

Analysis of Arkansas Public Defender Commission Attorney Salaries

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Introduction

In December of 1998, The Spangenberg Group was asked on behalf of the American Bar Association Bar Information Program to conduct a salary survey for the Arkansas Public Defender Commission. The Arkansas Public Defender Commission was established in 1993 to establish policies and procedures for the public defender system throughout the state. The Commission is expected to develop indigency standards, evaluate the performance of all public defenders, track caseloads and costs related to the public defender system, and convene training for public defenders. At that time, the majority of the cost of indigent representation was borne by Arkansas' counties, which levied a \$5 surcharge in criminal cases resulting in conviction and in all civil cases to help pay indigent defense costs. In the 1997 session, however, the Arkansas General Assembly passed legislation, effective January 1, 1998, shifting the major responsibility for funding indigent defense in Arkansas to the state. As a result, the Arkansas Public Defender Commission is now responsible for the payment of salaries of public defenders, secretaries and other support staff with public defender offices, while the counties remain responsible for the cost of facilities, equipment, supplies and other office expenses of public defender offices.

The Spangenberg Group is a nationally recognized criminal justice research and consulting firm specializing in the delivery of indigent defense services. Created in July 1985 and located in West Newton, Massachusetts, The Spangenberg Group has conducted research and provided technical assistance to justice organizations in every state in the nation. Since its inception, The Spangenberg Group has been under contract with the American Bar Association's Bar Information Program, which provides support and technical assistance to individuals and organizations working to improve their jurisdictions' indigent defense systems. As the ABA's primary provider of technical assistance relating to indigent defense systems, The Spangenberg Group has worked with judges, bar associations, state and local governments, legislative bodies and public defender organizations throughout the country.

Methodology

Arkansas is surrounded by eight states: Missouri, Kansas, Oklahoma, Texas, Louisiana, Mississippi, Tennessee, and Kentucky. We have provided comparison information on public defender salaries from all of these states. However, only limited salary data is available from Texas, Louisiana and Mississippi. Texas is not appropriate to use as a comparison state, due to the fact that indigent defendant representation is provided on a county-by-county (there are 254

counties) basis, and the vast majority of the counties in Texas use appointed counsel. Just a handful of counties in Texas utilize a public defender system, and we did collect some salary information from the Public Defender in Dallas County. In Mississippi, similarly, the system for providing representation varies by county, with the majority of the state's 82 counties using part-time contract defenders or assigned counsel. In Louisiana, the Louisiana Indigent Defender Board develops standards and guidelines for the district indigent defense programs, but defender salaries throughout the state vary by district.

We also gathered salary information from Colorado, Iowa, New Mexico and Wyoming, jurisdictions which, like Arkansas, have instituted a state-wide public defender system. Table 1 provides an overview of the indigent defense systems in each of the comparison states.

Salary Information

Tables 2 and 3 present actual salary figures for attorneys with varying levels of responsibility/experience. Each table is arranged in ascending order, according to minimum salary. Table 2 contains four parts: Part A lists public defender salaries at the entry level; Part B presents the salaries of attorneys with a few years experience (generally about five years), but with no supervisory role; Part C shows the salaries of deputy public defenders, or attorneys with some supervisory duties; and Part D lists the salaries of either deputy public defenders or chief public defenders overseeing a small staff. The tables must be read with the understanding that classification scales differ from state to state. There is no nationally-shared language regarding job titles, responsibilities, qualifications and/or salaries. We have done our best, when compiling the tables, to put similar positions together in the subsections of Table 2. However, due to the variation in states' pay scales, there will be anomalies in the tables, such as a state not being represented in each Part, or Kansas having three separate Deputy positions/salaries in Part C.

Table 3 shows the salaries of "Chief Defenders" in the comparison jurisdictions. The term "Chief Defender" refers to the head of an individual public defender office, not the head of a statewide public defender organization. It should be noted that for jurisdictions where chief defender salaries vary by the size of the public defender office, salaries for chiefs of larger offices are included in Table 3, and salaries for chiefs of smaller offices are shown in Table 2, Part D. For example, in Arkansas, the heads of the largest public defender offices (in Benton, Pulaski, Washington and Sebastian Counties) are classified separately from the other chief attorneys (Chief Defenders in smaller offices fall into Grade 26; full-time managers with full-

time attorneys on staff are unclassified positions - the category referred to as 99). Table 3 documents the salary information for these unclassified positions, while Table 2, Part D presents the salary range paid to all other Chief Public Defenders in Arkansas.

Public defenders in Arkansas participate in the state Pay Plan. This Pay Plan is composed of thirteen Grades, ranging from 14-26. Each Grade contains seven levels (I, IM, II, IIM, III, IIIM, and IV). Level I represents the starting salary for an employee in each grade, and Level IV represents the top salary for an individual within that grade. Arkansas' public defenders all fall into Grades 24, 25 and 26. Grade 24 attorneys are generally lesser-experienced attorneys without any supervisory role. Grade 25 positions are held by individuals with a good deal of experience, high caseloads and some management duties over other public defenders. Grade 26 public defenders are full-time deputies, or the heads of small offices. The heads of the largest public defender offices in Arkansas (Benton, Pulaski, Washington and Sebastian Counties) are all unclassified, or Grade 99, employees.

The tables show that salaries in Arkansas fluctuate widely. The number of levels within each range allows for a wide gap between the minimum (Level I) salary and the maximum (Level IV) salary within Grades. For example, in Table 2, Part C, the minimum salary for a Grade 25 defender is \$33,230 and the maximum is \$62,733. Although this maximum salary is a significant figure, and higher than almost all other maximum salaries paid by other programs in Part C, this does not reflect the reality of public defender salaries in Arkansas. There are some Chief Deputies (Grade 25) in Arkansas with a full-time salary of \$33,230, the lowest of all comparison areas. Chief Public Defenders in small offices (Grade 26) also fall into a pay scale which ranges from the lowest salary on the table (\$35,387) to one of the highest (\$66,837). Positioning within these ranges depends upon years of experience with the Public Defender, and years of experience outside the system.

Once attorneys become part of the Public Defender system, moving between levels and grades is difficult, resulting in Chief Public Defenders with salaries in the low \$30,000s. Defenders have the theoretical opportunity to achieve comparably high salaries, but have trouble receiving an increase in pay. Movement up the ladder to higher Levels is difficult, resulting in a pay scale which, although it appears healthy, does not provide the participants as much as it promises. Attorneys can only move between grades if there is an opening in the grade above their current position. Didi Sallings, the Executive Director of the Arkansas Public Defender Commission, notes that if there are no positions open, she may reclassify a position to a higher

grade. However, this requires a job audit by the state personnel department, a difficult and time consuming process. Ms. Sallings reports that she has never tried this for an attorney on her staff, but did unsuccessfully attempt such a reclassification for a member of her support staff.

In addition, public defenders have recently been losing out on a salary benefit which they can usually count on. At the end of each year, attorneys are entitled to a merit raise, based upon a performance evaluation. Typically, these raises range between 3-5.5%. However, the merit raises have been frozen for the past two years by the Governor (this freeze was experienced by all Arkansas state employees). Without these bonuses to count on, and with the lack of opportunity to move up in the system through the traditional route of seniority, salaries for attorneys with the Arkansas Public Defender Commission vary widely, and may remain well below the maximum for their level.

Furthermore, due to understaffing since the inception of the statewide system, as well as logistical problems regarding the staffing of courts, the Commission was forced to create part-time, or job-share, attorney positions. Many public defenders in such positions work on their private practice on the side. This raises questions regarding the quality of representation being provided by the part-time public defenders. While the attorneys are in most cases continuing to provide top-quality service, past studies of contract and assigned counsel attorneys across the country have noted that attorneys may spend more time on their private practice cases, which are billed by the hour, than their public defender work, for which they receive a salary. Until the Commission is allotted the number of positions they need in order for public defenders to handle every case assigned to them, attorneys will continue to fill in job-share, rather than full-time, slots.

Conclusion

The state salary system in Arkansas is set up in such a way that attorneys have incentive to leave the Public Defender Commission after a few years. The lack of opportunity to move up, and therefore receive any substantial increase in pay, can cause defenders to explore other options. After putting in a few years with the Arkansas Public Defender Commission, defenders discover that they could make more money by moving to another state government agency, the Federal Public Defender, private practice or a nearby state's public defender system. This turnover damages the morale and performance of the attorneys remaining with the agency. Other attorneys do not even have this option, as they are hired into job-share positions.

Defenders in this situation may simply cut back on their public defender work and focus on part-time private practice cases. In either scenario, the Public Defender Commission will continue to train attorneys who then move on to new positions or devote less time to the Commission. These situations not only lead to low morale among the public defenders who remain, but also create a drain of talent which leaves the Commission in a continual state of hiring and training, and struggling to maintain a balance between experienced and newer attorneys.