

Best, et al. v. Grant County

Monitor's Report

Fourth Quarter, 2008

January 26, 2009

Submitted by Francisco Rodriguez, Settlement Monitor

Monitor's Activities

I continue to visit Grant County about once a month. During the fourth quarter, I travelled to Ephrata on three separate occasions:

- October 6-7, 2008
- November 3-4, 2008
- December 1-2, 2008

While in Ephrata, I observed court proceedings, reviewed court files, and met with public defenders. Between site visits, I maintain regular contact with the Supervising Attorney and have periodic contact with individual defenders, investigators, and counsel for both parties.

In addition to my regular activities, during the fourth quarter, I had several meetings in Seattle relating to approvals required by the Settlement Agreement. On October 14, 2008, I met with counsel for both parties, Supervising Attorney Alan White, and one of the Grant County Commissioners to discuss Grant County's proposal for an in-house public defense system. On November 5, 2008, I met with attorney Jeff Goldman regarding Grant County's request that Mr. Goldman be approved as a part-time public defender. Finally, on November 21, 2008, I met at length with attorney Ray Gonzales regarding Grant County's request that he be approved as the new Supervising Attorney.

Due to past problems with jail visits, I now review case assignments and jail visitation logs each quarter to determine whether the Grant County public defenders are visiting their in-custody clients in a timely fashion. During the second half of 2008, I began systematically reviewing electronic court dockets for cases assigned to Grant County's public defenders in order to evaluate defender motions practice, use of experts, and case outcomes. I continued this practice in the fourth quarter, gathering data for both the quarter and the year.

Access to Information

The Settlement Agreement provides that the Monitor shall have broad access to information concerning the Grant County public defense system. Supervising Attorney Alan White and his assistant Aracely Yanez have always been very cooperative in providing whatever information I request of them. The Grant County Superior Court Clerk's Office also continues to be exceptionally helpful in locating and proving access to court files.

2007-08 Compliance

I understand that the parties continue to work toward a stipulated resolution regarding Grant County's compliance with the Settlement Agreement in 2007. I do not believe the parties have begun discussions regarding compliance in 2008. In June, I submitted a 2008 Compliance Report detailing my findings and recommendations relating to two violations that occurred earlier this year. The violations related to proper accounting for case credits on contempt cases and private practice by several of Grant County's public defenders. Now that we have reached year's end, I expect that the parties will attempt to reach agreement as to Grant County's compliance in 2008 and whether the violations found in June have been cured.

Attorney Staffing

Grant County's defender staffing underwent only minor changes in the fourth quarter. Ryan Earl, who had resigned in July, finished his contract during the fourth quarter. Although he was technically still on contract for the month of October, he was assigned no new cases during his last month and had already been replaced by Melissa MacDougall in September. The departure of Mr. Earl and arrival of Ms. MacDougall seems to have gone smoothly.

The only other staffing change during the quarter was the addition of Jeff Goldman as a temporary part-time defender. Grant County hired Mr. Goldman on a temporary basis for November and December in order to provide additional caseload flexibility in the event its other defenders approached their annual caseload limits. Mr. Goldman ended up receiving relatively few case assignments during his two month tenure.

While staffing in the fourth quarter was relatively stable, Grant County faces substantial staff turnover during the next few months. Four full-time defenders submitted their resignations in December, making staffing for 2009 a serious concern. Brian Gwinn, Mike Haas, Melissa MacDougall, and Mike Prince are all leaving Grant County to do public defense work in Okanogan County. The impact of these departures will be significant. All were assigned class A felonies in 2008. Brian Gwinn was the longest tenured public defender in Grant County and served as acting supervisor whenever Alan

White was on vacation or away for training. Mike Haas is a very talented defender who had more jury trials than any other defender in 2008. Mike Prince and Melissa MacDougall were both highly regarded as well. With these resignations, Grant County is losing almost half of its defenders at once and the only three defenders who actually resided in Grant County. Grant County faces a daunting challenge in finding qualified replacements for the departing defenders in a very short period of time.¹

Caseloads

Consistent with Washington State Bar standards, the Settlement Agreement sets an annual caseload limit of 150 case equivalents. In addition, the County has adopted monthly and quarterly limits to ensure that case assignments are distributed relatively evenly throughout the year. During the fourth quarter, the County observed its quarterly limit for all of its defenders. The County also observed its monthly limit with two exceptions. In October, Melissa MacDougall (19 credits) and Mike Prince (18.66 credits) both exceeded the monthly limit of 16 case credits. Ms. MacDougall's high October caseload was due to her involvement in a lengthy trial which entitled her to extraordinary credits. Mr. Prince's October caseload was higher than normal due in part to the fact that probation violation assignments were well above average for the month, and he was assigned to cover those calendars. Mr. Prince also received the second highest number of felony assignments for the month, however, so his caseload could have been better managed.

Grant County also appears to have met annual caseload limits.² When reconciling the December case assignments, Supervising Attorney Alan White found that both Ms. MacDougall and Mr. Prince had slightly exceeded their annual caseload limits for 2008. Upon discovering the error, Mr. White immediately reassigned a total of three cases to bring both attorneys within the specified limits. I do not believe the quality of representation provided by these attorneys suffered due to the error. Nonetheless, the Supervising Attorney should be careful in monitoring caseloads at year's end, particularly when several other attorneys had substantial caseload capacity remaining.

Distributing cases evenly among the defenders proved to be a challenge in 2008. While four defenders reached their annual caseload limits, the other five finished the year with anywhere from 9 to 21 case credits remaining. An average month's caseload is 12.5 credits. Three defenders had more than 18 unused credits at the end of the year. An

¹ The problem is exacerbated by the fact that the departing defenders took over the Okanogan County public defense contract on January 1, 2009, forcing at least some of them to carry two caseloads for a period of time. I have urged the parties to discuss how best to handle this situation as private practice is prohibited by the Settlement Agreement.

² I understand that whether Grant County complied with the annual caseload limits and other issues discussed in this report may be the subject of future disputes between the parties. I have not fully investigated these matters. My conclusions here reflect my preliminary impressions based upon the information currently available to me and are not intended to finally resolve the matter. I will resolve any disputes if and when they are submitted to me by the parties.

adequately staffed public defender system will often have excess capacity at the end of the year because of the need to protect against caseload fluctuations. The problem here was not excess staffing. The problem was the significant variation in case assignments among the defenders. One defender should not be assigned 20 more case credits than another.

Balancing case assignments has been difficult in Grant County for several reasons. First, Supervising Attorney Alan White had to assign cases to attorneys with five different annual caseload limits. Some had the default of 150. Others were reduced to 140 because they engaged in private practice. Still others started mid-way through the year and had pro-rated caseload limits. Tracking assignments and progress toward caseload limits in this environment was challenging to say the least. A second problem relates to Grant County's practice of assigning child support and probation violation calendars to just a few defenders rather than rotating them among the entire group. The credits awarded from these calendars are somewhat unpredictable, and concentrating these assignments among a small group of defenders makes it more likely that they will skew caseloads. Similarly, extraordinary case credits are earned rather than assigned. Because work on extraordinary cases is not reported until the end of the month, an unexpected increase in hours worked on these cases can also skew caseload numbers.

For 2008, Grant County assigned 1205 case equivalents to its public defenders, an average of around 100 cases per month. Although October case assignments were high, the last two months of the year were below average. In fact, five of the last seven months have been well below average. The Grant County Commissioners recently appointed a new prosecutor to complete the term of John Knodell who won election to Superior Court in the fall. It is unclear whether the new Grant County Prosecuting Attorney will have any effect on the number of criminal filings. Based upon 2008 case assignments, Grant County needs slightly more than 8 full-time defenders for 2009. As always, I recommend that the County include a healthy cushion in its staffing plans.

Training

The Settlement Agreement requires Grant County to satisfy the NLADA Defender Training and Development Standards. The preface to those standards recognizes that “[c]ontinuous improvement and training are critical to competence [and] crucial to the delivery of effective services to the clients served by defender organizations.” Because few criminal defense trainings are typically held locally, Grant County has provided training to its defenders by organizing its own trainings and by subsidizing defenders who attend relevant trainings elsewhere.

In 2008, Supervising Attorney Alan White worked with statewide defender organizations to obtain high quality local trainings for the Grant County public defenders. At Mr. White's request, the Washington State Office of Public Defense sponsored a two-hour training on misdemeanor appeals. Mr. White also arranged for the Washington Defender Association (WDA) to sponsor a half-day CLE covering search and seizure issues,

working with investigators, and the immigration consequences of criminal cases. During the fourth quarter, with the assistance of WDA, Mr. White organized another half-day training session on mental health issues and sentencing practice. All of these trainings were held in Ephrata with speakers from outside the county.

In addition to formal CLE sessions, Mr. White occasionally arranges for informal lunchtime trainings with local presenters. During the fourth quarter, for example, Mr. White invited jurors who had served on recent defender trials to attend the defender lunch meeting and discuss their experiences as jurors as well as their views on the cases and issues that arose in the trials in which they participated. I was very impressed by Mr. White's initiative in securing this unique training opportunity for the defenders.

The County has also been willing to provide financial assistance to defenders in order to allow them to attend trainings outside of Grant County. During 2008, Grant County supported Mike Prince in attending the National Criminal Defense College in Macon, Georgia, and Karen Lindholdt and Julie St. Marie in attending an intensive three-day training on cross-examination put on by Jerry Spence's Trial Lawyers College in Leavenworth, Washington.

Ms. Lindholdt and Ms. St. Marie found the cross-examination training so valuable that they have subsequently attended additional sessions conducted by the Trial Lawyers College at their own expense. Both attended an intensive voir dire training in Wyoming in September as well as a three-day workshop on "Psychodrama Skills for Trial Lawyers" in Lummi Island, Washington earlier this month. In addition, Ms. Lindholdt travelled to New York to attend another three-day training on opening statements. The commitment of these defenders to improving their trial skills is admirable, and I hope that Grant County will continue to support them in their efforts.

I continue to believe Grant County should do more "in-house" trainings. Three of its defenders have attended nationally recognized training sessions this year. Those defenders undoubtedly gained valuable knowledge and insights that could and should be shared with their peers. To date, however, Grant County has not taken advantage of such opportunities in any organized way. In 2009, I hope that Grant County will make an effort to tap the knowledge base of its own defenders to provide more "in-house" training opportunities.

First Appearances

The Settlement Agreement requires that Grant County provide representation at initial appearances for all indigent defendants. To fulfill this obligation, the County assigns each of its full-time defenders to cover first appearances for a week at a time on a rotating basis throughout the year. During the fourth quarter, Grant County's public defenders appear to have represented all indigent defendants at first appearance. In reviewing court files and observing court, I did not find a single defendant who went unrepresented.

Grant County used to require its defenders to visit first appearance clients in jail prior to their hearings. In May, Supervising Attorney Alan White changed the policy to require a meeting of some kind with the client and not necessarily a jail visit. Despite this change in policy, most defenders continue to meet with first appearance defendants in jail rather than the courtroom. In reviewing jail sign-in logs for the fourth quarter, I found a record of first appearance jail visits on most court days. Three defenders had a particularly large number of such visits: Brian Gwinn (40), Mike Prince (31), and Brett Billingsley (25). Based upon my courtroom observations and a review of "Intake Sheets," it appears that the Grant County defenders are having meaningful meetings with their first appearance clients and representing them effectively at their hearings.

Jail Visits

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

Timely jail visits have long been an area of concern in Grant County. Problems with jail visits date back to at least December 2006 and have persisted into 2008. As noted in prior reports, in-custody clients have sometimes had to wait weeks for a visit from their assigned attorneys; some never received visits at all. Because of the serious and persistent nature of this problem, I closely scrutinize defender jail visits each quarter.

I reviewed 88 in-custody cases assigned during the fourth quarter and found that the Grant County defenders visited their clients on or before the day of arraignment approximately 70% of the time. Within a week, the defenders as a group had visited 90% of their in-custody clients. Both figures represent a substantial improvement over past quarters. Though not perfect, Grant County's public defenders were very good about making timely jail visits in the fourth quarter.

Over the course of 2008, the defenders have steadily improved in this area. Visits prior to arraignment increased from 25% of in-custody cases in the first quarter to 70% in the fourth quarter. Visits within a week of assignment now occur in 90% of cases as compared with 39% in the first quarter. The table below shows the progression over the course of the year:

	<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
Visit before arraignment	25%	34%	38%	70%
Visit within 7 days	39%	46%	65%	90%

Brett Billingsley, Karen Lindholdt, Melissa MacDougall, John Perry, and Janelle Peterson all visited 100% of their in-custody clients within a week of receiving the assignment. Mike Prince visited all but one of his clients within a week.³

Two defenders, Mike Haas and Julie St. Marie, did not visit all of their clients in a timely fashion. Although Mr. Haas visited a majority of his clients within 7 days, three clients did not receive timely visits. One waited 13 days, another 19 days, and a third waited 24 days for a visit before finally pleading guilty having never received a jail visit from Mr. Haas. Mr. Haas indicates that he did meet with these clients at length in the hallway outside the courtroom. Ms. St. Marie visited 74% of her clients within a week, but I did find 4 cases in which her clients had to wait from 9 to 11 days for a visit. A fifth client waited 13 days. The delays in Ms. St. Marie's visits may be due, in part, to the fact that she was assigned more in-custody clients than any other defender during the fourth quarter. She also had transportation problems due to the heavy snowfall in December. Removing these two attorneys from the calculation, the remaining defenders combined visited 87% of their in-custody clients prior to arraignment and 99% within a week of assignment.

Client Complaints

Grant County maintains a toll-free telephone line for client complaints. Instructions regarding how to contact the Supervising Attorney are posted in several locations at the jail in both English and Spanish. At arraignment, the public defenders provide out-of-custody defendants with a flyer that directs them to contact Mr. White with complaints and includes his contact information. Aracely Yanez logs all calls to the complaint line and forwards messages to the assigned defender or refers the matter to Mr. White for follow-up.

During the fourth quarter, there were 210 calls to the complaint line. One mentally ill inmate was responsible for 81 of those calls. Excluding his calls, there were 129 calls to the complaint line. Many inmates call the line repeatedly for the same or similar reasons. Although there were 129 calls to the complaint line, there were only 56 unique callers.

As in previous quarters, almost all of the calls to the complaint line related to attorney-client communication. Few callers reported substantive complaints. Most wanted to speak with their attorneys or asked that their assigned attorneys visit them in jail. Calls to the complaint line generally fell into the following categories:

³ In the one case in which Mr. Prince did not make the required visit, he received the case just three days prior to arraignment, and the client pled guilty and was sentenced at that hearing. Mr. Prince already had an open case with the client, and the client pled guilty to take advantage of a package deal on both cases.

<u># Calls</u>	<u>Nature of call</u>
50	Request to speak with attorney/request for visit
26	Request to speak or meet with Alan White/Alan White took call
18	Question about case
15	Substantive Complaint (9 different callers)
6	Request for name of assigned attorney
4	Message for assigned attorney
3	Problems reaching assigned attorney
3	Trying to contact attorney/request for attorney contact information

Some of the calls fell into more than one category.

Telephone access to public defenders from the jail seems to have improved clients' overall satisfaction with their representation. A year ago, callers frequently complained about their attorneys not visiting them and expressed frustration at a lack of attorney-client contact. Now, most callers to the complaint line seem to view it as just another way to leave a message for their attorneys. The typical caller is simply impatient about not being able to instantly reach his or her assigned attorney by phone rather than unhappy with the level of contact overall.

In the fourth quarter, Grant County again experienced some problems providing inmates with telephone access to their defenders. Ryan Earl discontinued his toll-free telephone service in October even though he was still providing public defense services to Grant County. Mike Haas terminated his toll-free telephone service in August and did not reconnect it until October 27. As of November 6, Mr. Haas' phone line was still not working. It is unclear when his phone line was finally reactivated, but it was working on December 12 when Alan White conducted his monthly test. Although both Mr. Earl and Mr. Haas disconnected their telephone services in violation of both their contracts and the Settlement Agreement,⁴ to the best of my knowledge, Grant County took no disciplinary action against either attorney.

For substantive complaints, Mr. White investigates the matter, including visiting the defendant at the jail if necessary, and occasionally writes formal reports to the County detailing the results of his investigation. Mr. White is quite diligent about talking with defendants who have complaints about their public defenders by phone and/or visiting them in the jail. When it comes to documenting the process, however, his investigations often seem to stall. At present, Mr. White has quite a large backlog of pending investigations. Mr. White's December report lists at least 10 complaints dating back to June in which his investigation is still pending. Part of the problem may be that Mr. White appears to have a very high standard for such investigations. The two written

⁴ The Settlement Agreement specifically requires that each defender maintain a telephone system that allows clients to leave messages.

complaint reports that I have reviewed were quite comprehensive and lengthy. Such extensive investigation and documentation is not necessary in most cases.

As noted in prior quarterly reports, the current complaint system does not allow me to effectively monitor substantive complaints. Those are typically handled directly by Alan White, and the complaint line records often do not reflect the substance of his phone calls or meetings with inmates. Although Mr. White intends to draft reports regarding both the complaints and the findings from his investigation, I have only received two such reports to date. I have discussed this issue with Alan White and provided him with a sample public defender complaint log. I believe he has now adopted his own form based on this model. While Grant County should keep a written record regarding any substantive complaints against its public defenders, the records kept need not be overly detailed. The general nature of the complaint should be recorded along with the County's response, if any. If Grant County wishes to require a more detailed report, perhaps Mr. White could complete the basic report relatively quickly and defer the more detailed version to a later date when he has more time.

Investigator Staffing

Grant County currently has five approved investigators: Ellyn Berg, Marv Scott, Kathleen Kennedy, Jim Patterson, and Mario Torres. I have consistently received positive reviews of the work of Ellyn Berg and Marv Scott who have been working with the Grant County defenders for some time. Mr. Patterson is also a skilled investigator, but he seems to be very busy and did not receive any case assignments in the fourth quarter. Ms. Kennedy and Mr. Torres are both new to Grant County this quarter. Initial reviews of Ms. Kennedy's work have been glowing. The feedback I have received regarding Mr. Torres has been negative, with several defenders expressing concern about his failure to perform assigned tasks in a timely fashion or at all. I have also approved two other investigators, Allison Taylor and Win Taylor, but I understand that Grant County was unable to agree to contract terms with them.

Investigation Rates

For 2008, the overall rate of investigation was 36%, up slightly from 35% last year. The rate for individual attorneys ranges from 19% to 63%. As in the past, most defenders appear to be making appropriate use of investigators on their cases. The 2008 investigation rates for Ryan Earl, who has now left the program, and Brett Billingsley are low at 19% and 20% respectively. Even so, these rates are higher than some of the single digit rates I have found in the past. Excluding Mr. Earl and Mr. Billingsley, the 2008 investigation rate for the remaining attorneys was 41%. To his credit, Mr. Billingsley increased his rate of investigation in the second half of the year, and his overall rate of investigation would likely be higher had he not been assigned to cover child support calendars for much of the fourth quarter.

Experts

During the fourth quarter, I continued the practice I instituted last quarter of reviewing electronic court dockets on all new felony case assignments as well as pending cases from prior quarters. In my review of dockets and related court files, I found that Grant County public defenders requested experts in six cases during the fourth quarter. Janelle Peterson requested experts in two cases, and John Perry, Karen Lindholdt, Melissa MacDougall, and Julie St. Marie each requested an expert in one of their cases.

For the year, I found 17 requests for experts by Grant County's public defenders. All the requests came from the same five attorneys who made requests in the fourth quarter. Janelle Peterson and Karen Lindholdt were, by far, the most aggressive in requesting the appointment of experts. Ms. Peterson made eight requests, while Ms. Lindholdt made five.

Evaluating the use of experts is difficult. Without knowing all the facts and circumstances of a particular case, it is difficult to determine with any certainty whether an expert should have been requested. The one area in which I continue to have concerns about the use of experts in Grant County is on cases involving mental health issues. Most of Grant County's defenders seem to appreciate the need for a defense expert when a defendant has competency issues or potential mental defenses. For a few defenders, however, the routine practice in such cases has been to simply request that the defendant be sent to the state hospital for evaluation and then put the case on hold while awaiting the results. A zealous advocate for the defendant should be seeking an independent evaluation of the client by a defense expert, not relying on the State's experts to determine whether a valid mental defense exists. In my experience, such experts are far less likely to support a mental defense than an independent expert appointed by the court. Similarly, experts from the state hospitals are far more likely to find a defendant competent to stand trial than private experts who do not seem to set quite such a low bar for competence. While commitment to the state hospital for evaluation may be inevitable in many of these cases, the opinions of the State's experts should not be both the first and last word on these issues.

The Settlement Agreement requires that public defenders request experts via ex parte motion and that the records relating to experts be sealed. For the most part, Grant County defenders are requesting expert funds via ex parte application to the court and asking that the records be sealed.⁵ I have found some expert requests that are not properly sealed, but this appears to be the result of technical issues with the pleadings in most cases rather than a lack of effort on the part of the defenders involved. As mentioned in my last report, Grant County defenders should work with the clerk's office to develop standard sealing forms in order to ensure that expert requests and supporting documentation are properly sealed in the court file in every case.

⁵ In at least one case, the defenders report that the judge declined to hear an expert request ex parte. I understand that in most cases, however, the defenders are permitted to make their motions ex parte.

Motions Practice

During the third quarter, I began conducting a systematic analysis of motions practice in order to ascertain whether the Grant County defenders were filing motions in appropriate cases. I continued this effort in the fourth quarter, reviewing both new felony assignments and ongoing cases assigned earlier in the year.

Defender motions practice was quite robust in the fourth quarter. I found 27 cases in which Grant County defenders had filed substantive motions.⁶ In several cases, defenders had filed more than one motion. Seven different defenders filed written motions this quarter.⁷ Janelle Peterson had the most, with briefs filed in seven cases. The totals for the other defenders are listed below:

<u>Attorney</u>	<u>Motions</u>
Peterson	7
Lindholdt	5
MacDougall	4
St. Marie	4
Perry	4
Prince	2
Haas	1

Overall, Grant County public defenders filed motions in 59 cases in 2008. Defender motions practice improved substantially in the second half of the year; the number of motions filed more than tripled after July 1. Three attorneys were responsible for a disproportionate share of the motions filed. Karen Lindholdt (12), Janelle Peterson (14), and Julie St. Marie (13) filed motions in 39 cases in 2008 and were responsible for 66% of the motions filed. Ms. Lindholdt's total is particularly impressive in that she filed almost as many motions as Ms. Peterson and Ms. St. Marie even though she was assigned about half as many cases. Melissa MacDougall has only been in Grant County a few months, but she has already demonstrated herself to be quite aggressive in her motions practice, filing briefs in 15% of her felony case assignments, a rate second only to Ms. Lindholdt (20%).

Grant County should be proud of the overall level of motions practice by its defenders, particularly over the last six months. While a few defenders could be more aggressive in filing motions, virtually all are filing some motions, and a majority of the defenders are engaging in an active motions practice.

⁶ For purposes of this analysis, I defined substantive motions as any written motion to suppress pursuant to CrR 3.5 or CrR 3.6, any written Knapstad motion, and any written brief that contained substantive legal analysis tailored to a particular case.

⁷ The two defenders who did not file motions during the fourth quarter were assigned almost exclusively to cover child support calendars. Brett Billingsley received only 4 felony case assignments during the fourth quarter, and Brian Gwinn received none.

Overall Quality of Representation

Over the past year, Grant County's public defender program has improved substantially. Grant County has moved away from using part-time defenders and eliminated the dysfunctional group dynamic that plagued its defenders in 2007. Grant County now has a much more cohesive, collegial defender program. More importantly, Grant County's public defenders are currently providing their clients with better representation than at any other time during my tenure as Monitor. Most defenders are visiting their in-custody clients promptly, investigating their cases, and filing motions when appropriate. Grant County has a core group of defenders who have been doing excellent work for some time now, and several other defenders have raised their practice level in recent months. While there is always room for improvement, the overall quality of representation in Grant County is now quite good.

Disposition data for 2008 felony cases suggests that Grant County's public defenders frequently obtain favorable results for their clients. Of the 435 case dispositions I reviewed, approximately 94% of the cases assigned to Grant County public defenders resulted in criminal conviction, but only 66% of the cases resulted in a felony conviction. The most aggressive defenders saw only 57% of their cases end in a felony conviction. Almost all of the remaining cases resulted in a misdemeanor conviction. Although acquittal or dismissal is always the goal, a misdemeanor conviction is generally viewed as a favorable outcome for the defense in a felony case.

In the cases I reviewed, I found twenty-five 2008 cases that ended in dismissal. Julie St. Marie had the most cases dismissed with nine. In other jurisdictions, I would have assumed that most of these dismissals were simply cases dismissed pursuant to plea bargains or due to problems locating witnesses. As one defender pointed out, however, Grant County prosecutors "definitely don't give dismissals away." Indeed, upon further inquiry, I found that the defenders had, in fact, earned many of the dismissals. Through investigation, legal research, and/or zealous advocacy, five different Grant County defenders reported that they had successfully persuaded the assigned prosecutors that their clients had factual or legal defenses to the crimes charged.

Grant County public defenders had four felony trials during the fourth quarter, three jury trials and one juvenile bench trial. Mike Haas and Melissa McDougall were in trial for almost two weeks on a case involving numerous very serious felony charges including Attempted Murder 1°. The other two jury trials were forgery cases handled by Janelle Peterson and Karen Lindholdt. Though the defenders reportedly represented their clients well, each of the jury trials resulted in conviction. In the bench trial, however, Julie St. Marie and Janelle Peterson won a not guilty verdict for their juvenile client who had been charged with Child Molestation 1°.

For the year, Grant County public defenders had 13 jury trials and 3 bench trials.⁸ Mike Haas was lead counsel in three jury trials in 2008. Brett Billingsley, Karen Lindholdt,

⁸ Two of the jury trials were handled by part-time defenders who left the program at the end of 2007, but the cases were part of their public defense caseload.

and Janelle Peterson each acted as lead counsel in two jury trials. Julie St. Marie served as lead counsel in one jury trial and one bench trial. In addition to her jury trials, Ms. Peterson was sole counsel in two bench trials. Karen Lindholdt and Brett Billingsley both won jury acquittals in 2008, and in addition to the juvenile case described above, Ms. Peterson won another acquittal from the bench.

The overall trial rate was approximately 1.6%, a slight increase over last year. I continue to believe the trial rate should be higher and hope that it will increase next year. I still struggle to understand the reasons there are not more trials in Grant County. Most of the current defenders do not seem at all hesitant about going to trial. To some extent, their success in plea negotiations may have reduced the trial rate. I also know that in some cases, the defenders have been ready for trial but unable to proceed due to court congestion or court scheduling issues. Unfortunately, in more than one such case, the defendant has ultimately elected to plead guilty in order to secure his release from custody rather than wait for a trial.

Supervising Attorney

Alan White has been the Supervising Attorney for the Grant County public defense program since 2005, prior to the adoption of the Settlement Agreement. In November, however, Grant County decided to hire Ray Gonzales to replace Alan White as Supervising Attorney. I approved Mr. Gonzales as the new Supervising Attorney as he appeared well qualified for the position.

Mr. White continued to act as Supervising Attorney through the end of 2008. Although Mr. Gonzales started work in late November, he has been focusing on budget and planning issues rather than the day-to-day operation of the program. Grant County has contracted with Alan White to continue his administrative responsibilities for 3 to 6 months. During the transition, Mr. White will continue to be responsible for case assignments, monitoring caseloads, investigator assignments, maintaining the complaint line, and preparing all necessary reports.

The Settlement Agreement requires that I “oversee and assess the Supervising Attorney’s performance.” During his tenure as Supervising Attorney, Alan White earned the respect, loyalty, and trust of the Grant County public defenders. Although I have been critical of some aspects of Mr. White’s performance in the past, he has always been an effective administrator as well as a dedicated advocate for and mentor to the Grant County public defenders. His commitment to Grant County and its defenders has never been in question. Moreover, to his credit, he has always been very open to guidance and eager to improve as a supervisor. As a result, he has become a much more effective supervisor over the last year.

At the outset of 2008, I identified several areas of emphasis for Mr. White this year: (1) motions practice; (2) jail visits; (3) investigation rates; and (4) limiting his own court appearances to increase the time available for other tasks. Mr. White has been much

better this year about limiting himself to emergencies in covering hearings for the defenders. With respect to the other areas, as should be evident from my comments above, the performance of the Grant County defenders on motions, investigation, and jail visits has improved markedly over the course of the year. Mr. White highlighted these issues in his meetings with defenders and counseled defenders individually when appropriate.

In the first three quarters, Mr. White's monitoring of attorney performance in these areas was spotty, which allowed problems to go unaddressed for too long. In the fourth quarter, however, Mr. White regularly tracked jail visits and investigation rates and included his findings in his monthly reports. Because jail visits have been such a persistent problem, Mr. White also provided individualized reports to defenders regarding their visits and sought explanations when he found that some were untimely. I was quite pleased with Mr. White's handling of these issues in the fourth quarter.

New Supervising Attorney

As noted above, Ray Gonzales began work as Grant County's new Supervising Attorney in late November. Mr. Gonzales is charged with developing, implementing, and overseeing an in-house public defense program in Grant County. He is also responsible for supervising Grant County's contract public defenders.

Although Mr. Gonzales has only been working in Grant County a short time, he has already made a very poor impression on the public defenders he is assigned to supervise. During his first month in Grant County, I received several complaints about Mr. Gonzales as well as reports that defender morale was low. The apparent dissatisfaction with Mr. Gonzales was particularly concerning in light of the four resignations the County had already received. In order to assess the situation, I asked the defenders to complete a survey regarding the transition to an in-house system, the new supervising attorney, and defender morale. All nine public defenders completed the survey.

The survey results were disquieting to say the least. All of the public defenders described morale as low (3) or very low (6). All agreed that morale has deteriorated recently with virtually every defender listing Mr. Gonzales as a primary cause. Asked specifically about Mr. Gonzales, no one felt he had made a positive impression. Eight of the nine defenders indicated that he had made a very negative (5) or negative (3) impression. One defender who had already resigned said his impression was neutral.

I was struck by both the consistency and the intensity of the defenders' responses regarding Mr. Gonzales. The defenders were very critical of his interpersonal skills, describing him as "rude," "offensive," and "condescending." They noted that his "social skills are severely lacking" and that he "seems to lack any positive personality at all."

The defenders do not see Mr. Gonzales as an advocate for the public defense system. One defender observed that "he has not made a single comment that indicates he cares at

all about public defense. He is not mission driven.” Another defender wrote that he “belittles attorney concerns” and “seems to express disdain for clients.” The defenders view his leadership style as autocratic with little room for input from anyone else. As one defender put it, it’s “his way or the highway.” Mr. Gonzales has a difficult task in winning over the defenders as he seems to be viewed by most of the defenders as “more an enemy than a friend.”

I have had several discussions with Mr. Gonzales regarding the feedback I have received from the defenders. His response to date has been disappointing. Mr. Gonzales has been very defensive and not particularly open to reflecting upon his own performance. In approving Mr. Gonzales as Supervising Attorney, I felt that his experience and aggressive approach to defense practice would make him a valuable mentor for the Grant County public defenders. Unfortunately, his poor relationship with the defenders undermines his effectiveness as a mentor. Many defenders are now actively avoiding him. Unless Mr. Gonzales is able to establish some sort of rapport with the Grant County defenders, he will be relegated to serving as little more than an administrator.

Mr. Gonzales has stepped into a very difficult position. He is replacing a very popular supervisor at a time of significant change in the Grant County defender program. To some extent, he likely bears the brunt of defender unhappiness over the departure of Alan White and the implementation of an in-house defender program. It would be a mistake, however, to view the criticisms of Mr. Gonzales as solely the result of misdirected frustrations. Mr. Gonzales can and should do a better job of communicating with the defenders. He needs to find a way to earn their respect.

Proposed Transition to an In-house Defender Program

Grant County continues to move forward with its plans for an in-house defender program. Mr. Gonzales has been hired as a Grant County employee and department head. I understand that he recently completed the budget process with the Board of County Commissioners and now has an approved budget. Mr. Gonzales is in the process of drafting a comprehensive plan for the new defender program. He presented the broad outlines of that plan to the Board of County Commissioners last week. The County has already leased office space approximately one block from the courthouse, and Mr. Gonzales has been involved in planning the remodeling of that space to accommodate the needs of a defender office.

The unexpected departure of four defenders has caused Grant County to accelerate its timetable for the in-house program. The County has posted job announcements for in-house defender positions and is apparently hoping to open the new office in March. I believe this timeframe is unrealistic. To date, Grant County has not provided a detailed plan for the new in-house program. The proposals that I have reviewed seem preliminary and incomplete.

There is much work to be done and many questions to be answered before Grant County will be ready to institute an in-house public defender office. At present, the office space is little more than an empty shell with no interior office walls. The space needs a great deal of remodeling work before it will be a suitable workspace. In terms of staffing, although Grant County has listed salaries in its position announcements, I have not received documentation that those salaries are comparable to the salaries offered by the Grant County Prosecuting Attorney's Office as required by the Settlement Agreement. The current defenders have made clear to the County that they are unwilling to go in-house, and those that haven't already resigned are either actively looking for other work (3) or considering doing so (2). In response to the recent job postings, Grant County received only three applicants who meet the minimum qualifications for felony work. Meanwhile, the Supervising Attorney has no support staff and as a result, is currently unable to perform the administrative functions of his job.

In my last report, I urged Grant County to work with the defenders in planning for the new defender office. Unfortunately, the County did not heed my advice. Grant County has not involved its defenders in the planning process or even sought their input. Instead of being transparent, Grant County has been vague, guarded, and evasive about its intentions. This approach has caused great uncertainty and resentment among the defenders. Four defenders have already resigned at least in part due to Grant County's handling of this transition. As a result, Grant County has now lost its only three defenders who actually resided in the County. These defenders had made a commitment to Grant County, a commitment they did not feel was reciprocated.

Going forward, Grant County needs to develop a more concrete plan for its defender office along with a more realistic timeframe. In addition, Grant County and its Supervising Attorney need to immediately take steps to repair their relationships with the defenders before additional resignations further undermine the program.

Conclusion

Based solely on the quality of representation being provided to indigent defendants in Grant County, my conclusion would be that Grant County public defense is headed in the right direction. Unfortunately, just as the defender program had finally gotten on track, Grant County decided to make a number of changes that have the potential to set the program back significantly. The decisions to change supervising attorneys and to move the program in-house have been extremely disruptive. Only time will tell whether Grant County is able to overcome the turmoil that currently plagues its defender program.

Despite the impending departure of four of its defenders, Grant County still has a solid nucleus of defenders who consistently provide quality representation to their clients. The challenge for Grant County in the coming months will be to retain the quality defenders it still has while also recruiting talented new attorneys to build upon that nucleus.