

1. Can you disaggregate the Supervisor and Support numbers in Exhibit 5

The following table breaks down our staffing in a variety of courts. The category named “Clerical” reflects individuals within the Legal Administrative Specialist job class who provide services such as uploading discovery, scanning, filing, and other office related work. Although, in day-to-day practice, the numbers fluctuate because of personnel movement within divisions, the following table constitutes a representative sample.

Court	Supervisors/Managers	Attorneys	Paralegals	Clerical	Other	Total
Seattle Superior Court	3.75	35	7.5	4		50.25
Seattle Superior Court Calendars		2	0	0		2
MRJC Superior Court	3.5	27.5	5	3.5		39.5
MRJC Superior Court Calendar		1.2	0	0		1.2
Seattle District Court	1	4.5	0.7	1.75		7.95
Seattle District Court Calendars	0.3	1.5	0	0		1.8
MRJC District Court	1.3	7.4	1.5	4		14.2
MRJC District Court Calendars	0	0.5	0	0		0.5
NE District Court	0.3	2.8	0	1		4.1
NE District Court Calendars	0.1	0.2	0	0		0.3
Juvenile	1.05	9.4	1.5	1.8		13.75
Becca/ARY/CHINs	0.4	1.8	0	1.2		3.4
Dependency	3.1	27.4	5.25	5.5		41.25
ITA	2	18	2	2		24
Calendars (See Below)	0	0	0	0		0
COC	1.2	3	1.75	1.25		7.2
Drug Court (Superior)	0.68	4	0.33	0.75		5.76
MHC (Superior)	0.66	2	0.33	0		2.99
DOSA	0.66	2	0.34	0		3
Floater Clerical		0	0	0	8	8
Reception		0	0	7.25		7.25
Transcriptionist/Data		0	0	3.75		3.75
Total	20	150.2	26.2	37.75	8	231.15

2. Please describe to what extent DPD attorneys use paralegals/legal assistants in their work. I’m trying to understand if perhaps DPD and PAO use a different staffing model for legal work. Perhaps DPD relies more on attorneys rather than paralegals to do the legal work?

The number of paralegals and investigators employed by the DPD is based on Standards Six and Seven of the 2011 Washington State Bar Association's Standards for Indigent Defense Service¹, which establishes a floor for resources for public defense services. DPD's labor contract² incorporates those standards as does the staffing model created for DPD by the Office of Performance Strategy and Budget.

Stand Six and Seven require one investigator and one paralegal for every four attorneys; DPD's labor contract and staffing model combine the categories of paralegal and investigator into a single category of "support staff"³ and require one support staff person per two attorneys. Because different practice areas call for different kinds of work (drug court vs. felony trials, for example), the dedicated ratio of paralegals, investigators, and attorneys in different practice areas does not always reflect the 4/1/1 divide imagined by the WSBA standards; DPD tries to adjust support staff availability and time in a way that maximizes this limited resource.

Whereas the PAO relies on police agencies and the Washington State Patrol Crime Lab for investigative work, DPD must use its own investigative staff. Thus, even though our staffing model combines "support staff" into a single category, DPD's need for investigators means that any support staff allocation must be significantly consumed by investigative staff.

In addition to paralegals and investigators, DPD also employs Legal Administrative Specialists I, II, and III. Legal Administrative Specialists, broadly speaking, perform clerical tasks such as answering phones, staffing reception, uploading discovery, creating digital files for new clients, and other administrative/records tasks. When a paralegal will be out of the office for a substantial period of time, Legal Administrative Specialists are often selected to "special duty" into the open position because the skillsets involved in the legal administrative job may be imagined as precursors to some of the job duties of a paralegal.

Currently, DPD is undergoing an effort to standardize the type of work performed by the various levels of Legal Administrative Specialists and paralegals both within and across DPD's divisions, as divisions and different units within divisions are currently assigning different kinds of work to the same job types; for example, in one division, a paralegal might never be called upon to perform legal research or prepare any legal memorandum whereas another division might expect paralegals in certain practice areas to possess at least a background understanding of the law at issue in the practice area.

DPD does not currently use paralegals to perform any substantive legal analysis because this was not a consistent expectation at the non-profit agencies. Changing this would require training all current paralegals to perform this function and hiring new paralegals who were already skilled. An important step in making these changes would likely begin with creating consistent supervision of DPD's paralegals to ensure uniformity in expectations and performance. DPD hopes to work with labor to address this issue and the challenge in change management it presents.

Instead, paralegals at DPD tend to provide support to attorneys by maintaining client and witness contact, electronic filing, scheduling and calendar maintenance, expert services billing and coordination, preparation of trial binders and other trial materials, assistance during trial (such as aid in jury selection, note taking, equipment use during trial).

¹ https://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/standards-for-indigent-def-services-boh-apprv-9-22-11.pdf?sfvrsn=dae43cf1_2

² https://www.kingcounty.gov/~media/depts/executive/labor-relations/documents/contracts/462MLAC0117_scs_g_Search.ashx?la=en (See Section 24.6(D)).

³ "Support Staff" consist of highly skilled paralegals and investigators and should not be understood as interchangeable with clerical staff listed above.

3. Does DPD have a Supervisor ratio requiring a supervisor for every X number of staff?

Section 6.1 of DPD's contract⁴ with its managers and supervisors, represented by the Teamsters, requires a ratio of 1 attorney supervisor for every 10 attorneys. In the case of attorney supervisors, for each attorney below 10, the supervisor must take on a 10th of a caseload, though under a separate understanding with the Office of Labor Relations, this threshold is adjusted to seven. DPD's labor contracts do not provide a ratio of supervisors to staff for non-legal staff. In some case, this means that we have administrative supervisors who are supervising as many as 16 staff. This results in inadequate supervision for administrative support staff.

4. Do you consider the current DPD Superior Court and District Court supervisor and support staffing levels shown in Exhibit 5 to be a reasonable and effective balance with the number of attorneys? If not, what changes would you suggest?

While the current attorney supervisory levels at DPD are adequate, DPD lacks adequate support staff and adequate supervision of support staff. As discussed above, unlike PAO, DPD does not have external partners to conduct investigation, and all investigation must be done by DPD staff. DPD must obtain outside experts to perform the functions that the Washington Crime Lab performs for PAO. Changing standards of practice mean that DPD lawyers use investigators at higher rates, and caseloads of DPD investigators are growing.

Turning to paralegals, as discussed above, DPD would benefit greatly from using this job class to its full potential but several roadblocks prevent it from doing so. The problem begins with the fact that DPD lacks sufficient supervisor positions to create paralegal supervisors who would be able to ensure consistency. Increasing the ratio of paralegals to lawyers would allow DPD to hire paralegals with demonstrated legal research and writing skills. Placing such paralegals under the supervision of newly created paralegal supervisors and within practice units where their skills would be most applicable would allow DPD to reap the benefit of this position.

Increasing the ratio from the 2011 WSBA Standards of 1:4 makes a great deal of sense given the substantial increase in case complexity and discovery amount. Paralegals' duties require them to be familiar with the facts and the law involved in each of their cases to nearly the same degree as an attorney working on the case. Under a 1:4 ratio, this requires a highly performing paralegal to be familiar with four times as many cases as the lawyer being supported. In the context of a misdemeanor unit, where the caseload maximum for an attorney is 400 cases, the ratio would require a paralegal to perform the above functions in 1600 cases over the course of a year (or 600 felony cases). Whether or not this was possible in 2011 when the WSBA articulated the standards discussed above, no one person could now competently learn the facts, watch the body worn camera video, keep track of the witnesses, and be familiar with the legal issues in so many cases. As the complexity of cases continues to increase and the volume of discovery grows, the ratio of support staff to attorneys must keep pace.

⁴ https://www.kingcounty.gov/~media/depts/executive/labor-relations/documents/contracts/465MLAC0117_scsq_Search.ashx?la=en

Department of Public Defense response to Council staff questions

DPD believes that an important step towards parity is increasing our investigator staffing.

Prosecutorial systems and public defense systems acquire their evidence differently.

In most criminal cases, the prosecutor is not involved in the case until after the substantial completion of the law enforcement investigation and a suspect has been arrested by law enforcement, though prosecutors may be consulted by law enforcement earlier in a high-profile or legally complex case. Shortly after an individual's arrest, the prosecution receives the law enforcement file containing the investigative materials and decides whether to file charges; in some cases, the filing of charges can be delayed for additional investigation by law enforcement. After charges are filed, law enforcement continues to conduct any additional investigation requested by the prosecution. Often, the lead detective on a case assists the prosecutor with case preparation and will sit at counsel table with the prosecutor during any eventual trial.

The individual arrested acquires the right to appointed counsel after the filing of charges. Only after counsel is appointed will the defense investigation of the case begin. The 6th Amendment, which sets the absolute minimum effective level of representation, well shy of the defense standards articulated by the Washington State Bar Association and the American Bar Association, requires the defense attorney to conduct an independent investigation of the facts underlying the charges. Appropriately, the full cost of the defense investigation conducted by appointed counsel is borne by the public defense system. *See, generally, http://www.nlada.net/library/article/na_understandingbudgetsforprosanddefs.*

DPD needs additional investigators.

DPD currently has a ratio of 1 investigator to 4 attorneys. While this is the minimum prescribed by the Washington State Bar Association in 2011, it fails to adequately meet our current needs. The Public Defender Service in Washington, DC maintains a ratio of 1 investigator to 2 felony attorneys. In 2000, the National Legal Aid and Defender Association recommended a ratio of 1 investigator to 3 attorneys. *See Model Contract for Public Defender Services, section VII.F. G.* They recommended this ratio even before body-worn cameras became commonly used.

As part of DPD's expanding, albeit somewhat fledgling, efforts at data-based decision making, we have begun tracking the rate at which attorneys request investigator work on cases, the amount of time investigators spend on different types of cases (i.e., felonies vs. misdemeanors) in relation to the proportion of DPD's workload in each case area, and, qualitatively, held a series of meetings with our investigative staff to learn about their evolving experience of their workload. All of these factors, in combination with practices in comparable public defense offices, strongly indicate the need to change the ratio of investigators to attorneys from 1:4 to 1:3.

Finally, Judge O'Donnell and Judge Galvan have expressed a growing frustration with the lengthening of the time to resolution/adjudication of cases because of the limited availability of defense investigators and the resulting need to continue cases to complete investigative work.