

Report on Attorney Caseload Standards

August 1, 2015 – July 31, 2016

I. Introduction

HB 1318, passed in the 83rd Texas Legislature was the impetus behind the study that brought forward guidelines for indigent defense attorney caseloads. Stories circulated about some attorneys in urban counties handling in excess of 1,000 cases per year, and concerns about the quality of representation were widespread. A broad study was conducted amongst a wide group of stakeholders, reviewing the information collected from the first attorney time reporting mandated by the Legislature beginning in 2014. The study group not only analyzed current conditions, but also convened Delphi panels.¹ The summarized guidelines that arose out of the study created the following number of appointments per case category². It should be noted that each of these case categories acts as a maximum in and of itself; each number represents a maximum yearly caseload for that type of case. Acknowledging that defense attorneys often carry a caseload consisting of multiples degrees (3rd degree felonies, state jail felonies, etc.), the guidelines have to be addressed as caps, with current attorney caseload in each case category viewed as a percentage of the cap.

Montgomery County began to participate in Fair Indigent Defense Online (FIDo) beginning August 1, 2015. With one full year of use, we can now more accurately review current indigent defense appointments for how they measure up to the guidelines. Important to remember is that appointments are listed by wheel. Since all Misdemeanors are assigned under one wheel, as well as 3rd Degree and State Jail Felonies on their own wheel, the data presented in this report cannot perfectly reflect the guidelines, which have separate guidelines for each case category. Therefore, percentages used in this report to show total caseload operate in a range from a low to a high percentage.

While the guidelines apply to total full time annual caseload, the data for ascertaining the total cumulative attorney caseload (the combination of retained and appointed cases), is still being defined in a forthcoming custom report from Odyssey. Once that information is readily parsed, we will have a clearer picture of the full extent of attorney caseloads.

II. Data and Analysis

The chart below lists the top ten attorneys with the most criminal indigent defense appointments. The top ten are shown because any caseload issues that may come close to the guidelines would be found in this cohort of attorneys. The chart lists the number of 1st degree felony appointments, 2nd degrees, 3rd/State Jails, and Misdemeanors for each attorney. Beside each column is a percentage column, showing the percentage of the total case category guideline. By adding each of these

¹ Delphi panels are groups of subject matter experts brought together to analyze hard quantitative data in order to both explain phenomena, as well as make recommendations on best practices.

² Case category in this instance is used to reference the degree of the charge (1st degree felony, Class B misdemeanor, etc.)

percentages, we can show the total appointed workload for each attorney, and how close they come to the over guidelines. We will first look at felonies and then misdemeanors.

	F1	%	F2	%	F3	%	FS	%
TIDC Guidelines	77		105		144		174	
Crespo, Ivan	16	20.8	12	11.4	43	29.9		24.7
Mata, Jose	12	15.6	11	10.5	41	28.5		23.6
Bartlett, Robert	14	18.2	13	12.4	44	30.6		25.3
LaBella, Joseph	13	16.9	15	14.3	52	36.1		29.9
Walker, Jarrod	14	18.2	14	13.3	50	34.7		28.7
Barker, Robbie	13	16.9	10	9.5	46	31.9		26.4
Brass, Rick	10	13	11	10.5	44	30.6		25.3
Duckworth, Tony	9	11.7	14	13.3	42	29.2		24.1
McCotter, Larry	6	7.8	4	3.8	41	28.5		23.6
Burns, Brian	0	0	0	0	53	36.8		30.5

Felonies make up, on average, between 50 and 55 percent of the appointed caseload for the top ten attorneys. The outlier in this is Brian Burns, who does not currently take 1st or 2nd degree felony appointments. The current attorney with the highest number of felony appointments is Joe LaBella, with between 61 and 67 percent of his appointed caseload being felonies.

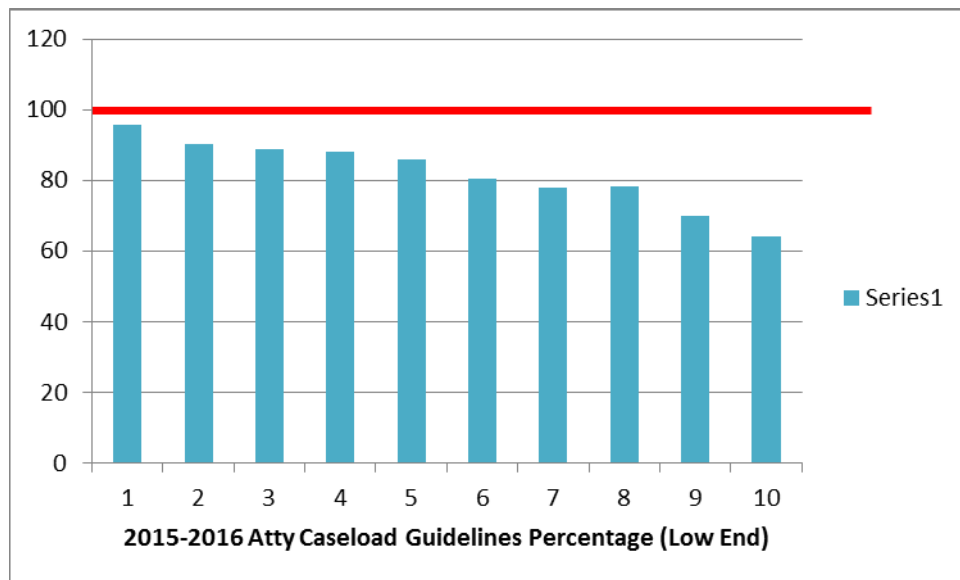
	MA	%	MB	%
TIDC Guidelines	216		236	
Crespo, Ivan	92	42.6		39
Mata, Jose	96	44.4		40.7
Bartlett, Robert	78	36.1		33.1
LaBella, Joseph	64	29.6		27.1
Walker, Jarrod	61	28.2		25.8
Barker, Robbie	65	30.1		27.5
Brass, Rick	69	31.9		29.2
Duckworth, Tony	69	31.9		29.2
McCotter, Larry	82	38		34.7
Burns, Brian	79	36.6		33.5

Misdemeanors are more evenly spread between the top ten attorneys, at least in terms of percentage of the overall appointed caseload. That being said, both Ivan Crespo and Jose Mata have misdemeanor caseloads that come close to matching their felony caseloads. Still, no attorney tops handling 50 percent of the guidelines for misdemeanor caseload.

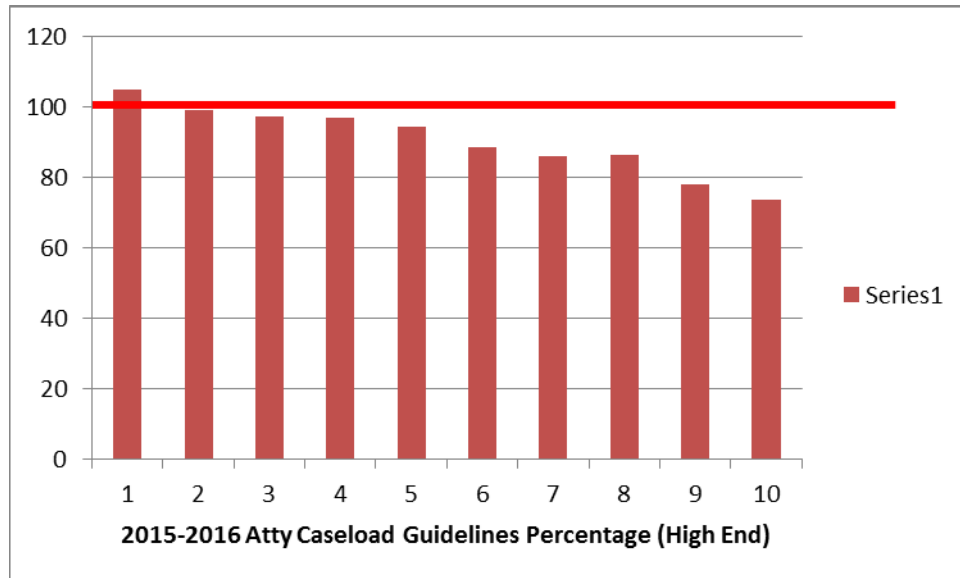
	Total	Total % Low End	Total % High End
TIDC Guidelines			
Crespo, Ivan	163	95.9	104.7
Mata, Jose	160	90.4	99
Bartlett, Robert	149	89	97.3
LaBella, Joseph	144	88.2	96.9
Walker, Jarrod	139	86	94.4
Barker, Robbie	134	80.3	88.4
Brass, Rick	134	78	86
Duckworth, Tony	134	78.3	86.1
McCotter, Larry	133	69.9	78.1
Burns, Brian	132	64	73.4

When total appointments are tallied up for both felony and misdemeanor, Ivan Crespo is the only attorney that potentially is representing a higher caseload than the guidelines suggest. The term potentially is used because his appointed caseload is between 95.9 and 104.7 percent of the guidelines adopted by TIDC. Jose Mata comes close, with a range of between 90.4 and 99 percent of the established attorney caseload guidelines.

To visualize this in terms of overall caseload, one can estimate the space between the top of the bar and the 100 percent line to see what percentage of an attorney's retained practice could fall within the guidelines set by TIDC.



On the low end, the average attorney in the top ten still has room of 15 to 20 percent for a retained practice. On the high end, that percentage is reduced to little more than 10 percent for the average attorney in the top ten.



Without the information to be gleaned from custom Odyssey reports, this data still does not present the entire picture, but it does give a reasonable and sound view into how closely Montgomery County appointment practices fall into the guidelines adopted by TIDC.

III. Conclusion

The current top ten attorneys in terms of number of indigent defense appointments in Montgomery County all fall generally within established guidelines for appointed attorney caseload. These guidelines were adopted by the Texas Indigent Defense Commission in order to set forward what a maximum caseload would be in order to ensure quality of representation in every case. National standards³ dictate that defense attorneys “should not accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations.” These caseload standards should be used for future decision making on how to manage Montgomery County’s indigent defense system, and may be used to help set compensation rates that accurately reflect attorney caseload. In short, while the attorneys listed here generally fall within the guidelines, future studies should be undertaken with comparable and improved data to ensure quality representation of indigent defendants in Montgomery County.

³ American Bar Association, Providing Defense Services, Standard 5-5.3, (http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_toc.html.)