses that OCR should cover. Furthermore, four of the gift cards exceeded the established dollar limit of \$25; two were \$45 each and two were \$40 each. OCR policy states "limited use of incentives (including gift cards with a face value not to exceed \$25.00) is a legitimate tool in motivating adult learning [and] youth involvement in focus groups, etc."

After we brought these purchases to OCR's attention, the staff who purchased the gift cards told OCR management that the four gift cards were packs of cards and each card denomination was under the limit. However, OCR did not have documentation to support these statements and did not have evidence that it had checked the gift card amounts prior to paying for this staff's card purchases.

NOT ALLOWED BY POLICY

- \$364 on food when OCR staff met with non-judicial district staff, including one purchase for \$160 in our sample. OCR's policy states that the cost of staff meals is covered only when staff are meeting with judicial officers, stating that, "OCR (Denver) staff may purchase meals periodically for meetings with judicial officers in their district(s)." For the purchase in our sample, OCR could not provide documentation that the staff met with judicial officers.

EXCEEDED LIMITS WITHOUT APPROVAL

- \$231, including tax and tip, for a dinner for four OCR staff prior to OCR's annual conference; each meal exceeded the per diem allowed per person for dinner by \$21. The maximum allowed is based on per diem rates established by the State Controller's Office.
- \$15 for a staff member's breakfast, which was \$4 more than the per diem allowed, while traveling to attend a meeting that was not with a judicial officer.

GENERAL LACK OF APPROVAL

- \$250 for six other staff meals charged to the cards when traveling for which OCR had no documentation of approval by the cardholders' supervisors. OCR's policy states that, "Reimbursement for travel-related expenses is made in accordance with the following...Travel [is] approved by the employee's supervisor."
- \$937 in other travel-related expenses in our sample was charged to the cards without documentation of supervisory approval. This included \$372 for two hotel stays and \$565 for a conference registration requiring out-of-state travel.

UNNECESSARY PAYMENT OF TAXES

- For four sampled purchases, OCR paid state sales taxes totaling \$110 for a hotel stay, an Amazon purchase for training materials,

and OCR's office phone bills, although statute exempts state agencies from state sales tax when purchasing within their official government capacity [Section 39-26-704(1), C.R.S.]. OCR told us that it typically pays sales taxes on procurement card purchases.

POTENTIAL FOR DUPLICATE PURCHASES AND OVERSPENDING

We identified instances between July and December 2017 when multiple OCR staff used their procurement cards to make purchases for the same events or to buy similar items, increasing the risk of duplicate spending, making it difficult for OCR to know how much is spent on events and similar items, and indicating that purchasing could be consolidated onto fewer cards. For example, two staff used their cards to purchase catering for a single training event, and three staff used their cards to purchase information technology items, such as software subscriptions and hardware.

Furthermore, staff are able to make large purchases on their cards without pre-approval and without supervisory review of the purchases after they are made, which increases the risk of overspending. For example, one staff spent \$3,089 in a single transaction for "various prints," according to the invoice. Staff noted on the invoice that the purchase was for training materials, but the purchase was not pre-approved and no supervisor reviewed the purchase, such as by reviewing the invoice or card statement or verifying receipt of the goods purchased.

We also found that a number of staff use their cards minimally, but the current monthly credit limits on the cards could allow the nine staff to spend up to \$50,000 every month. EXHIBIT 3.2 summarizes each staff's use of their procurement card for the period we reviewed.

EXHIBIT 3.2. OCR STAFF CREDIT CARD PURCHASES JULY THROUGH DECEMBER 2017			
OCR STAFF	NUMBER OF PURCHASES IN 6 MONTHS	TOTAL PURCHASES IN DOLLARS OVER 6 MONTHS	MONTHLY CARD LIMIT
Executive Director	1	\$4.50	\$5,000
Deputy Executive Director	36	\$2,698	\$5,000
Staff Attorney	23	\$1,433	\$5,000
Staff Attorney	22	\$1,943	\$5,000
Staff Attorney	17	\$3,890	\$5,000
Staff Attorney ¹	3	\$374	
Administrative Assistant	28	\$3,160	\$5,000
IT Manager	6	\$1,436	\$5,000
Attorney Payment/Human Resources Manager	54	\$7,776	\$5,000
Training Coordinator	30	\$11,196	\$10,000
TOTAL	220	\$33,910	
SOURCE: Office of the State Auditor analysis of CORE data and OCR procurement card statements.			
¹ This staff attorney left OCR in June 2017; purchases were paid in July.			

WHY DID THESE PROBLEMS OCCUR?

Overall, OCR lacks controls over spending with procurement cards. Specifically:

- **OCR DOES NOT HAVE A POLICY ON THE USE OF PROCUREMENT CARDS.** OCR policy does not establish what types of expenses procurement cards can be used for or how staff should demonstrate that a purchase is reasonable and necessary. For example, policy does not define the types of card purchases that are considered reasonable and necessary, or specify the types of documentation needed to support the reasonableness and necessity of purchases, such as requiring staff to include a written explanation on the receipt or invoice of the business purpose of the purchase. For the gift card purchase in our sample, OCR reported that staff did not need to document the purpose of the purchases and that staff's verbal explanation was acceptable. Furthermore, OCR policy does not specify which types of staff positions need procurement cards and why. OCR management told us that it believes that most of the Denver staff (eight of the 10 staff in the office) need their own card to buy things for their job areas.

- **OCR DOES NOT CONSISTENTLY ENFORCE ITS WRITTEN POLICY.** Despite having the policy requiring staff to be reimbursed according to per diem rates and obtain supervisory approval for travel, which is common practice among state agencies to control costs, OCR is not reviewing meal purchases to ensure that they are within per diem rates when staff travel, and management told us that it has not had staff get approval from their supervisors for travel purchases because travel by staff is routine and expected as part of their jobs. As noted in RECOMMENDATION 4, OCR applies the Judicial Fiscal Rules when reviewing and approving payments to its contract attorneys because the Rules limit payment for meals to per diem amounts that the Judicial Branch has established in line with the State Controller's Office; however, OCR does not apply those same Rules to its staff. For example, the Rules do not allow meals when travel is completed within a single day, but for one purchase in our sample, a staff member purchased breakfast (the sampled purchase) and lunch during a single day of travel for meetings.
- **OCR LACKS A SUPERVISORY REVIEW AND SEPARATION OF DUTIES OF PROCUREMENT CARD STATEMENTS.** OCR policy does not require any documentation of approvals, and OCR has not had staff obtain spending pre-approval or get supervisory approval for any purchases made with the cards. The cardholders' supervisors do not review their direct reports' statements to ensure that purchases are reasonable and appropriate and supported by receipts. In addition, the staff who report to the Executive Director review and approve the Executive Director's procurement card purchases. Subordinates should not review and approve their supervisor's expenses. The Executive Director's expenses should be reviewed and approved by someone with authority over the Executive Director, such as a member of the Child's Representative Board. Further, OCR's administrative assistant conducts an initial reconciliation of the statements and receipts, which includes the administrative assistant's own purchases; there is no segregation of duties for reconciling receipts to purchases for this staff.

- **OCR HAS NOT ESTABLISHED CONTROLS TO AVOID PAYING UNNECESSARY TAXES.** There are various means by which state agencies pay expenses that are designed to ensure they do not pay taxes from which they are exempt. These include providing staff with copies of the state tax certificate showing the agency's tax exempt status that staff can present to vendors when paying expenses directly with a purchasing card; and paying expenses through warrants or funds transfers from the agency itself, such as for conference registrations or airfare. OCR does not use these mechanisms. Instead, OCR has a policy that staff cannot follow and that OCR cannot enforce, that staff must "cross out amounts for State and State-collected local taxes...and write in the appropriate amount to pay."

Lastly, when we interviewed staff, many did not seem familiar with OCR's policies related to the cards, indicating that additional staff training is needed.

WHY DO THESE PROBLEMS MATTER?

OCR's mission statement says that "as a state agency, OCR is accountable to the State of Colorado to achieve this mission in the most cost-effective manner..." However, when OCR lacks fundamental controls over its operating expenses, it is not ensuring that it is operating cost-effectively and that all purchases are reasonable and necessary expenses for OCR. Specifically, without written policies on documenting the business need for all expenses incurred by staff, OCR management does not have the information it needs to verify that all expenses are justified. Moreover, without enforcement of spending limits and approval of expenses, OCR may be spending more than is reasonable and necessary on expenses, such as staff meals and lodging, rather than operating as cost-effectively as it can.

In addition, allowing over half of the staff in the Denver office to have procurement cards tends to decentralize OCR's purchasing, which creates risks of misuse of funds and limits OCR management's ability to monitor spending. Purchasing by a few authorized staff provides greater controls over OCR's finances compared with allowing many employees to purchase goods and services without approval or supervisory review.

RECOMMENDATION 5

The Office of Child's Representative (OCR) should improve its controls over procurement card purchases by:

- A Improving its policies and procedures to cover the use of procurement cards, including, but not limited to, describing the types of purchases that staff are authorized to make with the cards, identifying the staff positions that need cards, and outlining the documentation needed to support that purchases are reasonable and necessary.
- B Enforcing existing policy by ensuring that staff obtain supervisory approval for travel and do not exceed per diem rates.
- C Implementing a written policy for cardholders' supervisors to review their subordinates' procurement card statements to ensure reasonableness of purchases and compliance with policy, and for a Child's Representative Board member to review the Executive Director's card statements to approve payment.
- D Establishing mechanisms to avoid paying state sales taxes on purchases.
- E Establishing processes to ensure that staff are trained on and comply with the revised policy and procedures that are implemented in PARTS A through D.

RESPONSE

OFFICE OF THE CHILD'S REPRESENTATIVE

- A AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR will update its policies to clarify purchases authorized to be made with purchasing cards, identify the staff positions authorized

to have a card, and clarify the documentation required to support that purchases are reasonable and necessary.

B AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR will update its policies regarding staff travel, including when supervisory approval is required. Additionally, OCR will update its policies regarding per diem rates for meals and provide training to staff on its updated policies.

When evaluating that travel costs do not exceed per diem rates, OCR has considered the daily aggregate per diem rate for meals and incidental expenses rather than the individual meal rates. The audit correctly identified that certain individual meals paid on the credit card exceeded the per diem rate for the individual meal. However, the amount paid for meals did not exceed the per diem rate for the day; from that perspective, OCR did comply with its policies. OCR will clarify its policies to specify that payment for the sum of all meals in a day during travel will not exceed the daily per diem rate.

Routine travel (e.g., travel to a staff attorney's assigned district for meetings, court observations, etc.) as well as out-of-state travel (e.g., conference) is discussed by the staff attorneys during regular meetings. "Approval" is given during those meetings; however, sufficient formal documentation is not always provided as backup to the travel costs. OCR will document formal approval of travel.

C AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR will update its policies to require supervisors to review subordinates' procurement card statements and also require an OCR board member to review the Executive Director's statements.

Additionally, OCR will evaluate which staff have credit cards and determine if those credit cards can be canceled or if the monthly credit limit can be reduced.

D AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

OCR's current mechanism to avoid paying state sales tax on purchases is to point out at the time of purchase the tax exemption notation on the state credit cards. The top of the state-issued credit cards includes the State's tax exempt number along with a notation of "For approved business only." OCR will train staff to point this out on future credit card purchases. After receipt of the credit card statement, OCR staff attempts to have any sales tax removed.

For recurring charges paid on the purchasing cards, OCR will review those charges and work with vendors who may be currently applying sales tax to remove those taxes from future billings. Additionally, when placing orders using the purchasing card, OCR will work with the vendor by providing the necessary tax exempt information (e.g., tax exempt number, copy of the exemption certificate) to avoid paying sales tax.

E AGREE. IMPLEMENTATION DATE: FEBRUARY 2019.

As indicated in previous responses, OCR will update its policies and procedures to ensure staff are aware and will comply with such policies. OCR will provide staff training upon completion of the policy and procedures revisions.