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AN AGENCY OVERVIEW OF

THE MINNESOTA STATE BOARD

OF PUBLIC DEFENSE

JANUARY 2001

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BOARD OF PUBLIC DEFENSE
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Introduction

Our Federal and State Constitutions both provide that anyone charged with an offense punishable by loss of liberty is entitled to representation by a lawyer.* This right applies to all those who are charged with felonies, gross misdemeanors, misdemeanors, and juvenile delinquency.

Minnesota Statutes also provide certain parties in CHIPS (Children in Need of Protective Services) and TPR (Termination of Parental Rights) cases with a right to counsel.

A "petty misdemeanor" such as a speeding ticket is not included because it does not carry a threat of loss of liberty.

If the individual cannot afford to hire an attorney, a public defender is appointed.

*See Gideon vs. Wainwright 372 U.S. 335 (1963)

In Minnesota approximately 80% of all individuals charged with a felony or gross misdemeanor are represented by a public defender. In the Second Judicial District (Ramsey County) and the Fourth Judicial District (Hennepin County) this percentage may be even higher.

A History of the Board Of Public Defense & Services Being Provided

Prior to 1981, each county in the State of Minnesota hired counsel (often appointed by the local judge) to provide public defender services, often on an hourly or a case-by-case basis.

In 1981, the Board of Public Defense was created as a part of the Judicial Branch of State government.

The mission of the Board is to provide quality criminal defense services to indigent defendants through a cost effective and efficient public defender system.

By July 1, 1990, the Board of Public Defense had begun setting a budget for each of the eight multi-county Judicial Districts and prorating the costs of the budget among the Counties in the Judicial District based on population.

In the Second Judicial District (Ramsey County) and the Fourth Judicial District (Hennepin County) the budget was set by the respective county boards.

Since July 1, 1990, the Board of Public Defense has overseen and allocated legislative appropriations for the provision of public defense services throughout the State of Minnesota.

Transferring the financial responsibility from the counties to the state was intended to be "cost neutral."

The intent was that for every dollar of estimated cost to the state, the "HACA" (Homestead Agricultural Credit Aid) funding to the counties was to be reduced a dollar.

While all counties had provided a reasonable level of defense for felonies and gross misdemeanors, there was variance among counties as to their level of public defender representation in juvenile and misdemeanor cases.

Also, county records on the cost of juvenile and misdemeanor public defense weren't as detailed as records on felonies and gross misdemeanors.

With the goal of identifying the cost of juvenile and misdemeanor defense, the State assumed juvenile and misdemeanor costs in the Eighth Judicial District with the original "Eighth District Trial Court Pilot Project" in 1989.

Because the Second and Fourth Judicial Districts had operated with combined budgets for juvenile/misdemeanor, and felony/gross misdemeanor, the costs of all these services in both Judicial Districts were assumed by the State in 1990.

Juvenile and misdemeanor services in the Third and Sixth Judicial Districts were assumed beginning on July 1, 1992, as a continuation of State assumption of the costs of public defense.

There is still cost sharing between the State and Hennepin County in the Fourth Judicial District.

The 1994 Legislature completed the "takeover process" and assigned the responsibility of providing juvenile and misdemeanor defense in the First, Fifth, Seventh, Ninth and Tenth Judicial Districts to the State Board of Public Defense.

The Board of Public Defense is now responsible for providing public defense services for all felony, gross misdemeanor, misdemeanor and juvenile indigent criminal cases. Mental commitments and paternity cases remain the responsibility of the Counties.

Organizational Structure

The services provided by the Board of Public Defense are delivered through . . .

The State Public Defender;

The Administrative Services Office;

The Appellate Office;

Ten Judicial District Public Defender Offices;

And 5 Public Defense Corporations.

The State Public Defender ("SPD") is appointed by the Board for a four-year term; most duties of the office are set out in Minnesota statutes, including:

- Supervision of the Chief Public Defenders of the 10 Judicial Districts.
- Supervision of the Deputy State Public Defender, who provides appellate services for indigent Minnesota prisoners (almost all appeals of Minnesota criminal sentences are handled by the State Public Defender's Office); this office also represents indigent prisoners in civil work (e.g., divorces) and in prison disciplinary cases.
- Proposal of standards for consideration by the Board and development of policies for implementation of standards the Board has adopted; and
- Responsibility for planning and providing training for the attorneys who provide public defense services in Minnesota.

Although not formally mandated by statute, the State Public Defender often acts as spokesperson for Public Defense in Minnesota.

By statute, the State Public Defender is also responsible for the appointment of a Chief Administrator who supervises the Administrative Services Office.

The Administrative Services Office is responsible for all statistical, budgeting, and personnel record-keeping for the public defense system in Minnesota, as well as its technology improvements. It provides policy direction and guidance for the Board of Public Defense program and overall management of its activities.

The Board provides grants to five public defense corporations which primarily help serve the needs of minority communities around the state. Funding for the corporations began with the federal government in the late 1970's and early 1980's; the State began replacing the federal funding in the early 1980's.

Currently the Minnesota Legislature makes specific appropriations for these grants, but has the funds distributed through the Board of Public Defense.

LEGAL DEFENSE CORPORATIONS FUNDED THROUGH GRANTS FROM THE BOARD OF PUBLIC DEFENSE

Legal Rights Center (Minneapolis)

Neighborhood Justice Center (St. Paul)

Indian Legal Services (Duluth)

White Earth Reservation Criminal & Juvenile Defense Corporation

Leech Lake Reservation Criminal & Juvenile Defense Corporation

Most of the Public Defense service in Minnesota is provided through the public defense structures in the 10 Judicial Districts of the state.

One of the Board's main functions is to appoint the Chief Public Defender in each Judicial District.

Following action taken by the 1994 Legislature, all Chief Public Defenders are full-time employees, with full-time offices.

District Chiefs are appointed to a four year term, and serve as the Board's administrator and direct supervisor for assistant public defenders, staff and contracted attorneys in each Judicial District.

Assistant public defenders work in 29 full-time regional offices throughout the state and, in addition, there are approximately 250 part-time public defenders with their own private offices.

District Budgets

&

Reimbursement of

Assistant Public Defenders

With State assumption of the costs of public defense also came assumption of different budgeting methods, benefits, and salaries in different Judicial Districts.

In the Fourth Judicial District (Hennepin County) the funding of public defense services is shared between the State of Minnesota and Hennepin County.

The Board provides a base dollar allocation to Hennepin County; Hennepin County adds to this to provide their desired salary and service level.

After the Legislature and the Governor approve an appropriation for public defense, the Board provides each Chief Public Defender with a budget for the upcoming fiscal period.

Within this budget, each District Chief hires assistant public defenders and staff based on state-wide salary ranges. Part-time public defenders also receive an overhead allowance based on the number of hours of public defense service provided. This ranges from $1,000 to $3,000 annually.

During fiscal year 1999, employees of the Board of Public Defense were organized into two separate bargaining units representing attorneys and support staff. Teamsters Local 320 is the exclusive representative for both of these employee groups. These two bargaining units were the first new units created on the state level in over twenty years. Negotiations between the Board and the unions were recently completed with the approval of a two-year contract for fiscal years 2000 and 2001. The contracts call for regular salary increases for employees. This is a first for Board employees and is similar to the other contracts that the State has with its employees.

Most of the assistant public defenders outside of the Second and Fourth Judicial Districts are private attorneys who work part-time for the Board of Public Defense.

They are appointed by the Chief Public Defender of their Judicial District, are paid an annual salary and agree to accept all or a specific "rotation" of cases in a given geographical area, as assigned by the Chief Public Defender.

The annual salary is paid in twenty-six equal installments over the course of the fiscal year.

The Board has a policy governing the creation of full-time assistant public defender positions in the Judicial Districts to insure that certain requirements are met before a full-time position is established.

Assistant public defenders and staff in the Second (Ramsey) and Fourth (Hennepin) Judicial Districts are mostly full-time County employees governed by the personnel rules of their respective counties.*

*All new hires in the Second and Fourth Districts, since January 1, 1999, are now state employees.

Caseloads are affected by outside factors such as the general state of the economy, poverty and unemployment rates, numbers of police and prosecutors, and the attitudes of the public and legislature on crime and safety.

Eligibility for public defender services is determined by the Trial Court, and specifically by the Trial Judge.

To put this another way . . .

The Board of Public and district public defenders **do not and cannot** control their caseload.

Each client has a **constitutional right** to the service that the public defenders provide. To meet the standards of legal ethics, public defenders must represent these clients the same way a private attorney would represent fee paying clients.

In a sense, the part-time public defense attorneys are gambling that the number of cases in a given year will be such that their per hour rate will make it worthwhile for them to do public defense work.

With the public's concern about crime, the growing number of cases going to trial and the increases in resources to the police, prosecution, and the courts, caseloads often overwhelm the public defense system.

Part-time defenders have seen a steady decline in their real hourly wage.

Moreover, as public defense work requires more hours, it becomes much more difficult for these lawyers to maintain a private practice.

From the amount of the annual retainer, the assistant public defenders are expected to cover their office overhead such as:

Rent

Support Staff

Supplies

Equipment and Furniture

Memberships, Dues, Fees

Subscriptions

Sometimes annual retainers do not even cover the pro-rated office overhead for the public defense share of the attorney's work.

The Board does reimburse for certain expenses according to its contract with Teamsters Local 320. This follows the guidelines established in other State contracts.

Expenses Eligible for Reimbursement

Copying Charges	10 cents per page
Mileage	31 cents per mile
Meals	Actual Costs*
Overnight Lodging	Actual Costs*
Postage	Actual Costs*

*As outlined in the Board of Public Defense Labor Agreement with Teamsters Local 320.

In 1992 legislation was sought and approved which clarified the rights of assistant public defenders to participate in P.E.R.A. New assistant public defenders hired after January 1, 1993, now participate in the Minnesota State Retirement System plan.

Prior to assumption of public defense costs by the State of Minnesota, some district public defender staff had been allowed to participate in County group insurance programs; others had not.

When it assumed the costs of public defense services, the Board inherited this inequity.

In 1993, the Minnesota Legislature approved eligibility for any attorney working for the Board at least half-time to be able to participate in the State's group insurance program. Attorneys working between 50% and 75% time must pay a pro-rated percentage of the cost.

Administrative Processes

Starting on July 1, 1990, when state money first began covering the cost of public defense, counties within each district actually issued the checks for payroll and other public defense expenses incurred within their county.

The Board would then reimburse the counties for their costs.

This system was fragmented, unwieldy, and made it extremely difficult for the Board to produce current and reliable statistics and financial statements.

Since January 1, 1993, district public defender staff are being paid through the State's central payroll system.

This is bringing the added accountability and consistency which any agency needs to have.

Beginning in March 1993, the Board implemented an automated Management Information System which is providing data (consistent across district lines) on caseloads, types of cases, and hours.

In 1997, the Minnesota Legislature appropriated $550,000 for the Board to establish an Information Systems Office.

The Information Systems team currently consists of five staff people. The IS team designs, implements, and maintains systems used by over 700 public defender employees statewide.

On an ongoing basis, significant time and effort is dedicated to maintaining and enhancing existing systems such as email, virus protection, web site resources, case and client statistics, asset tracking, attorney timekeeping, online legal brief and transcript banks, and treatment facility information.

Each of our twelve main offices and 16 satellite offices requires regular assistance to keep its local computer network up and running.

Working with three contractors, the IS Team is in the process of connecting our 16 satellite offices to Web resources, integrating systems with the Minnesota Supreme Court, and making our case and client statistics-gathering software accessible to all full time and part time staff statewide.

This system will be an invaluable tool to the Legislature, Board, and the District Chiefs in determining appropriations, allocation of funding, and managing salary and budgets.

The Funding Process

The Board of Public Defense receives a biennial appropriation from the Legislature to fund its activities. The general fund provides over 99.9% of the funds, with two small federal grants making up the rest.

In the spring of each even numbered year the Administrative Services Office issues guidelines and a schedule for the Chief Public Defenders, the Appellate Office and the five Public Defense Corporations to prepare budgets for the upcoming biennium.

The Board's guidelines follow the rules of the Minnesota Department of Finance as to the form and content of the budget.

The Chief Public Defender in each Judicial District submits the base budget along with requests for new funding to the Board's Administrative Services Office. This occurs in August/September of even numbered years.

The staff compiles and reviews these in light of results of the Board's Weighted Caseload Study, the requirements of Minnesota Statutes 611.27, public defender caseloads, actual hours reported by the Districts during the year, and policies and standards adopted by the Board.

The Chief Administrator then makes a recommendation to the Board using the above-mentioned guides as well as its considered opinion as to what will be best received in the Legislature.

In its September/October meeting, the Board reviews budget requests from the Chief Public Defenders and also the recommendations from staff for the total budget.

There is no statutory obligation to fund each organizational unit under the Board's jurisdiction the same "base" amount for each fiscal year.

It is the Board's responsibility to attempt to resolve any outstanding deficits that may occur during either a fiscal year or a biennium.

If unexpended balances occur in any organizational unit, it is the responsibility of the Board to determine where those funds should be reallocated, or if they should simply not be spent.

The Board cannot fund any items that would carry over into a new biennium.

All requests for reallocations of unexpended balances are measured and prioritized within the parameters of the Board's goals, objectives and vision.

The Board also tries to include elements of its long-term goals within its budget proposal to the Legislature.

For example, in 1992, the Board made a major strategic decision to move toward funding that would be sufficient to meet the "Weighted Caseload Standards" that were commissioned by the Legislature in 1989 and adopted by the Board in 1991 (see Appendix III).

The Board ultimately adopts a budget recommendation which its staff puts into the form required by the Department of Finance.

Traditionally, the Governor respects the separation of powers between the Judicial Branch and Executive Branch and transmits the budget directly to the Legislature. This occurs in January of each odd numbered year.

The Chief Administrator and staff of the Administrative Services Office then make budget presentations to the Legislature regarding the needs of the Board of Public Defense.

The State Public Defender collects information and advises the Board of Public Defense and the Legislature on criminal justice policy issues which affect the clients. The Board supports rational, humane, cost-effective, and non-discriminatory approaches to crime.

Public defense employees sit on many state and county committees and task forces which are working to coordinate the criminal justice system.

The Legislature adjourns in the middle of May of each odd numbered year after setting biennial funding for all State agencies including the Board of Public Defense.

Between the middle of May and July 1 (the beginning of the new fiscal year) the Chief Administrator and Administrative Services Office staff must make budget recommendations to the Board using the guidelines outlined previously.

The Board must then weigh these recommendations against the criteria in Minnesota Statutes 611.27, which set guidelines for financing the offices of the district public defenders.

The Board also considers the intent of the Legislature and the Board's long-range plans, especially in allocating new funding.

The Board ultimately allocates the appropriation among the Judicial Districts, the Office of the State Public Defender, the Legal Defense Corporations and the Administrative Services Office.

At a time when the public is concerned with crime and the cost of government, it is politically difficult to increase the budget for public defense services.

As we appropriate more and more money to police, prosecuting attorneys and Courts, there must also be equitable funding increases to public defense. Without sufficient public defenders, the scales of justice will not be in balance and criminal cases cannot be processed in an equitable and speedy manner.

We must remember that a public defender is defending our Bill of Rights at the same time he or she is defending an indigent person accused of a crime.

APPENDIX I

BOARD OF PUBLIC DEFENSE CHRONOLOGY

1963 - U.S. Supreme Court in Gideon vs. Wainwright establishes "Right to Counsel" in felony cases in state courts. This right further extended in 1967 and 1972.

1967 - Judicial Council formed in Minnesota to oversee public defense services which are provided through individual counties.

1981 - Minnesota Board of Public Defense created. Board is charged with appointing the State Public Defender, six of ten Chief Public Defenders, and approving and certifying budgets for the six Judicial Districts under its supervision. Counties are then ordered to pay a pro-rated share of costs for their Judicial District's public defense services.

1987 – Board's authority expanded: Third and Eighth Judicial Districts brought under the Board's supervision, administrative office created, new standards and administrative processes established.

1989 - Legislature appropriates funding for the state to assume the costs of felony and gross misdemeanor services statewide, plus juvenile and misdemeanor services in the Second, Fourth, and Eighth Judicial Districts.

1989 - Legislature appropriates $100,000 for the "Weighted Caseload Study".

1990 - On July 1, the Board begins funding the costs for felony and gross misdemeanor services statewide, plus juvenile and misdemeanor services in the Second, Fourth and Eighth Judicial Districts.

1991 - Board adopts weighted caseload standards as recommended by state-mandated study.

1992 - Board begins funding costs of juvenile and misdemeanor services in the Third and Sixth Judicial Districts. Full-time Chief Public Defender offices established in these two Districts and also in the Eighth District; these are the first full-time employees outside of Ramsey and Hennepin Counties.

1992 - Legislature approves funding for a centralized budget and accounting system, and for an automated data information system.

1993 - On January 1, 1993, the system of County payment of bills and payroll ends. Budget and payroll of multi-county Judicial Districts now on statewide accounting system. Expense reimbursements now standardized.

1993 - Automated Data Collection System begins operation in March, 1993.

1994 - Legislature assigns responsibility for providing juvenile and misdemeanor defense services for indigents in the First, Fifth, Seventh, Ninth and Tenth Judicial Districts to the State Board of Public Defense. Full-time Chief Public Defender offices are also established in these Districts.

1995/1996 - Legislature provides funding for insurance benefits and salary equity for part-time public defenders.

1997 - Legislature appropriates money for statewide management information system.

1998 - Legislature requires that all persons hired after January1, 1999, in the public defender offices in the Second and Fourth Judicial Districts (Ramsey and Hennepin Counties) will be state employees.

APPENDIX II

FISCAL YEAR 2001 BOARD OF PUBLIC DEFENSE BUDGET

First Judicial District	$ 4,099,000
Second Judicial District	4,777,000
Third Judicial District	3,299,000
Fourth Judicial District*	10,508,000
Fifth Judicial District	2,803,000
Sixth Judicial District	2,657,000
Seventh Judicial District	3,479,000
Eighth Judicial District	1,758,000
Ninth Judicial District	3,164,000
Tenth Judicial District	4,510,000
Legal Research/Training	120,000
Public Defense Corporations	1,119,000
Administrative Services Office/ Information Systems Office	1,755,000
State Public Defender Office	3,569,000
TOTAL BUDGET	**$47,617,000**

*Hennepin County provides additional funding of approximately $3-4,000,000 per year.

APPENDIX III

WEIGHTED CASELOAD STANDARDS

In 1989, the Minnesota State Legislature appropriated $100,000 to fund a study to determine reasonable caseload limits within which public defenders could provide adequate defense to their clients. The Board contracted with the Spangenberg Group, Inc., of Newton, Massachusetts, to conduct the study.

They reported back in February, 1991, with the recommendation that "Public Defenders in Minnesota should process no more than the following number of cases each year:"

Homicides	3 per lawyer per year
Other Felony	100-200 per lawyer per year
Gross Misdemeanor	250-300 per lawyer per year
Misdemeanor	400 per lawyer per year
Child Welfare	80 per lawyer per year
Other Juvenile	175 per lawyer per year
Other Cases	200 per lawyer per year

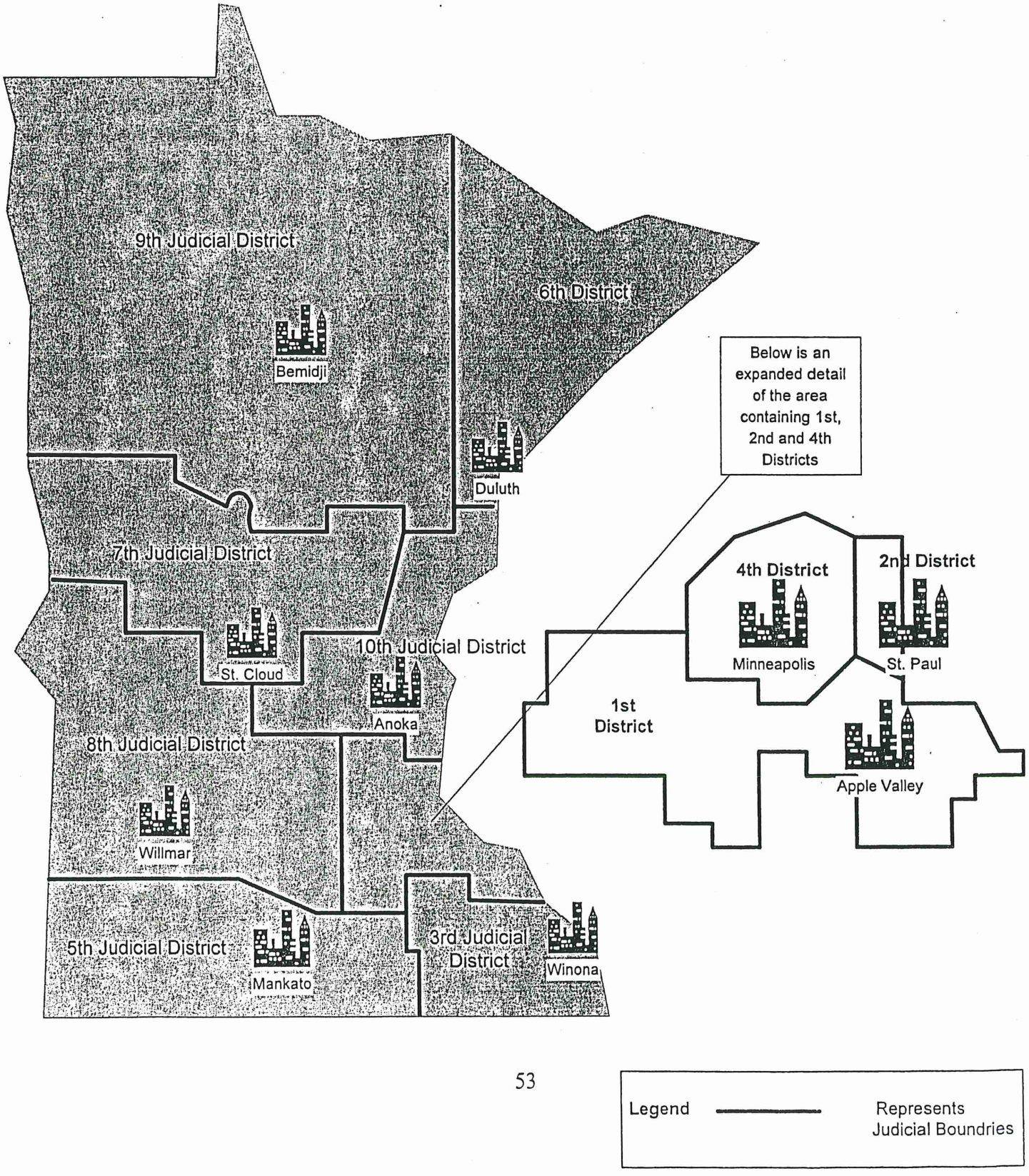
The above figures are all based on the services of a full-time attorney.

APPENDIX IV

SERVICE CATEGORIES PROVIDED

District	Felony	Gross Mis.	Misd.	JuvDel	CHIPS	CHIPS (Parents)	Paternity	Mental Comm.
First	X	X	X	X	X	X		
Second	X	X	X	X	X	X	X	
Third	X	X	X	X	X	X		
Fourth	X	X	X	X	X	X		
Fifth	X	X	X	X	X	X		
Sixth	X	X	X	X	X	X		
Seventh	X	X	X	X	X	X		
Eighth	X	X	X	X	X	X	X	X
Ninth	X	X	X	X	X	X		
Tenth	X	X	X	X	X	X		

APPENDIX V
Ten Minnesota Judicial Districts



APPENDIX VI

THE BILL OF RIGHTS

1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. A well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed.

3. No soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner prescribed by law.

4. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

5. No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

6. **In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.**

7. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

8. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.