

# MEMORANDUM



## JOINT BUDGET COMMITTEE

TO Members of the Joint Budget Committee  
FROM Steve Allen, JBC Staff (303-866-4961)  
DATE March 18, 2019  
SUBJECT Comeback requests from two Judicial Branch agencies

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Two judicial branch agencies, the Office of the Alternate Defense Counsel and the Office of the Respondent Parents' Counsel have submitted comebacks requesting reconsideration of agency requests that were denied during figure setting.

**OADC R4.** The Office of the Alternate Defense Counsel (OADC) requests reconsideration of two rejected parts of OADC R4, Compensation Plan Alignment:

- \$73,647 to increase the salaries of some employees whose salaries are at or close to the minimum of their new salary range under the new common compensation plan adopted by the Office.
- \$9,091 for a salary increase for the Executive Director of the OADC to align the Executive Director's salary with the salary of the State Public Defender. The OADC Executive Director's salary is currently tied to the salary of a District Court Judge. State Public Defender's salary is tied to the salary of an associate appellate court judge

The numbers for the second part of the OADC request are slightly confusing. The Executive Director's salary is currently tied to the salary of a district court judge, which equals \$168,202 annually in FY 2018-19. If this request is *not* approved, the Executive Director's salary will rise to \$173,248, in step with the already approved district court judge salary increase for FY 2019-20. If this request is approved, the Executive Director's salary will rise to equal the \$180,697 salary for FY 2019-20 of an associate appellate court judge. Adding payroll taxes, PERA, AED, SAED, and short term disability, means that the cost to the state of each of these salaries is 22.04% higher. Staff believes the best way to state the cost of bullet 2 of the comeback request is to compare the full cost (with payroll taxes, PERA, etc.) of the approved request with the full cost of non-approval (under which the Executive Director's salary rises in step with that of a District Court Judge). Measured this way, the incremental cost of approval is \$9,091 as stated above. The OADC comeback document says that the cost is \$15,249, which compares the FY 2019-20 full cost of an associate appellate court judge salary with the full cost of the Executive Director's salary in FY 2018-19.

***If the request for the Executive Director's salary increase is approved, staff recommends equal increases for the executive directors of the Office of the Child's Representative (OCR) and the Office of the Respondent Parents' Counsel (ORPC) so that all these salaries align with the salary of an associate appellate court judge. The structure of the OADC, the OCR, and the ORPC are similar and the duties of the executive directors are also similar. If the salaries of all three executive directors rise, the combined cost of the increases will be \$27,273 (= 3 \* 9,091) General Fund.***

**ORPC R2.** The Office of the Respondent Parents' Counsel (ORPC) requests reconsideration of rejected request ORPC R2, which asked for \$125,977 General Fund and 1.0 FTE for a staff attorney who will consult with the Office's contract attorneys on cases, respond to parent complaints, and generally alleviate what the Office describes as currently overburdened FTE workloads. The cost annualizes to \$134,832 in FY 2020.



**Office of the**  
**Alternate  
Defense  
Counsel**

**FISCAL YEAR 2019-20  
COMEBACK REQUEST**

**March 18<sup>th</sup> 2019**

**Lindy Frolich, Director**

	FY2018-19 Appropriation	FY2019-20 JBC Staff Recommendation	Comeback Request	Action and Comeback Difference
Total	\$ 1,850,081	\$ 2,065,813	\$ 2,154,854	\$ 89,041
FTE	13.8	15.9		
GF	\$ 1,850,081	\$ 2,065,813	\$ 2,154,854	\$ 89,041
Personal Services	\$ 1,533,490	\$ 1,746,857	\$ 1,827,692	\$ 80,835
Health, Life, and Dental	\$ 185,370	\$ 185,370	\$ 185,370	
Short Term Disability	\$ 2,195	\$ 2,230	\$ 2,353	\$ 123
AED	\$ 64,513	\$ 65,678	\$ 69,719	\$ 4,042
SAED	\$ 64,513	\$ 65,678	\$ 69,719	\$ 4,042

### Summary of Initial Request:

The Office of the Alternate Defense Counsel requested \$114,697 (General Fund) in order to fully fund four categories of salary adjustments for 8.0 FTE staff, in four categories. See the chart below.

### Joint Budget Committee Action:

The JBC staff approved the first two categories, or \$25,656. This amount is \$89,041 less than the Agency's original request.

	OADC Request	JBC Staff Recommendation	Agency Comeback Request
Total	\$ 114,697	\$ 25,656	\$ 89,041

Categories :

(1) Salary Survey on positions 10% or more below market study	\$ 3,093	\$ 3,093	\$ -
(2) Judicial Branch Compensation Plan alignment to range minimums	\$ 22,563	\$ 22,563	\$ -
(3) Judicial Branch Compensation Plan alignment to amounts above range minimums	\$ 73,647	\$ -	\$ 73,647
(4) OADC Commission Requested alignment of Agency Director to the State Public Defender	\$ 15,394	\$ -	\$ 15,394

## Office of the Alternate Defense Counsel Comeback:

During the FY18 Budget process the Joint Budget Committee submitted common questions to state agencies, one of which focused on Judicial Branch salary adjustments and asked: *‘How can the processes that are used to evaluate and approve salary adjustments for Judicial Branch employees be improved so that they are more consistent with the practices that are used by the State Personnel Director’.*

The branch responded by stating:

*‘...The Judicial Department and the independent agencies within the Judicial Branch recognize the concerns raised by the JBC and are committed to studying ways to collaborate in reviewing their compensation and classification programs. All agencies are committed to review the matter and have already begun meeting to help address the issues raised...’.*

It is from that JBC recommendation that the OADC has diligently worked side-by-side with the Office of the Child’s Representative (OCR) and the Office of the Respondent Parent Counsel (ORPC) in researching and modifying current job classifications, descriptions, and ranges to align with the Judicial Branch Compensation Plan. The independent agencies have also reached out to their JBC Analyst and presented the newly created compensation plan. While revising the Compensation Plan with the other independent Agencies the OADC found that four of its staff within its Financial Division are at a significant disadvantage when compared to salaries of their counterparts within the Judicial Branch.

### Analysis

The OADC does not have the funding to hire consultants to conduct annual salary surveys like their larger counterparts (Office of the State Public Defender, Office of the State Court Administrator, Department of Law). Due to the lack of annual salary surveys, many of the Agency’s staff have fallen behind not only comparable market positions but also positions within its own branch. These individuals are at or near the bottom of their salary ranges, which is inconsistent with their extensive state experience. Given their levels of experience, each of these employees warrants the adjustment requested. As of FY19 these four FTE comprise the entirety of the Agency’s Financial Division.

	Approved Monthly Salary	Years of State Experience	Range Minimum	Range Midpoint	Range Maximum	% above Range Minimum	% below Range Midpoint	% below Range Maximum
Data Analyst	\$ 5,155	11	\$ 5,155	\$ 6,114	\$ 7,072	0.00%	18.60%	37.19%
Billing Administrator	\$ 5,391	14	\$ 5,365	\$ 6,280	\$ 7,195	0.48%	16.49%	33.46%
Senior Office Manager	\$ 6,290	22	\$ 6,116	\$ 7,483	\$ 8,850	2.76%	18.98%	40.71%
Controller / Budget Manager	\$ 7,997	12	\$ 7,557	\$ 9,752	\$ 11,865	5.50%	21.95%	48.36%

## Growth of the Agency

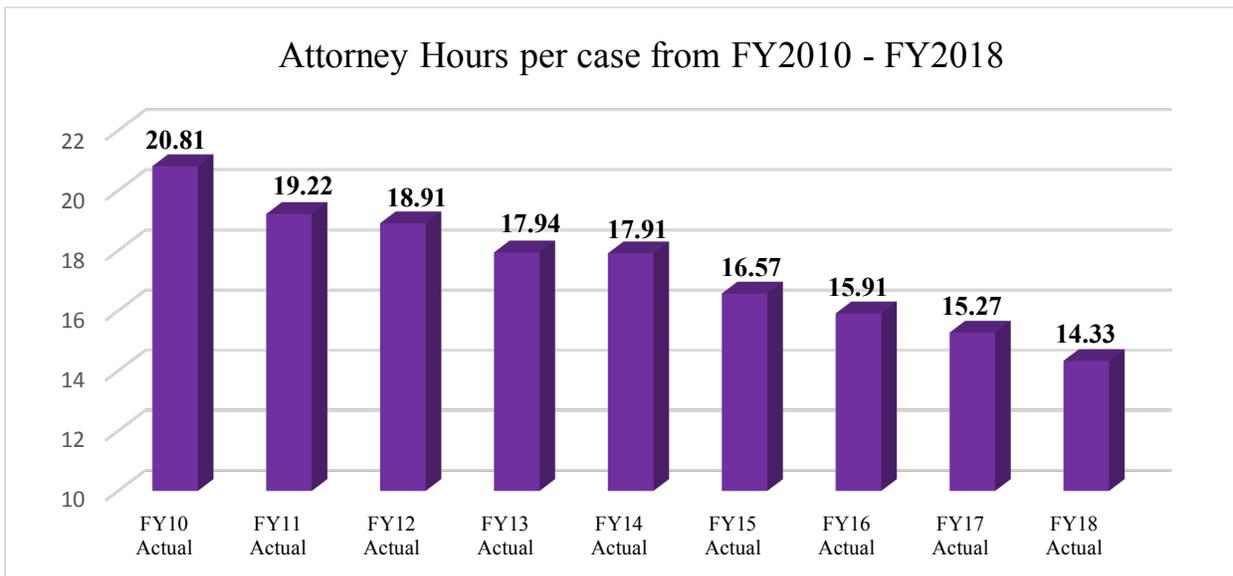
Given current projections the Agency's FY20 budget will exceed \$48 million.

FTE Position	FY14	FY15	FY16	FY17	FY18	FY19 est	FY20 est
Total FTE	8.4	9.1	10.9	11.0	12.0	13.8	15.9
Cases	15,085	16,680	18,244	20,103	22,638	25,645	29,051
% change	26.98%	10.57%	9.38%	10.19%	12.61%	13.28%	13.28%
Payments	52,900	58,911	64,997	72,753	98,891	112,025	126,903
% change	33.12%	11.36%	10.33%	11.93%	35.93%	13.28%	13.28%
Expenditures	\$25,555,788	\$30,359,184	\$31,556,315	\$32,935,253	\$35,387,940	\$42,559,152	\$48,164,160
% change	24.68%	18.80%	3.94%	4.37%	7.45%	20.26%	13.17%

## State savings due to efficiencies by the OADC:

As the following chart shows, the agency's total number of attorney hours per case has steadily *decreased* from 20.81 in FY10 to 14.33 in FY18.

Contain Case Costs		FY10 Actual	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Actual
Contain the total number of Attorney hours per case. Includes all case type hours.	Actual	20.81	19.22	18.91	17.94	17.91	16.57	15.91	15.27	14.33
	% change		-7.64%	-1.61%	-5.13%	-0.17%	-7.48%	-3.98%	-4.02%	-6.16%



The total percent decrease from FY2010-18 is 31%. This eight year decrease in average attorney hours of 6.48 hours per case comes at a time where cases are clearly becoming more complex.

Contain Case Costs		FY10 Actual	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Actuals	FY19 Budget	FY20 Request	FY10 to FY18 % change
Average Cost per Case	Target	na	\$1,581	\$1,581	\$1,581	\$1,456	-14.2%						
	Actual	\$1,697	\$1,620	\$1,641	\$1,593	\$1,596	\$1,722	\$1,581	\$1,523	\$1,456			
	% change		-4.5%	1.3%	-2.9%	0.2%	7.9%	-8.2%	-3.7%	-4.4%			

$$(\$1,697 - \$1,456) = \$241 \times 22,638^* = \mathbf{\$5,455,758}$$

\*22,638 are the total actual cases for FY18

Without the high level of experience and contributions of the OADC staff, the agency would not have been able to control these hours and these costs

The overall budget request approved by the JBC for the OADC in FY2019-20 is \$48,075,119. Our Budget Request Comeback is \$89,041 or less than 0.2% of the total budget approved by the JBC.



**Office of Respondent Parents' Counsel FY2019-20 Comeback**

**Summary: The Joint Budget Committee should fund the ORPC's request for an FTE Staff Attorney.**

- The ORPC was created to ensure the provision of high-quality legal representation for parents in child welfare proceedings – funding another Staff Attorney will help retain experienced lawyers essential to this mission.
- In the years since the ORPC was created, it has experienced problems with attorney recruitment – funding another Staff Attorney would help the ORPC more efficiently recruit and develop attorneys to practice in this area of the law.
- The JBC Analyst's recommendation against funding the Staff Attorney position presented data not suited to comparison – the comparisons do not reflect what takes place at the ORPC or the work of the ORPC's staff.

**Point 1:** The ORPC was created to ensure the provision of high-quality legal representation for parents in child welfare proceedings – funding another Staff Attorney will help retain experienced lawyers essential to this mission.

The retention of experienced lawyers is essential to the representation of parents. Experienced lawyers are more efficient, more skilled, and require less oversight. They are also in demand and recruited by similar agencies and other jobs that offer benefits. Since 2016, the State of Colorado has lost 122 respondent parent counsel attorneys. The ORPC began tracking reasons for contract attorney departure recently and compiled the status of 59 lawyers who no longer contract with the agency. The below table illustrates the various reasons why this occurs. Overwhelmingly, the main reasons identified include “practice issues” and “full time jobs with benefits.” “Practice issues” result from the agency identifying those lawyers that cannot meet the standards of practice outlined in Chief Justice Directive 16-02 and outlined by the American Bar Association’s Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases. Nine lawyers preferred to devote their practice solely to Alternate Defense Counsel or Guardian *ad litem* work.

<b>ORPC Attorney Contractor Attrition</b>	
<b>July 1, 2016 through Present</b>	
<b>Reason for Leaving</b>	<b>Number of Contractors</b>
ADC	4
Deceased	1
Did not like the work	3
Did not reapply	4
Full time job with benefits	14
GAL	5
Health	1
Other	5
Practice issues	16
Retired	6
<b>Grand Total</b>	<b>59</b>



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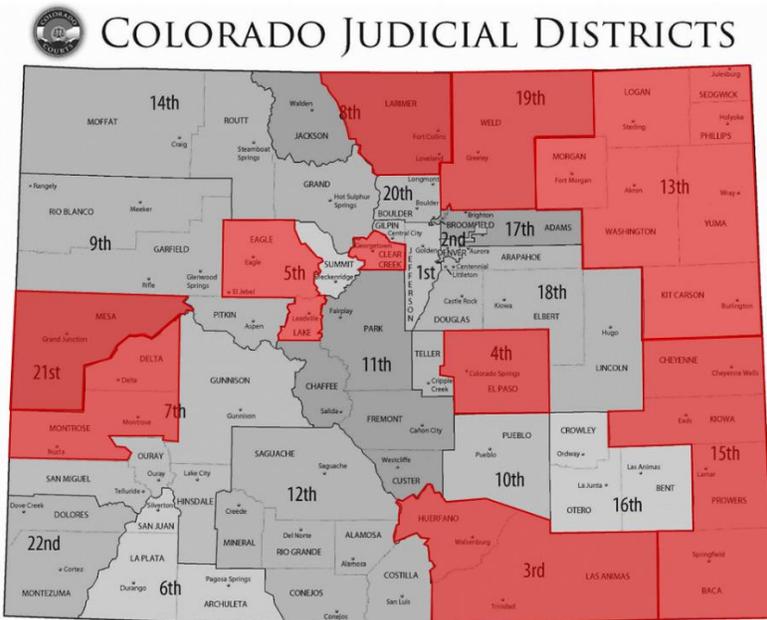
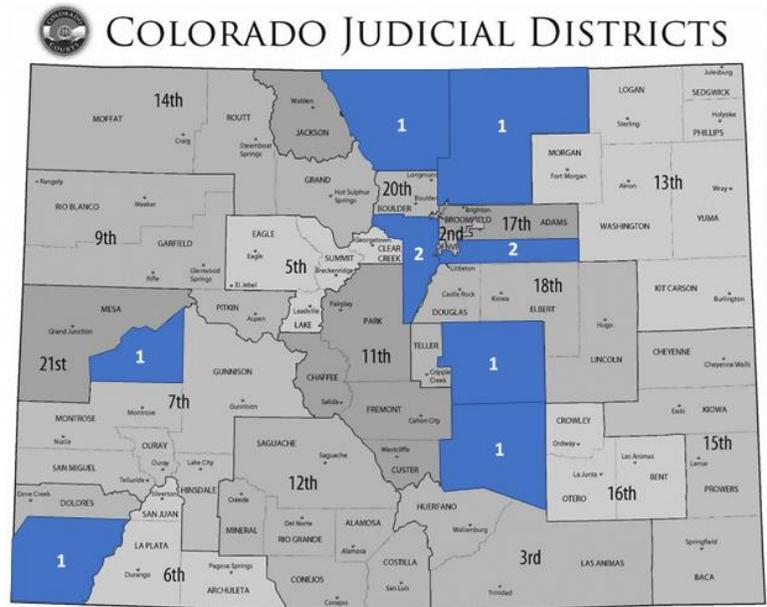
Currently, the ORPC lacks the necessary staff to support and retain experienced and skilled contract attorneys. When Executive Director Thompson presented the ORPC budget in December of 2018, she told the JBC the ORPC was actively recruiting lawyers and that many jurisdictions were short lawyers. Despite successful recruitment efforts, the ORPC has not been able to increase its lawyer roster at all due to attrition. The ORPC needs staff to establish relationships across the state with current contractors to motivate, create community, and ensure retention.

**Point 2:** In the years since the ORPC was created, it has experienced problems with attorney recruitment – funding another Staff Attorney would help the ORPC more efficiently recruit and develop attorneys to practice in this area of the law.

The total number of ORPC contract attorneys across the state is low, meaning that Colorado does not currently have enough attorneys representing indigent parents in child welfare proceedings. The ORPC routinely hears from contractors that they are overburdened, their caseloads are too high, and they do not have enough hours in the day to do all that is required to properly advocate for their indigent parent clients. The ORPC needs an additional staff attorney to assist with the recruitment of contract attorneys throughout the state, especially at law schools to establish relationships with clinical programs where interest in child welfare work can be developed.

In addition to the problem of lawyer recruitment, new lawyers come to this area of the law with little exposure to or experience with child welfare law. It is a time intensive task for the ORPC to train new attorneys and new law graduates who have never handled a jury trial or complex litigation. The ORPC's oversight requirements mean that its staff attorneys provide case consultations and resources to lawyers that can require hours to help attorneys prepare cases for contested hearings, trials, and other meetings that a lawyer may not have encountered in any other type of practice.

The ORPC has opened its application cycle for FY 2019-20, which is half way complete. As of the date of this report, only 10 new applicants have applied for ORPC trial contracts despite advertising in local bar associations, specialty bars associations, through the American Bar Association, on the ORPC website and Facebook page, through the ORPC listserv, notifying every single magistrate and judge in Colorado, posting on the Judicial website, and advertising through the Colorado Bar Association. The below maps show where we have received applicants and where we have a significant need for attorneys. The map in blue is where the 10 new applicants live. The map in red shows where the ORPC has the greatest need for attorneys.



A staff attorney is essential to establishing relationships to foster interest in respondent parent counsel work, train and mentor new lawyers, and recruit lawyers to this work.

**Point 3:** The JBC Analyst’s recommendation against funding the Staff Attorney position presented data not suited to comparison – the comparisons do not reflect what takes place at the ORPC or the work of the ORPC’s staff.

The ORPC’s JBC Analyst compared the total number of ORPC contractors (243) to the total number of OADC contractors (700) to conclude that the ORPC does *not* need an additional Staff Attorney FTE. The numbers relied upon showed that ORPC would be overstaffed compared to OADC. The JBC Analyst used a figure of 700



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contractors for OADC, which included more contractor types than just lawyers (i.e. paralegal and case assistants). Whereas the ORPC contractor number included solely lawyers. The updated table below compares the total number of OADC contract attorneys and the total number of ORPC contract attorneys, which is updated as of March 15, 2019.

The ORPC cannot speak to OADC's staff model and does not wish to compare criminal cases to child welfare cases. These comparisons do not reflect what takes place at the ORPC or the work of the ORPC's staff.

<i><b>FY 2019-20 FTE if requested JBC Action is Approved</b></i>				
<b>FY 2018-19 Comparison of OADC and ORPC</b>				
	Appropriation (\$ million)	FTE	Attorney Contractors	Staff per 100 Contractors
OADC	45.8	14.8	444	3.33
ORPC	20.5	<b>13.0</b>	274	4.74
ORPC as % of OADC	45%	88%	62%	142%