



Staff Report

File #: 24-207

Version: 1

Date: 7/8/2024

Item #: 6.a.

TO: Mayor and City Council

THROUGH: Keith Stahley, City Manager

FROM: Eleanor Beatty, Municipal Judge

SUBJECT:

National Legal Aid and Defender Association Report Dated April 18, 2024, for Salem Municipal Court Indigent Defense Services

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Safe and Healthy Community

SUMMARY:

The City of Salem Municipal Court under the direction of the former elected judge, contacted the National Legal Aid and Defender Association (NLADA) in May 2021, to conduct a study of the current indigent defense services for the Salem Municipal Court (SMC). The study was conducted as part of a grant for the NLADA services, which included a scope of work and final report to be published by the Department of Justice at no cost to the Municipal Court.

ISSUE:

Information only.

RECOMMENDATION:

Information only.

FACTS AND FINDINGS:

The NLADA and SMC identified and agreed to a specific scope of work to support indigent services. The NLADA spent months examining the SMC during a time when court was operating under COVID restrictions and nearly all proceedings were conducted by telephone or in writing. The NLADA team

interviewed interested parties including but not limited to City management, Pro Tempore Judges, former and current defense attorneys, prosecution attorneys, and court staff, observations of court proceedings, review of records and data associated with delivery of defense attorney services. The final interviews were completed in fall of 2021. The NLADA report was published in April 2024, more than two years after the expected completion date.

The report identified several key areas where SMC could benefit from structural reforms. Some of the recommendations should be implemented at the earliest opportunity. Other recommendations address issues that are no longer of concern and have already been implemented at no cost to the City.

NLADA Report Recommendations:

1. The City of Salem must restructure oversight of the Municipal Court indigent defense function to shift responsibility and influence away from the Presiding Judge and the Court, and toward an independent entity that does not present a conflict of interest for zealously promoting the interests of court appoint attorneys (CAA) and their clients. This change is essential to establish independence of the indigent defense function of the court. The necessary change will likely require increasing the budget allocated to indigent defense services.
2. The hourly compensation rate for court appointed attorneys should be increased, considering not just comparable rates in other courts, but parity with City Attorneys, as well as actual attorney overhead costs.
3. Salem officials should give serious consideration to whether it is a priority to retain criminal court jurisdiction, particularly in light of the additional investment of resources required to fully provide access to counsel for people charged with jailable misdemeanors.
4. Salem leadership should consider whether an appointed presiding judge model would better service the City than the elected judge model.
5. The SMC should consider the desirability and feasibility of becoming a court of record.
6. The SMC should take measures to ensure that court appointed attorneys are able to receive training specific to misdemeanors and Municipal Court work, and that CAAs are provided access to Continuing Legal Education (CLE) courses without having to pay for those out-of-pocket.
7. The SMC should consider an internal reorganization to provide a deputy to assist the Court

Administrator, provide more levels of staff hierarchy, and address other inefficiencies within Court Administration.

8. SMC should upgrade to an electronic invoice processing system that will simplify CAA invoice submission, review, and payment.
9. SMC should use an electronic data tracking system for CAA appointments that will allow for easy production of reports on system performance.
10. SMC and City leaders should continue working to resolve the backlog of criminal jury trials.
11. Outside the pandemic-related court closure context, the SMC should consider strategies to bring more cases to trial.
12. Court appointed attorneys should have greater access to social workers to help identify social service needs that interact with advocacy in their clients' criminal cases. The SMC should explore strategies to increase access to social workers and encourage attorneys to use them.
13. The SMC should work to relaunch the Community Court program. Alternatively, the Municipal Court should seek ways to proactively connect defendants to social services like housing, mental health treatment, substance use disorder treatment and employment.
14. The City of Salem and the SMC should work together to identify a space that can be used as a confidential meeting area for defense attorneys and their clients to use that is near the Salem Municipal Court courtroom(s).
15. Professionals working the SMC system, including but not necessarily limited to judges, court staff, City Attorneys, CAAs, and City Officials, should hold regular cross-collaborative meetings to discuss and resolve issues in the Court.

Response to NLADA Recommendations:

A. Law Firm/Attorney Contracts:

Utilize a Request for Proposal (RFP) process to contract with attorneys or law firms to provide indigent defense services for SMC. This change will require modification of Salem Revised Code (SRC) 4.095 and depending on the terms of the contract could significantly reduce the

steps involved for CAAs to be paid for their services and should include integration of electronic or digital submission of invoices. The contract would be managed by the Finance Department rather than the Court. The rate of pay would be negotiated during every contract renewal period. Firms can choose to include overhead costs such as CLE's as part of the contract negotiation.

Response: Eugene Municipal Court provides indigent defense under this model, contracting with two law firms for approximately 80 percent of the cases and has a small list of other attorneys for cases where both law firms have conflicts. This change would address recommendations 1, 2, 6, and 8.

B. Type of Court:

- I. Current model is not a court of record handling both criminal matters and violations.

Response: No Change to current model.

SMC should continue to process criminal matters as Marion County Circuit Court is not able to assume the increased caseload and those matters would not be prosecuted. Becoming a court of record would significantly increase the costs for personnel, equipment, and data storage. The benefit would be realized for the appeals process, but SMC only has averaged less than ten (10) appeals filed each year.

- II. Community Court

Case filing have changed since the time the Community Court concept was originally launched. Local resources for unhoused individuals have also changed dramatically in this same period. In winter 2020, the Community Court participants were not able to identify a single defendant that was a good candidate for Community Court who was willing to participate in the program. Social Workers would have been involved in this process and are most relevant to those cases involving quality of life charges.

Response: The Community Court as imagined in 2018-2020 was not going to be successful had the pandemic not interrupted the process and should not be relaunched in the future. Addresses recommendations 3, 5, 12, and 13.

C. Judge

- I. A change from elected to appointed judge would require a change in the City Charter and public approval. There are significant costs associated with

attempting to make this change and looking to the experience in Hermiston, Oregon when voters elected not to change the City Charter and retain an elected judge, suggests the City should look at another option for providing accountability. However, there needs to be serious consideration about creating a Judicial Oversight Committee comprised of the City Manager, Mayor or City Council Member, and a member in good standing in the Oregon State Bar Association when a behavioral complaint is lodged by any individual defendant regarding judicial conduct. This should be outside of the Court Administrator's responsibility.

Response: There already is a Municipal Judge Compensation Commission per SRC 4.035, and this group could be tasked with responding to any complaints of judicial misconduct. Addressing recommendation 4.

- II. The current system does not provide for any meaningful judicial accountability. As an elected position, the judge is theoretically subject to a recall process.

Response: Retain elected judge but created a Judicial Oversight Committee.

D. Internal Structures and Systems

- I. Physical space needs, data tracking, flat staffing hierarchy of court.

Response: Continue with changes that are already in various stages of implementation.

- II. Salem Civic Center will be undergoing a substantial remodel in the near future. There will be physical space available for defense counsel to have confidential meetings with defendants included in the remodel plans. In the interim, the court is utilizing space vacated by the Police Department for a second courtroom. In addition to the courtroom, this space has several rooms available to defense counsel for confidential meetings.

Response: Addresses recommendation 7, 9, and 14.

- III. The court has been in discussions to upgrade the case management systems (CMS) for more than a year. Many functions of the court cannot be substantially changed while we continue to work with a system that does not meet all court's needs. A new CMS will include a public portal that will allow defense attorneys to access information remotely and can provide better data tracking.

- IV. The City has already approved funding for a Deputy Court Administrator (DCA). The

new DCA will be in place in July 2024.

E. Trials

- I. There is a substantial backlog of cases awaiting trial due to COVID restrictions and historically a very small percentage of cases were resolved by trial historically.

Response: Continue with changes already implemented.

- II. Data from the period after the NLADA completed their interview process shows the impact of the judicial change and resumption of trials. In 2022 and 2023, 33 jury trials were scheduled. Of those cases, 16 proceeded to trial (12 in 2023 and 4 in 2022; 13 resulted in a change of plea (3 on day of trial, 5 at the pretrial hearing date, 5 on later dates); 5 cases were dismissed by the City Attorney after the trial date was scheduled. None of these cases resulted in a mistrial. This is a substantial change from the pre-pandemic period where about 4 cases per year involved a trial that went to verdict.

Response: There is still a backlog of cases waiting for jury trials, but the situation is improving. Addresses recommendation 10 and 11.

F. Cross-collaborative Meetings

The prior presiding judge started convening quarterly meetings with Pro Tem Judges, City prosecutors, and CAAs. These meetings occurred consistently for approximately five years before they ceased in summer of 2019, pre-COVID. The prior presiding judge also held a few general stakeholder meetings annually but those ceased years before the pandemic.

Response: No Change. In discussions with several parties that attended these meetings in the past, all agreed that the meetings were not productive and were not necessary. Addresses recommendation 15.

BACKGROUND:

The City of Salem prosecutes criminal misdemeanor offenses through the Municipal Court and is required under the Sixth Amendment of the United States Constitution to provide effective assistance of counsel to people who are accused of crimes in the court.

There was a change in judicial leadership when newly elected presiding judge Eleanor Beatty was sworn into as Judge in January 2023.

Deborah E. Ingledew
Court Administrator

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Attachments:

1. NLADA Report