Maryland Office of the Public Defender

# Report on the Status of the Office of the Public Defender's Administrative Fee Billings

Report to the Joint Chairmen
Senate Budget and Taxation Committee
House Appropriations Committee

October 2008

This report is submitted in response to the following committee narrative appearing on page 20 of the Joint Chairmen's Report – State Operating Budget, April 2008:

> **Submission of an Annual Report on Administrative Fee Billings:** The committees are concerned about the Office of the Public Defender's (OPD) untimely recordation of administrative fee billings. By October 1, 2008, and annually thereafter, OPD shall submit a report to the committees and the Office of Legislative Audits outlining the status of the agency's accounts receivable, including any unrecorded client billings.

This is the Office of the Public Defender's required response to the Joint Chairman's Report – Operating Budget, April 2008 regarding the status of the Agency's administrative fee billings. The Office of Legislative Audits, in their audit report dated December 10, 2007**,** reported that the Office of the Public Defender (OPD) had not recorded, or pursued for collection, administrative fees for cases opened during fiscal 2006 and 2007, and that a significant backlog of unrecorded billings for cases opened prior to July 2005 existed.

The Office of the Public Defender provides legal services to eligible indigent individuals charged with incarcerable violations of State, county, and/or municipal laws. By definition, the indigent are impoverished, destitute and without the means of subsistence. Therefore, the professional services provided by the Office of the Public Defender to its indigent clientele are rendered without charge. However since 1994, an applicant seeking representation by the Office of the Public Defender is required to enter into an agreement to pay an administrative fee at the time of application. Administrative fees are generally assessed in an attempt to recoup some of the costs of providing a service. However, the OPD does not directly benefit from the revenue generated by the fee (it goes to the General Fund), even though the OPD provides the resources necessary to administer the fee. Refusal to pay or become obligated to pay the Office of the Public Defender administrative fee has no bearing on the acceptance for representation of the Office of the Public Defender clients.

The Office of the Public Defender charges administrative fees of $50 for adults and $25 for juveniles. Entering into a fee agreement, or paying the administrative fee, or both, is not a condition that shall be met before the provision of representation. At the time that services are to be rendered, clients sign administrative fee agreements and are instructed to mail their payments to a lockbox account. Unpaid accounts are forwarded to the State's Central collection Unit (CCU) where collection is pursued via the State's Tax Refund Intercept Program (TRIP). Collection of administrative fee billings and referral of unpaid accounts to CCU for collection assistance result in additional General Fund revenues that accrue to the State.

The Office of the Public Defender has the potential of generating between 100,000 and 200,000 administrative fee accounts receivables in any given fiscal year, based upon its caseloads. Revenues from these accounts receivables would be significant to the State if they were all realized as revenue. However, the reality is that most of these accounts ultimately become bad debts. This should come as no surprise, given the debtors inability to pay, conferred upon them by virtue of their status as indigents. In fiscal 2007, the Office of the Public Defender requested an abatement of approximately 574,000 administrative fee accounts receivables due to an inability to collect. These accounts receivables approximated $27.8 million, representing unpaid administrative fees dating as far back as 1993. Since then, two additional abatement requests have been made to the Central Collections Unit totaling approximately $10 million, and representing approximately 213,000 additional uncollectible accounts receivables. The vast majority of these accounts receivables had been subject to tax refund intercept collection efforts at least three times. Collections of administrative fees for fiscal years 2005 through 2008 total $5.45 million; however, total administrative fee billings for the same period total $24 million.

The accounting and monitoring of hundreds of thousands of administrative fee accounts receivables is a very challenging task. The magnitude of the receivables warrants the dedication of more resources than the Office of the Public Defender can dedicate to this activity. Currently, one individual stewards the process of managing this data through an Access database environment, while performing other key roles and functions. Additional resources, especially personnel trained in database management, would greatly enhance the current process of managing this receivables environment. The subject of the Agency's administrative fees has warranted comment in five consecutive legislative audits.

Prior to July 2005, the administrative fee agreements prepared at the OPD's district offices were submitted to OPD's Administrative Services Unit for recordation. When the OPD implemented a new automated case management system in July 2005, the district offices became responsible for directly recording the administrative fee billings in the case management system. This information was then to be periodically downloaded into the accounts receivables database records. The Agency intent was for this process to commence on or around July 2005; however, this process was not initiated in earnest until October 2007, contributing to the comment regarding administrative fees in the 2007 legislative audit report. In addition, data entry issues have emerged, and persist, concerning the transfer of the information from the case management system to the accounts receivable database environment.

The backlog of administrative fee billings cited in the 2007 legislative audit report has been recorded in the accounts receivable records. The Comptroller assisted the OPD in completing this task in September 2007. The accounts receivable billings from fiscal 2006 and 2007 were also recorded in the accounts receivable records as of October 2007. The accounts receivable billings from fiscal 2008 have also been entered in the accounts receivable records as of August 2008. Administrative fee billings representing activity for the first quarter of fiscal 2009 have not yet been entered in the accounts receivable records due, in part, to the on-going data migration issues that require a manual review of all non-complying data.

Should there be further questions, please contact Van Lewis, the Director of the Administrative Services Unit at 410-767-8481.