

Council Report
on
OPPAGA Justification Review of the Capital Collateral Regional Councils
“Performance of Collateral Councils Improved;
Registry Accountability Needs to be Revised.”
(OPPAGA Report No. 01-52)



House of Representatives
Council for Healthy Communities
February 19, 2002

Introduction

This report is prepared by Council staff, as directed by the Council for Healthy Communities at its meeting held on January 30, 2002, to identify deficiencies in OPPAGA's Justification Review of the Capital Collateral Regional Councils issued in November of 2001 ("OPPAGA report"). In further compliance with the directive given by the Council, this report includes a recommendation that the OPPAGA report's recommendations not be accepted. In reaching that recommendation, this report will identify and describe those deficiencies which support the rejection of OPPAGA's recommendations.

Background

In November 2001, the Office of Program Policy Analysis and Government Accountability (OPPAGA) issued a report entitled "Performance of Collateral Councils Improved; Registry Accountability Needs to be Revised." The report's purpose was described as being the results of their "Program Evaluation and Justification Review of the Capital Collateral Regional Councils."¹

OPPAGA conducts program evaluations and justification reviews pursuant to section 11.513, Florida Statutes. (See Appendix A). According to OPPAGA's website, research conducted by OPPAGA is guided by *The Program Evaluation Standards, 2nd Edition*, issued by The Joint Committee on Standards for Educational Evaluation (SAGE Publications).²

Section 11.513(5) provides in part that:

- (5) The Legislature intends that the program evaluation and justification review procedure be designed to assess the efficiency, effectiveness, and long-term implications of current or alternative state policies, and that the procedure results in recommendations for the improvement of such policies and state government...

The OPPAGA report, although an evaluation of the three Capital Collateral Regional Councils (CCRCs), included a review of the registry of private attorneys (registry attorneys) who, like the CCRCs, represent death row inmates in postconviction proceedings. The attorney registry was created in 1998 to help reduce the backlog of these cases, and to represent inmates where a conflict of interest precluded representation by the CCRCs.

With respect to the day-to-day functioning of the regional councils, OPPAGA made no recommendations for the middle regional office, apparently finding no room for improvement in any aspect of their operation. With respect to the northern and southern regional offices, the

¹ OPPAGA report at 1.

² <http://www.oppaga.state.fl.us/about.html>

report recommends simply that these two offices should evaluate the feasibility of acquiring scanning capability.³ Several recommendations are made for the registry attorneys.⁴

Above and beyond the review of the CCRCs and the registry lawyers, however, the report took the extraordinary step of offering a recommendation related to the entire postconviction process itself. Specifically, the report contains the following recommendation:

Rather than pursuing the dual-track post-conviction concept, which would increase the number of cases reviewed by about 50%, Florida should try to eliminate delay in the collateral appeals system by qualifying for the opt-in provisions of the federal Anti-Terrorism and Effective Death Penalty Act.⁵

In this review of the CCRCs, they include a recommendation for the Florida Attorney General's Office as follows:

We recommend that the Attorney General's Office prepare and request from the Federal District Court treatment of Florida's federal habeas corpus petition under the opt-in provisions of the Anti-Terrorism and Effective Death Penalty Act.⁶

In view of concerns and questions raised about the report, Representative Fasano, Chairman of the Council for Healthy Communities, wrote a letter to OPPAGA's director, John Turcotte, and submitted written questions to be answered by OPPAGA staff regarding specific issues and recommendations discussed in the report. (See, Appendix B). OPPAGA's response to these written questions are attached to this report. (See, Appendix C).

Analysis

Previously Stated Goals of Legislature with Respect to the Death Penalty

In the Death Penalty Reform Act of 2000, the Legislature declared: “. . . it is in the best interest of the administration of justice that a sentence of death ordered by the courts of this state be carried out in a manner that is fair, just, and humane and that conforms to constitutional requirements, and . . . in order for capital punishment to be fair, just and humane for both the family of victims and for offenders, there must be a prompt and efficient administration of justice following any sentence of death ordered by the courts of this state, . . .”

³ OPPAGA report at 14.

⁴ See, *Id.* at 14 & 15 for the complete listing of recommendations.

⁵ OPPAGA report at page 15.

⁶ *Id.*

Currently, in Florida, the average length of stay of inmates on death row is 14.61 years for persons executed during 1996-2001.

Finding 1: OPPAGA's recommendations that Florida avoid a dual track system and opt-in to the provisions of the federal Anti-Terrorism and Effective Death Penalty Act was inadequately researched and beyond the scope of a program evaluation and justification review of the CCRCs.

OPPAGA's recommendation to avoid returning to a dual track system was based on an assessment that such a system would result in an estimated 40% increase in workload for the regional counsels, registry lawyers and lower courts because of the high reversal rate of Florida's Supreme Court with respect to death penalty cases. The report concluded that the cost of such a workload increase would be substantial.⁷

The CCRCs are but one participant in the postconviction process. While the CCRCs represent persons whose death sentence have been affirmed on direct appeal by the Florida Supreme Court, in postconviction⁸ proceedings, the State Attorneys of the twenty judicial circuits represent the people of the state of Florida in postconviction hearings conducted by the trial court, the Attorney General's Capital Appeals Division lawyers serve as co-counsel for the State Attorneys in state trial court proceedings, represent the state in postconviction appeals and all federal trial and appellate litigation. In addition, the Governor is responsible for signing death warrants which trigger additional post-warrant collateral litigation. The Governor is also responsible for review of clemency petitions which follow postconviction proceedings. In addition, registry lawyers who, like the CCRCs represent death row inmates, are also participants in the process. Finally, the Department of Corrections must house and care for the needs of inmates sentenced to death, in maximum security facilities, at a substantial cost.

Although a dual track system may increase the workload costs of the regional counsels, assuming the Florida Supreme Court's reversal rates remain the same, such a system may provide savings which could be realized among the other components of the postconviction process. Clearly beyond the scope of a program evaluation of the CCRCs and the registry lawyers, a recommendation concerning a dual track post conviction system would have required identification, input, recommendations, and impact assessment from **all** components of the postconviction process and the Department of Corrections.

With respect to their recommendation to avoid a dual track system and opt-in to the federal Anti-terrorism and Effective Death Penalty Act, OPPAGA did not contact any of the twenty State Attorneys' Offices, the Florida Attorney General's Office, the Governor's legal counsel, the

⁷ OPPAGA report at page 13.

⁸ The term "postconviction" is synonymous with "collateral" in the context of this report.

Executive Director of the Commission on Capital Cases, or any registry lawyer.⁹ As a result, no potential savings with respect to these components of the process was known or considered in making this recommendation. No recommendation with regard to the process itself should be relied upon when it is based on an assessment of the impact on one component of the system examined in isolation.

In addition, in recent years Texas, and in 2001 Oklahoma, have led the country in the number of executions carried out annually. Texas and Oklahoma both are on a “dual track” system. Significantly, the OPPAGA report failed to compare these dual track states with Florida’s current postconviction process prior to recommending that Florida abandon efforts to pursue such a system. No information was provided from which someone could compare the average length of time it takes to carry out a death sentence in Texas and Oklahoma, to the average length of time it takes in Florida. No discussion of what modifications to the current system would be required to implement a dual track system in Florida was provided. Likewise there was no explanation given as to why Florida could not or should not elect to do both, i.e. opt-in to the federal system (if that is advisable) **and** implement a dual-track system. Finally, no estimate was provided on how much time would be reduced in the postconviction process if Florida did pursue a dual track system.

The OPPAGA report stated:

Many of the legislative and court changes were the result of a concern about the length of time it took to resolve death penalty cases.¹⁰ (footnote omitted)

Considering this acknowledgment by OPPAGA that delays in capital cases was a concern of the legislature which drove the previous changes, the omission of basic information with respect to the most expeditious form of postconviction review in the country is significant for two reasons. First, it illustrates once again that a program evaluation of the CCRCs was not a proper forum to issue a recommendation concerning the postconviction process as a whole. Second, it illustrates how the recommendation to avoid a dual track system is seriously lacking in comparative analysis and largely unsubstantiated.

There are currently 38 states that have a death penalty. The fact that no state has opted in to the provisions of a federal law that passed in 1996, which was designed to accelerate postconviction review in death penalty cases, is significant. Yet, the reason no other state has opted in was not explained in the OPPAGA report. At the January 30th meeting of the Council for Healthy Communities, OPPAGA’s response to the inquiry, with respect to whether they contacted the Attorney Generals of other states with respect to this phenomenon, was that they contacted the

⁹ See, response to question #2 in Appendix.

¹⁰ OPPAGA report at page 5.

Arkansas Attorney General.¹¹ Aside from the sole state of Arkansas, no other state's Attorney General was contacted to ascertain why these other 36 states have not opted in. It is not known whether these other states see the law as problematic, ineffective, simply unnecessary, or if several other states have tried and failed to opt-in to these provisions.

With respect to the recommendation of opting-in, OPPAGA failed to solicit the input of Florida's Attorney General's Office concerning that recommendation. The report does not give the reader the benefit of the Florida Attorney General's assessment of the necessity, value or perhaps futility of opting into the federal law. Likewise, none of the twenty State Attorneys Offices were contacted with respect to this recommendation.

Finding 2: OPPAGA's program evaluation and justification review of the CCRCs was inadequately researched, failed to utilize critical performance measures, and provided a sub-standard evaluation of the CCRCs' performance.

In reviewing the OPPAGA report, one would be led to believe that the CCRCs day-to-day operations are virtually flawless.¹² The report notes, for example, that the "Regional counsels are moving cases through the system."¹³ From the information mentioned in the body of the report, however, it is difficult for the reader to reach any type of intelligent impression or conclusion concerning the actual success or failure of the CCRCs to actively litigate these cases through the system in such a manner so as to bring them to an expeditious resolution. For example, included in the report is an exhibit which purports to indicate "Legal Action" among the three regions in fiscal year 2000-01 (See, **Table 1**).¹⁴ This exhibit measures actions entitled *post-conviction motions, evidentiary hearings held, other hearings and oral arguments*. Of these actions, however, only one (evidentiary hearings held) is an actual performance measure. The report does mention the fact, as reflected in the exhibit, that last year the regional counsels attended 53 preliminary hearings and made 26 oral arguments in various state and federal courts, but that is the extent of the explanation with respect to these two actions.¹⁵ No one reading the report could glean from it where the CCRCs' litigation activity was in relation to moving cases through the system to a final resolution.¹⁶

¹¹ This response is not consistent with their response to question #2 of the written questions in Appendix C.

¹² OPPAGA makes no recommendation to improve the day-to-day operation of the middle region's Capital Collateral Regional Counsel. As for the Northern and Southern regions, they recommend only that the two offices evaluate the feasibility of obtaining scanning capability.

¹³ OPPAGA report at page 5.

¹⁴ OPPAGA report at page 5, Exhibit 4.

¹⁵ OPPAGA report at page 5.

¹⁶ The OPPAGA report acknowledges that : "While the reforms are too recent to allow for an analysis of their effect on case completion, case activity provides an indicator of whether cases are progressing through the system." OPPAGA report at p. 5. However, the notion that case "activity" indicates that cases are progressing through the system attaches too much significance to mere activity when no inquiry is conducted as to the nature of that activity. For example, the report does not indicate how much of this activity, if any, was connected to the filing of successive pleadings, procedurally barred pleadings, or frivolous pleadings.

Legal Action	North Region	Middle Region	South Region	Total
Post-conviction Motions	8	6	9	23
Evidentiary Hearings held	8	10	14	32
Other Hearings	26	16	11	53
Oral Arguments	6	10	10	26

Table 1 (Footnotes Omitted, See OPPAGA report page 5 for actual exhibit)

The exhibit's reference, for instance, to "8" post-conviction motions for the north region is ambiguous in that it is unclear from the exhibit whether that represents 8 motions filed for the fiscal year, 8 motions fully litigated in the fiscal year, 8 motions which will be supplemented later, or for that matter if this number includes some successive motions in the same case. If it represents 8 motions filed for the north region in the fiscal year, one would expect an indication of how many cases the north region **should** have filed during that fiscal year in order to put this number in context (i.e. how many cases were there in the northern region in which such motions were due). Obviously, the same short-coming can be raised with regard to the number representations for the other two regions as well.

Because of a provision in the Florida Rules of Criminal Procedure 3.851, and tolerance by the trial courts and the Florida Supreme Court, permitting successive post-conviction motions, the numbers reflected in the exhibit relied upon by OPPAGA, although they do show action of some type, provide no real indication of CCRCs' effectiveness at moving cases through the system to a final resolution. The exhibit simply shows "activity," which in death penalty cases, is not necessarily synonymous with "progress."

Most notably absent from the evaluation of the CCRCs, was scrutiny of data collected regarding some key performance measures of the CCRCs. In fact, not only does OPPAGA not utilize the data, they reject it outright as meaningless. These measures are the following (See **Table 2**):

Measures	Fiscal Year 1999-00			Fiscal Year 2000-01			Fiscal Year 2001-02		
	Northern Region	Southern Region	Middle Region	Northern Region	Southern Region	Middle Region	Northern Region	Southern Region	Middle Region
Percent of issues raised by CCRCs considered by the courts which were not ruled procedurally barred or without merit.	20%	20%	16%	20%	20%	20%	20%	20%	20%
Number of issues raised by CCRCs considered by the courts which were not ruled procedurally barred or without merit.	20	70	40	40	30	35	95	75	75
Percent of issues raised by CCRCs that are summarily dismissed by the courts or if formally considered by the courts, ruled to be procedurally barred or without merit.	80%	80%	84%	80	80%	80%	80%	80%	80%
Number of issues raised by CCRCs that are summarily dismissed by the courts or if formally considered by the courts, ruled to be procedurally barred or without merit.	80	280	210	160	120	175	380	300	300

Table 2

Appendix B of the report dismisses such measures saying that they may give an “inaccurate portrait of the work performed by the regional counsels.”¹⁷ This conclusion is reached because there may be some issues that are raised knowing they are going to be summarily dismissed for purposes of preserving them on the record in the event the law changes with respect to that specific issue.¹⁸ This explanation, however, does not warrant the wholesale dismissal of these measures as not worthy of evaluation. To the contrary, a proper inquiry into CCRC efficiency would have looked behind the data generated by these measures to identify possible waste and inefficiency within the CCRCs, or perhaps to identify ways to refine the measure for future data collection.

Some questions that would have produced more insight into the actual performance of the CCRCs should have been generated by the data obtained in connection with these measures. For example, if 80% of the issues raised by the CCRCs are summarily dismissed or ruled to be procedurally barred or without merit, that data begs the following questions:

¹⁷ OPPAGA report at page 19.

¹⁸ Id.

1. How many of these issues were procedurally barred because the CCRCs were late in filing their motions?
2. How many of these issues were procedurally barred because they raised an issue which should have already been raised on appeal?
3. How many of these issues were procedurally barred because the issue had already been litigated?
4. How many issues were dismissed because they were factually baseless? Or in other words, how often, if at all, did they seek relief based on non-existent facts?

Moreover, with an evaluation of this data, progress could have been made in determining what a fair number or percentage should be to set as standard for this measure. Or perhaps, an analysis of the data could be used to refine the measure to make it more specific for purposes of future review and analysis. As it is, OPPAGA's review offered no analysis and hence no recommendation on ways to improve these measures to highlight waste and inefficiency of the CCRCs, or to build upon the information collected from these critical measures.

The OPPAGA report also mentions that there are some performance measures approved by the Legislature which the CCRC does not report.¹⁹ The reason for the failure of the CCRCs to collect this information is not discussed or explained but rather rationalized by OPPAGA. With regard to CCRCs' non-compliance with the requirement to collect such data, OPPAGA states:

The regional counsels have **not reported** performance for **some measures** pertaining to hours spent in various activities. However, the regional counsels are required to file detailed reports to the Commission on Capital Cases of the hours spent on each case. These reports include the case, the activity performed on the case, the individual who performed the activity, and the hours, by quarter-hour increments, expended on those activities. We believe because of the breadth of these reports, the information is better collected and reviewed by the Commission on Capital Cases on a quarterly basis, rather than as part of the performance measures.²⁰ (emphasis added)

This paragraph, while suggesting that this information is not necessary for the Legislature's purposes, does not specify what measures they are referring to.²¹ In addition, the indication of

¹⁹ OPPAGA report at page 19.

²⁰ OPPAGA report at page 19.

²¹ Based on House staff's review of the CCRCs' Long Range Program Plan, it was determined that the performance measures being referred to here are the following: 1) The average number of hours per public record analysis and 2) The number of formal legal and background death row case record analyses made. Both of these measures were initially recommended by the CCRCs themselves. With respect to the first measure, the CCRCs

OPPAGA's belief that data from quarterly reports is better collected and reviewed by the Commission on Capital Cases, fails to recognize that the information collected in connection with these measures is intended for a different purpose than the information contained in quarterly reports. The information in these measures is designed for use particularly by members of the appropriations committee for budgetary consideration and analysis of fiscal resource utilization of the CCRCs. The Commission on Capital Cases does not determine budgetary issues for either chamber of the Legislature.

Further, Roger Maas, Executive Director of the Commission on Capital Cases has indicated that in fact the data collected in these measures is more useful in some respects than the data collected in quarterly reports by the Commission.

The OPPAGA report's evaluation of the registry lawyers indicates that:

The comparative timelines of case processing between the registry and regional counsels cannot currently be determined. None of the registry cases has gone through the entire post-conviction process.²²

The report also notes that the regional counsels transferred newer cases to the registry lawyers when the registry was created.

Although OPPAGA is correct that no registry case has been through the system completely, it does not follow that some comparisons could not have been drawn which would have been helpful. For, instance, OPPAGA could have compared the average time it takes for a CCRC lawyer to bring a **filed** postconviction motion to a hearing compared to a registry lawyer. The fact that registry cases are newer is irrelevant to that issue because the time to bring a filed motion to a hearing is not affected by a difference in motion filing deadlines. Regardless of whether the motion was filed under a two year time limit or a one year time limit, once the motion is filed, the time between the filing of the motion and the hearing is something that could be compared.

Contrast OPPAGA's comments quoted above, with the following comment regarding comparing regional counsel performance with that of registry lawyers which appeared in the **1999 Report to the Commission on the Administration of Justice in Capital Cases** (Commission Report):

made the following statement concerning the validity of the measure: "This measure will assist the CCRC to better plan and budget its own resources to provide critical analysis required to represent its death row inmate clients efficiently and effectively." With respect to the second measure, the CCRCs made the following statement concerning the validity of the measure: "The ability to log the workload requirements associated with this critical part of CCRC's responsibilities will be essential for credible operational planning, budgeting and management with CCRC and will satisfy requests by outside authorities to know this information." The statements above are taken from the 2000 D-2B Exhibits of the CCRCs when the above measures were being considered for approval.

²² OPPAGA report at page 7.

With two parallel systems of collateral representation of death-row inmates, it will be possible for policymakers to compare the effectiveness of each system. This should help determine the best direction for such representation in the future.²³

OPPAGA's Comments Concerning Consequences for Discontinuing the Program

Appendix A of the OPPAGA report in "Table A-1, *Summary of the Program Evaluation and Justification Review of the Capital Collateral Regional Counsels*," beside the issue heading "consequences for discontinuing the program" states in part "Discontinuance of the program could lead to the execution of innocent people."²⁴

There are some assumptions being made in the above statement that fail to acknowledge some very fundamental aspects of our criminal justice system. To name one, persons convicted of first degree murder should not be presumed innocent. OPPAGA does not identify a single individual on death row who is actually "innocent" of the crime in the real sense of the word.²⁵

In addition, it fails to recognize that this legal service could be performed by lawyers other than CCRC lawyers as an alternative to the current system. For example, the service by CCRC could be discontinued and provided entirely by private registry lawyers. OPPAGA does not point out a contrary conclusion reached by the authors of the Commission report with respect to discontinuing this service by the CCRCs and replacing them with registry lawyers. With respect to its analysis of what the effects would be of privatizing postconviction proceedings, the Commission report notes increased efficiency and speed in postconviction filings stating:

The appointment of private counsel has resulted in the significant shortening of the initial postconviction filing. CCRC-North provided information about the planned designation dates and 3.850 motion due dates for their overflow cases. In the Rolling case, for example, the CCRC- North had indicated a designation date of 1/3/2000, with a 3.850 due date of 12/4/2001. The recently-appointed private counsel has already filed the initial 3.850, thus saving 3 years, a potential saving of \$75,000 (3 years @ \$25,000). In the Thomas case, the time saving in the appointment of counsel is 1 year and 5 months, a potential saving of \$35,500. No comparable information was available from the CCRC-Middle or South.

²³ By Isabelle Potts, J. D. and Gretchen Hirt, J. D., Florida State University School Of Criminology And Criminal Justice, for the Florida Corrections Commission.

²⁴ OPPAGA report at page 17.

²⁵ "Innocent" is used in this context to mean that the person convicted actually did not commit the crime as defined by law. It does not refer to persons frequently characterized as "wrongfully convicted" who did actually commit the crime but for some reason or another were released, granted a new trial, or received a lesser sentence.

Finally, the assertion by OPPAGA that discontinuance of the program could lead to the execution of innocent people fails to take into consideration a procedural safeguard provided by the current rules of criminal procedure. Under rule of criminal procedure 3.851(d)(4), if the Governor were to sign a death warrant prematurely, the Court would grant a stay of execution in order to allow the postconviction process to proceed. As a result, a very real and probable consequence of discontinuing this service would be that no person would be executed.

Conclusion

In closing, it should be noted that in reviewing the OPPAGA report, staff also reviewed the program evaluation standards utilized by OPPAGA. Many of the deficiencies noted and explained in this report illustrate that OPPAGA's program evaluation and justification review of the CCRCs was conducted in a manner which is contrary to their own published standards for review. A summary of these standards are attached to this report as Appendix D.²⁶

For the foregoing reasons it is recommended that the recommendations in the OPPAGA report not be accepted.

²⁶ *The Program Evaluation Standards, 2nd Edition*, which is issued by The Joint Committee on Standards for Educational Evaluation (SAGE Publications). A full copy of this publication is available in the Council office until February 18, 2002. The Legislative Library has ordered a copy of this publication which has not been received as of the date of this writing.

The 2001 Florida Statutes

Title III
 Legislative Branch;
 Commissions

Chapter 11
 Legislative Organization, Procedures, And
 Staffing

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11.513 Program evaluation and justification review.--

(1) Each state agency shall be subject to a program evaluation and justification review by the Office of Program Policy Analysis and Government Accountability as determined by the Legislative Auditing Committee. Each state agency shall offer its complete cooperation to the Office of Program Policy Analysis and Government Accountability so that such review may be accomplished.

(2) A state agency's inspector general, internal auditor, or other person designated by the agency head shall develop, in consultation with the Office of Program Policy Analysis and Government Accountability, a plan for monitoring and reviewing the state agency's major programs to ensure that performance data are maintained and supported by agency records.

(3) The program evaluation and justification review shall be conducted on major programs, but may include other programs. The review shall be comprehensive in its scope but, at a minimum, must be conducted in such a manner as to specifically determine the following, and to consider and determine what changes, if any, are needed with respect thereto:

- (a) The identifiable cost of each program.
- (b) The specific purpose of each program, as well as the specific public benefit derived therefrom.
- (c) Progress toward achieving the outputs and outcomes associated with each program.
- (d) An explanation of circumstances contributing to the state agency's ability to achieve, not achieve, or exceed its projected outputs and outcomes, as defined in s. [216.011](#), associated with each program.
- (e) Alternate courses of action that would result in administration of the same program in a more efficient or effective manner. The courses of action to be considered must include, but are not limited to:
 - 1. Whether the program could be organized in a more efficient and effective manner, whether the program's mission, goals, or objectives should be redefined, or, when the state agency cannot demonstrate that its efforts have had a positive effect, whether the program should be reduced in size or eliminated.
 - 2. Whether the program could be administered more efficiently or effectively to avoid duplication of activities and ensure that activities are adequately coordinated.
 - 3. Whether the program could be performed more efficiently or more effectively by another unit of government or a private entity, or whether a program performed by a private entity could be performed more efficiently and effectively by a state agency.

4. When compared to costs, whether effectiveness warrants elimination of the program or, if the program serves a limited interest, whether it should be redesigned to require users to finance program costs.

5. Whether the cost to administer the program exceeds license and other fee revenues paid by those being regulated.

6. Whether other changes could improve the efficiency and effectiveness of the program.

(f) The consequences of discontinuing such program. If any discontinuation is recommended, such recommendation must be accompanied by a description of alternatives to implement such recommendation, including an implementation schedule for discontinuation and recommended procedures for assisting state agency employees affected by the discontinuation.

(g) Determination as to public policy, which may include recommendations as to whether it would be sound public policy to continue or discontinue funding the program, either in whole or in part, in the existing manner.

(h) Whether the information reported as part of the state's performance-based program budgeting system has relevance and utility for the evaluation of each program.

(i) Whether state agency management has established control systems sufficient to ensure that performance data are maintained and supported by state agency records and accurately presented in state agency performance reports.

(4) No later than December 1 of the second year following the year in which an agency begins operating under a performance-based program budget, the Office of Program Policy Analysis and Government Accountability shall submit a report of evaluation and justification review findings and recommendations to the President of the Senate, the Speaker of the House of Representatives, the chairpersons of the appropriate substantive committees, the chairpersons of the appropriations committees, the Legislative Auditing Committee, the Governor, the head of each state agency that was the subject of the evaluation and justification review, and the head of any state agency that is substantially affected by the findings and recommendations.

(5) The Legislature intends that the program evaluation and justification review procedure be designed to assess the efficiency, effectiveness, and long-term implications of current or alternative state policies, and that the procedure results in recommendations for the improvement of such policies and state government. To that end, whenever possible, all reports submitted pursuant to subsection (4) must include an identification of the estimated financial consequences, including any potential savings, that could be realized if the recommendations or alternative courses of action were implemented.

(6) Evaluation and justification reviews may include consideration of programs provided by other agencies which are integrally related to the programs administered by the state agency or entity which is scheduled for review as determined by the Legislative Auditing Committee.

History.--s. 5, ch. 90-110; s. 1, ch. 92-142; s. 18, ch. 94-249; s. 32, ch. 96-318; s. 19, ch. 99-333; s. 1, ch. 2001-60; s. 19, ch. 2001-266.

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Florida House of Representatives

Council for Healthy Communities

Tom Feeney
Speaker

Mike Fasano
Chair

January 2, 2002

John Turcotte, Director
Office of Program Policy Analysis and Government Accountability
111 West Madison Street, Room 312
Claude Pepper Building
Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

I have reviewed OPPAGA's justification review of the Capital Collateral Regional Councils (CCRCs) report # 1-52. I must admit that I was very surprised at some of the recommendations and comments contained in this report. While offering very little in the way of substantive recommendations concerning the day to day operation of the CCRCs, OPPAGA staff makes recommendations concerning the postconviction process itself that are, in my opinion, far beyond the call of a justification review of the CCRCs. For example, the report recommends that Florida abandon further attempts to pursue a dual track postconviction process. Further, despite the fact that no other state has seen fit to do so, staff also recommends that Florida "opt-in" to the Federal Anti-Terrorism and Effective Death Penalty Act. Considering the fact this justification review includes such recommendations to the postconviction process, I have enclosed with this letter a series of questions which I would like your staff to answer concerning these recommendations.

In addition, I was also concerned that, in conducting this review, staff seemed to simply dismiss the significance of some highly valuable performance measures which reflect the number and percentage issues raised by the CCRCs which are procedurally barred or non-meritorious, as well as, the number of meritorious issues raised by the CCRCs which were not procedurally barred. I also, therefore, have some questions for your staff to answer in connection with that aspect of the report.

Finally, I also have questions concerning some of the points raised in the report regarding overpayment of fees for registry attorneys and workload issues. Please have your staff respond to these questions in writing by January 10, 2002.

John Turcotte, Director
January 2, 2002
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Thank you for your cooperation in this matter. You may direct staff's response to the enclosed questions to David De La Paz.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Fasano". The signature is fluid and cursive, with a large loop at the end.

Mike Fasano, Chair
Council for Healthy Communities

cc: Tom Feeney
Randy Ball
Gus Bilirakis

OPPAGA Justification Review: Capital Collateral Counsels

Questions for Report No. 01-52

1. Please identify the provision of statutory authority under which OPPAGA's justification review of the CCRCs, included an opinion and recommendation with respect to abandoning future attempts to pursue a dual track post-conviction process in death penalty cases, and for Florida to "opt-in" to the federal "Anti-terrorism and Effective Death Penalty Act?"
2. What lawyer or lawyers (name and telephone number) were consulted by OPPAGA in the formulation of the recommendation for Florida to opt-in to the Anti-Terrorism and Effective Death Penalty Act?
3. The report, recommends the abandonment of further attempts to pursue a dual-track post-conviction system noting that such a system would increase the number of cases reviewed by 50%. Before making that recommendation, the report notes that Florida Supreme Court reverses about 40% of these cases on direct appeal. Prior to making this recommendation, did OPPAGA compare reversal rates of the Florida Supreme Court, with reversal rates of other state supreme courts?
☐ Yes
☐ No
4. Did OPPAGA compare the average length of time it takes for CCRC lawyers to bring a (Rule 3.851) post-conviction motion to a hearing compared to registry attorneys?
☐ Yes
☐ No
5. Before making your recommendation concerning a dual track post-conviction concept, did you review the dual track laws in Oklahoma and Texas?
☐ Yes
☐ No
6. Did you compare the length of time it takes to review capital postconviction cases in those states under a dual track system, prior to recommending that Florida no longer pursue a dual track postconviction process?
☐ Yes
☐ No

7. What is the average number of cases assigned to each CCRC lawyer?

☐ North
☐ Middle
☐ South

8. What is the average number of cases assigned to each lawyer in the capital appeals division of the Attorney General's Office?

9. Did you substantiate all of your claims regarding registry attorney overpayment?

☐ Yes
☐ No

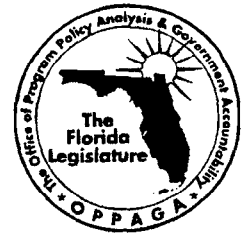
10. If the answer to the above question is "yes", please describe how these claims were substantiated.

In addition to answering the above questions, please provide copies of court orders OPPAGA is aware of where judges awarded fee payments to registry counsel above the statutory maximums provided in s. 27.711.



The Florida Legislature

OFFICE OF PROGRAM POLICY ANALYSIS AND GOVERNMENT ACCOUNTABILITY



John W. Turcotte, Director

January 11, 2002

The Honorable Mike Fasano
Chair, Council for Healthy Communities
Attention: David De La Paz
Florida House of Representatives
1102 Capitol
Tallahassee, Florida 32399-1300

Dear Representative Fasano:

Thank you for your interest in our recent report on the Capital Collateral Regional Councils (CCRC). We received your letter dated January 2, 2002 on January 8, and have endeavored in this response to include appropriate and relevant information to satisfactorily address the issues you raised.

After review of the enclosed material, I hope you will be reassured that OPPAGA's findings and recommendations in the CCRC report are entirely consistent with our statutory responsibilities, and with our previous efforts to provide the Legislature with objective, independent, professional analyses of state policies to support legislative decision-making, and to recommend the best use of public resources.

I believe you will find that in the course of this review, OPPAGA fulfilled your expectation that our work be thorough in our examination of the operational aspects of the program, such as performance measures, costs and efficiencies; thoughtful in our pursuit of alternative approaches; and well documented in our discussion of issues and policy options.

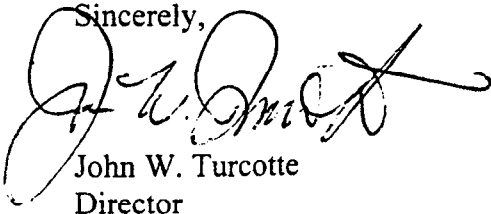
With regard to your inquiry concerning the performance measures which count issues that are time barred, procedurally barred or without merit, the report notes that this measure may give the impression that post-conviction counsel are attempting to be frivolous in presenting those issues. However, in order to legally preserve these issues they must be raised or be later barred. Thus, in raising the issues the post-conviction counsel is performing in a professionally required manner. As noted in the report, the approved treatment of these issues is to clearly label them and acknowledge matters as being preserved for the record. For example, as the law changes on mental retardation, either by statute or by U.S. Supreme Court ruling, attorneys in cases where the issue was preserved will be able to argue for the application of the law to that case. Had the issue not been preserved then the relief may not be available.

The Honorable Mike Fasano
January 11, 2002
Page 2

If, after your review of this information, you have any further questions, please do not hesitate to direct your staff to contact the analyst who conducted this review for me. Cynthia Cline, J.D., an attorney with twenty years of legal experience, including work with capital cases, is available to provide any additional assistance you may require. She may be reached by telephone at (850) 487-9222 at your convenience.

Thank you for your continued interest in the work of this office.

Sincerely,

A handwritten signature in black ink, appearing to read "John W. Turcotte", with a stylized flourish at the end.

John W. Turcotte
Director

JWT/wd

Attachments

cc: Speaker Tom Feeney
Representative Randy Ball
Representative Gus Bilirakis

OPPAGA Justification Review: Capital Collateral Counsels

Questions for Report No. 01 -52

1. *Please identify the provision of statutory authority under which OPPAGA's justification review of the CCRCs, included an opinion and recommendation with respect to abandoning future attempts to pursue a dual track post-conviction process in death penalty cases, and for Florida to "opt-in" to the federal "Anti-terrorism and Effective Death Penalty Act?"*

OPPAGA conducts program evaluation and justification reviews under the authority of section 11.513, *Florida Statutes*. As indicated in subsection (5), the Legislature intends that the program evaluation and justification review procedure be designed to assess the efficiency, effectiveness, and long-term implications of current or alternative state policies, and that the procedure results in recommendations for the improvement of such policies and state government.

Subsection 11.513(3)(e)6., *Florida Statutes*, directs OPPAGA to conduct a comprehensive review that examines multiple aspects of a program. We are to specifically determine whether there are alternative courses of action that would result in administration of the same program in a more efficient or effective manner, and whether other changes could improve the efficiency and effectiveness of the program. To that end, whenever possible our justification reviews include an identification of the estimated financial consequences, including any potential savings, that could be realized if the recommendations or alternative courses of action were implemented.

As part of the justification review of the Capital Collateral Regional Counsels (CCRC) we considered and evaluated the efficiencies of the day-to-day operations of the regional counsels. For example, we reported the number of motions, hearings and other legal matters each office has completed. We also commented on the increases in productivity created by the use of new technology and the availability of scanning. Out of these observations came the recommendation to increase the availability of this technology.

The report cites the positive effect of legislation creating the registry and the repository on the ability of the state to process death penalty cases in a timely manner. We also considered another legislative initiative creating the dual track appeals process. During the course of project research it became evident that the dual track legislation would increase the caseload of both the regional counsels and the registry attorneys, thus increasing the cost of the program.

The question we then had to address was whether the time efficiencies that were desired by the Legislature could be obtained by other, less expensive means. In reviewing the systemic delays of executions we noted that there are a number of points at which the process becomes bogged down. For example, the Florida Supreme Court took issue with the trial courts for delaying the decisions on 3.851

petitions. In *Florida v. Williams*, (No SC 94989, August 23, 2001) the court noted that the trial court had taken seven years to decide a post-conviction motion.

2. *What lawyer or lawyers (name and telephone number) were consulted by OPPAGA in the formulation of the recommendation for Florida to opt-in to the Anti-Terrorism and Effective Death Penalty Act?*

In light of the findings noted above, one area that our research revealed as place for greater efficiency was the federal habeas corpus procedure. The staff attorneys for the federal district court in Tampa were interviewed. Sheila McNeil and Richard Owens are the former and current staff lawyers who are dedicated to processing federal habeas corpus petitions in capital cases. They cover a period of ten years of experience with the habeas corpus process. When asked how long it took to finish a case they indicated that they attempted to ensure that the cases were resolved within three years. The regional counsels indicated that some federal cases have taken much longer than three years. In addition to the time spent in the federal district court, cases would also await decisions from the federal circuit courts of appeal. The Anti-terrorism and Effective Death Penalty Act (ATEDPA) and its provisions was discussed with the federal staff attorneys.

Further research disclosed that the act had several appealing features.

- It reduced the amount of time the federal district court could use to decide federal habeas corpus claims to 180 days and the time for circuit court review to 120 days (compared to the current situation where habeas corpus claims can take several years to decide).
- It reduces the filing time for the petitions from 1 year to 6 months.
- It limits the ability of the federal courts to grant stays of execution.
- It creates greater deference to the decisions of Florida courts when they affirm death sentences.

The act requires a quid pro quo from the states in order to qualify for the enhanced treatment. Essentially the law provides that the states must guarantee that the defendants have competent, fairly compensated counsel.

The available information indicated that no other state has qualified for the act, although it should be noted that Arkansas passed Act 925 in 1997 with the express intention of providing counsel in such a manner as to qualify for the act. In the act the Arkansas legislature made a finding that federal court delays were substantial. "From 1990 through 1993, the average time that prisoners sentenced to death in this state awaited execution was ten years and two months for those prisoners who pursued federal habeas corpus litigation. However, if the states comply with the requirements of the Antiterrorism Act, the average time that prisoners will await execution in federal court will be reduced to less than three years in most cases." (Section 10 Act 925 of 1997, Arkansas Legislature.) Arkansas is experiencing similar difficulties to those that Florida experienced in *Hill v Butler*, 941 F. Supp. 1129 (N.D. Florida, 1996) and has not yet qualified for the act. They are currently seeking solutions.

Florida has made a concerted effort over the last decade to provide the type of counsel required by the ATEDPA. Our state is a leader in providing a fair and effective system for processing death cases. The changes that would be required for Florida to qualify for the enhanced case processing are relatively minor. In fact the OPPAGA report recommendations on training and experience dovetail with the requirements of the federal act. Thus, it is not a great leap of faith to believe that Florida could be the first state to qualify for the enhanced treatment, which would limit the time cases remain in federal court, as well as limit the federal government's ability to intercede into Florida criminal cases.

This is not to say that dual track could not speed the process. The OPPAGA report does not suggest that dual track would not work, only that it could be expensive and that alternatives exist.

3. *The report, recommends the abandonment of further attempts to pursue a dual-track post-conviction system noting that such a system would increase the number of cases reviewed by 50%. Before making that recommendation, the report notes that Florida Supreme Court reverses about 40% of these cases on direct appeal. Prior to making this recommendation, did OPPAGA compare reversal rates of the Florida Supreme Court, with reversal rates of other state supreme courts?*

The reversal rates in capital cases in other states, although reviewed, did not appear relevant to the consideration of the cost of dual track in Florida. We noted that there have been approximately 152 prisoners who have been removed from death row in Texas since the death penalty has been reinstated. These individuals have either been re-sentenced, acquitted or the charges have been dismissed. Similar information was not available for Oklahoma.

4. *Did OPPAGA compare the average length of time it takes for CCRC lawyers to bring a (Rule 3.851) post-conviction motion to a hearing compared to registry attorneys?*

The breakdown of cases between the regional counsels and the registry were such that the average time to bring a case to hearing could not be compared. When the registry was created and the regional counsels divided their caseloads with registry lawyers newer cases were assigned to the registry. Cases retained by the regional counsel would include cases where the petitions were filed under a two-year statute of limitations and where the capital collateral counsel, not the regional counsels, and others, represented the defendants. Comparing an average for these cases with an average for the registry cases that have gone to hearings would not be statistically valid.

5. *Before making your recommendation concerning a dual track post-conviction concept, did you review the dual track laws in Oklahoma and Texas?*
6. *Did you compare the length of time it takes to review capital postconviction cases in those states under a dual track system, prior to recommending that Florida no longer pursue a dual track postconviction process?*

Texas and Oklahoma death penalty laws were reviewed. However there are fundamental systemic differences between Florida and these two states that may have an impact on the cost of a dual track system in Florida.

First, Texas and Oklahoma both have two supreme courts, one civil and one criminal. These states committed additional resources to increasing judicial capacity and could therefore handle the dual track appeals caseload. Since the Florida Constitution prohibits the creation of additional courts this is a substantial difference.

There are other systemic differences. Texas has long been criticized for its failure to provide adequate counsel to death penalty defendants. Anecdotal cases of attorneys who were intoxicated or sleeping add to the perception that Texas is far below the standards that Florida has set. One author indicated that the maximum amount allowed for appointed counsel including investigative expenses was \$25,000. This is in stark comparison to the \$114,000 maximum allowed to registry attorneys in Florida. Recently the Texas legislature set standards for the appointment and payment of counsel. However, there is nothing comparable to the investment Florida has in the regional counsels and the registry. Thus the cost effectiveness of Texas' dual track legislation and Florida's is not currently comparable.

Oklahoma presents other systemic differences. In Oklahoma, presentation of ineffective assistance of counsel claims is required in direct appeals. In Florida these claims are reserved for the post-conviction process. The evidentiary question concerning ineffectiveness would generally be dealt with on direct appeal rather than in a post-conviction process in Oklahoma. The matters that a post-conviction appeal would cover would be considerably less in that state. For this reason, Oklahoma's process would not be similar to the current Florida process.

A third state of interest to you may be Arkansas, where the Arkansas Supreme Court attempted to implement a dual track system in the late 1980's only to abandon the rule a year and a half later as unworkable. The problem appeared to be that ineffectiveness claims could not be adequately presented because of evidentiary and other difficulties.

7. *What is the average number of cases assigned to each CCRC lawyer?*

The regional counsels had the following caseload during our analysis:

**North 60
Middle 69
South 64**

The counsels have 10, 15 and 14 attorneys respectively. A raw average caseload would be between 4-6 cases per attorney. However, the regional counsels comply with professional standards that recommend that two attorneys be assigned to each case. Thus the caseload is between 8 and 12 cases. It is also notable that senior attorneys may oversee more than two cases. In the southern region one senior lawyer supervised 22 cases.

Registry attorneys have between 0 and 5 clients each.

8. *What is the average number of cases assigned to each lawyer in the capital appeals division of the Attorney General's Office?*

The capital division of the Attorney General's office has approximately 17 attorneys who handle approximately 252 open collateral cases. The average number of collateral cases assigned to each lawyer would be approximately 15. However, it must be remembered that the attorney general's office is also responsible for completing the direct appeals in capital cases on behalf of the various state attorney's offices. As such the office is already well acquainted with the record and the issues presented in the case. By contrast post-conviction counsel, whether regional or registry counsel, comes to the file with no prior knowledge and thus has to review a substantial number of records in order to properly prepare the case.

It should be noted that in his most recent long range program plan the Attorney General states that the load carried by the individual attorneys far exceeds professional standards for capital cases. It is also notable that the Attorney General exceeds the limitation on registry attorneys for post-conviction caseload, which is set at 5 under section 27.711, *Florida Statutes*.

9. *Did you substantiate all of your claims regarding registry attorney overpayment?*
10. *If the answer to the above question is "yes", please describe how these claims were substantiated.*

Yes. The overpayments reported were discovered during a review of the Comptroller's payment spreadsheets for each of the cases handled by the registry lawyers. These overpayments were discussed with Bill Nichol, the attorney who reviewed and, if necessary, litigated the overpayments. Attorney Nichol also provided information concerning the *Demps* case wherein the court held that the limitation on attorney payments was unconstitutional.

In addition to answering the above questions, please provide copies of court orders OPPAGA is aware of where judges awarded fee payments to registry counsel above the statutory maximums provided in s. 27.711.

The order in the *Demps* case is attached.

1
IN THE CIRCUIT COURT, EIGHTH
JUDICIAL CIRCUIT, IN AND FOR
BRADFORD COUNTY, FLORIDA.

STATE OF FLORIDA,

CASE NO.: 77-0116-CFA

Plaintiff,

A.S.A.: Gregory P. McMahon

vs.

BENNIE DEMPS,

Defendant.

**FINAL ORDER ON ATTORNEY GEORGE F. SCHAEFER'S
REAPPLICATION FOR AWARD OF ATTORNEY'S FEES**

On February 26, 2001 the Supreme Court of Florida transferred to this court attorney George F. Schaefer's reapplication for an award of attorney's fees and costs for an evaluation pursuant to Chapter 27, Fla. Stat. (1999). On March 13, 2001 this court conducted a hearing on this reapplication. In reviewing this matter, this court has considered the affidavit, attorney time records, and costs documentation of Mr. Schaefer. This court has also considered the affidavits of local attorneys Robert S. Griscti and Robert A. Rush, copies of pleadings filed by the parties with the Supreme Court of Florida in reference to this matter (which include the December 8, 2000 letter from Robert B. Beitler, Deputy General Counsel for the Comptroller, and the response of the Comptroller to attorney fee applications of William P. Salmon and George Schaefer), and the arguments of counsel. After careful consideration, this court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

1. On May 24, 2000 attorney George F. Schaefer was appointed by this court to serve as cocounsel to attorney William P. Salmon in the appeal by Bennie Demps of the denial of postconviction relief from his first-degree murder conviction and death sentence.

2. At the time of the appointment, extraordinary circumstances existed, which include the fact that the appeal by Mr. Demps to the Supreme Court of Florida had not been perfected, cocounsel William Salmon's wife was severely ill, and the Governor had signed a death warrant for Mr. Demps.

3. On June 7, 2000 the State of Florida executed Bennie Demps.

4. Attorney George F. Schaefer requests an award of attorney's fees from the State of Florida in this case in the amount of \$26,180.00 (130.90 hours X \$200 per hour) and costs reimbursement in the amount of \$1,130.59 for a grand total of \$27,310.59.

5. The Office of the Comptroller for the State of Florida agrees that the amount of hours incurred by Mr. Schaefer are reasonable, but objects to an hourly rate of \$200.00 because of the statutory provisions of §§27.703 and 27.711, Fla. Stat. which limit attorney's fees for court-appointed postconviction relief registry counsel to \$100.00 an hour.

6. The Office of the Comptroller also objects to reimbursement of photocopying costs incurred by Mr. Schaefer in the amount of \$657.72.

7. Attorney George F. Schaefer served the public and advanced the integrity of the legal system by accepting the appointment to defend Mr. Demps.

8. Mr. Schaefer rendered excellent legal services on behalf of Mr. Demps.

9. The requested hourly rate of \$200.00 an hour is at the low end of reasonable compensation for the work performed by Mr. Schaefer under the extraordinary circumstances of this capital case.

10. To compensate Mr. Schaefer at a rate of less than \$200.00 an hour would be confiscatory of Mr. Schaefer's time, energies and talents.

11. There is no evidence that the State of Florida met the requirements of §27.710(4), Fla. Stat.

12. It was necessary and appropriate for Mr. Schaefer, given the time constraints under which he was operating, to incur the disputed photocopying expenses in order to render effective assistance of counsel to Mr. Demps.

II. CONCLUSIONS OF LAW

13. The State of Florida has waived its right to challenge the requested fees because of its failure to submit at the hearing any evidence of compliance with §27.710(4), Fla. Stat.

14. Furthermore, under the holding and analysis of Makemson v. Martin County, 491 So.2d 1109 (Fla. 1986), the \$100.00 statutory hourly cap found at §§27.703 and 27.711, Fla. Stat., as applied in the extraordinary circumstances of this capital case, is unconstitutional under the Florida Constitution.

4

15. It was necessary for Mr. Schaefer to incur the photocopying costs in order to render effective assistance of counsel to Mr. Demps as required under the Florida and United States Constitutions.

16. The attorney's fees requested by Mr. Schaefer in the amount of \$26,180.00 (130.90 hours X \$200.00 an hour) and costs reimbursement in the amount of \$1,130.59 are reasonable.

IT IS THEREFORE ORDERED AND ADJUDGED that the Comptroller for the State of Florida shall pay George F. Schaefer \$27,310.59 for attorney's fees and costs incurred in this case.

DATED this 30 day of April, 2001.

ORIGINAL SIGNED BY
LARRY GIBBS TURNER
Circuit Judge

LARRY GIBBS TURNER
Circuit Judge

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of this order was mailed on ^{May}~~Apr~~ 2, 2001 to:

William Nickell/Robert B. Beitler
Office of the Comptroller
101 East Gaines Street
Fletcher Building, Suite 526
Tallahassee, Florida 32399-0350

Curtis French
Assistant Attorney General
The Capitol, Suite PL-01
Tallahassee, Florida 32399-1050

Terrence Brown
Bradford County Attorney
Post Office Box 40
Starke, Florida 32091

Gregory P. McMahon
Chief Assistant State Attorney
Post Office Box 1437
Gainesville, Florida 32601

Bill Salmon, Esquire
P.O. Box 1095
Gainesville, Florida 32602-1095

George F. Schaefer
Attorney-at-law
1005 SW Second Avenue
Gainesville, Florida 32601

ORIGINAL SIGNED BY
LOIS A. HOUSTON
JUDICIAL ASSISTANT

Lois Houston
Judicial Assistant

The Program Evaluation Standards

Summary of the Standards

Utility Standards

The utility standards are intended to ensure that an evaluation will serve the information needs of intended users.

U1 Stakeholder Identification--Persons involved in or affected by the evaluation should be identified, so that their needs can be addressed.

U2 Evaluator Credibility--The persons conducting the evaluation should be both trustworthy and competent to perform the evaluation, so that the evaluation findings achieve maximum credibility and acceptance.

U3 Information Scope and Selection--Information collected should be broadly selected to address pertinent questions about the program and be responsive to the needs and interests of clients and other specified stakeholders.

U4 Values Identification--The perspectives, procedures, and rationale used to interpret the findings should be carefully described, so that the bases for value judgments are clear.

U5 Report Clarity--Evaluation reports should clearly describe the program being evaluated, including its context, and the purposes, procedures, and findings of the evaluation, so that essential information is provided and easily understood.

U6 Report Timeliness and Dissemination--Significant interim findings and evaluation reports should be disseminated to intended users, so that they can be used in a timely fashion.

U7 Evaluation Impact--Evaluations should be planned, conducted, and reported in ways that encourage follow-through by stakeholders, so that the likelihood that the evaluation will be used is increased.

Feasibility Standards

The feasibility standards are intended to ensure that an evaluation will be realistic, prudent, diplomatic, and frugal.

F1 Practical Procedures--The evaluation procedures should be practical, to keep disruption to a minimum while needed information is obtained.

F2 Political Viability--The evaluation should be planned and conducted with anticipation of the different positions of various interest groups, so that their cooperation may be obtained, and so that possible attempts by any of these groups to curtail evaluation operations or to bias or misapply the results can be averted or counteracted.

F3 Cost Effectiveness--The evaluation should be efficient and produce information of sufficient value, so that the resources expended can be justified.

Propriety Standards

The propriety standards are intended to ensure that an evaluation will be conducted legally, ethically, and with due regard for the welfare of those involved in the evaluation, as well as those affected by its results.

P1 Service Orientation--Evaluations should be designed to assist organizations to address and effectively serve the needs of the full range of targeted participants.

P2 Formal Agreements--Obligations of the formal parties to an evaluation (what is to be done, how, by whom, when) should be agreed to in writing, so that these parties are obligated to adhere to all conditions of the agreement or formally to renegotiate it.

P3 Rights of Human Subjects--Evaluations should be designed and conducted to respect and protect the rights and welfare of human subjects.

P4 Human Interactions--Evaluators should respect human dignity and worth in their interactions with other persons associated with an evaluation, so that participants are not threatened or harmed.

P5 Complete and Fair Assessment--The evaluation should be complete and fair in its examination and recording of strengths and weaknesses of the program being evaluated, so that strengths can be built upon and problem areas addressed.

P6 Disclosure of Findings--The formal parties to an evaluation should ensure that the full set of evaluation findings along with pertinent limitations are made accessible to the persons affected by the evaluation, and any others with expressed legal rights to receive the results.

P7 Conflict of Interest--Conflict of interest should be dealt with openly and honestly, so that it does not compromise the evaluation processes and results.

P8 Fiscal Responsibility--The evaluator's allocation and expenditure of resources should reflect sound accountability procedures and otherwise be prudent and ethically responsible, so that expenditures are accounted for and appropriate.

Accuracy Standards

The accuracy standards are intended to ensure that an evaluation will reveal and convey technically adequate information about the features that determine worth or merit of the program being evaluated.

A1 Program Documentation--The program being evaluated should be described and documented clearly and accurately, so that the program is clearly identified.

A2 Context Analysis--The context in which the program exists should be examined in enough detail, so that its likely influences on the program can be identified.

A3 Described Purposes and Procedures--The purposes and procedures of the evaluation should be monitored and described in enough detail, so that they can be identified and assessed.

A4 Defensible Information Sources--The sources of information used in a program evaluation

should be described in enough detail, so that the adequacy of the information can be assessed.

A5 Valid Information--The information gathering procedures should be chosen or developed and then implemented so that they will assure that the interpretation arrived at is valid for the intended use.

A6 Reliable Information--The information gathering procedures should be chosen or developed and then implemented so that they will assure that the information obtained is sufficiently reliable for the intended use.

A7 Systematic Information--The information collected, processed, and reported in an evaluation should be systematically reviewed and any errors found should be corrected.

A8 Analysis of Quantitative Information--Quantitative information in an evaluation should be appropriately and systematically analyzed so that evaluation questions are effectively answered.

A9 Analysis of Qualitative Information--Qualitative information in an evaluation should be appropriately and systematically analyzed so that evaluation questions are effectively answered.

A10 Justified Conclusions--The conclusions reached in an evaluation should be explicitly justified, so that stakeholders can assess them.

A11 Impartial Reporting--Reporting procedures should guard against distortion caused by personal feelings and biases of any party to the evaluation, so that evaluation reports fairly reflect the evaluation findings.

A12 Metaevaluation--The evaluation itself should be formatively and summatively evaluated against these and other pertinent standards, so that its conduct is appropriately guided and, on completion, stakeholders can closely examine its strengths and weaknesses.



Prepared by:
Mary E. Ramlow
The Evaluation Center
401B Ellsworth Hall
Western Michigan University
Kalamazoo, MI 49008-5178
Phone: 616-387-5895
Fax: 616-387-5923
Email: Mary.Ramlow@wmich.edu