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LEWIS & CLARK COUNTY, MT

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8 IN THE JUSTICE COURT OF RECORD
9 CITY OF HELENA, LEWIS AND CLARK COUNTY, MONTANA
10 Before MICHAEL SWINGLEY, Justice of the Peace

11 STATE OF MONTANA,)
12)
13 Plaintiff,) Cause No. TK-2013-2469
14 - vs -)
15)
16 DAVID SHANNON PHILLIPS,)
17)
18 Defendant.)

19 **STATE’S RESPONSE TO DEFENDANT’S MOTION TO RESCIND APPOINTMENT**
20 **OF COUNSEL IN PENDING AND ADDITIONAL CASES**

21 The State through Deputy Lewis and Clark County Attorney Anne Person requests the
22 Court deny the motion of the Office of Public Defender to rescind its appointment to represent
23 the defendant and to vacate the hearing scheduled to consider the motion

24 **BACKGROUND / PROCEDURAL POSTURE**

25 On September 3, 2013, the Lewis and Clark County Sheriff Office cited Mr. Phillips
into this Court for his alleged commission of the offense of Partner Family Member Assault.
At his initial appearance on September 4, 2013, this Court followed the legislature’s directive

1 by granting Mr. Phillips's request for appointed counsel by appoint the Office of Public
2 Defender (OPD) to represent him and the Court set an omnibus hearing for October 16, 2013.

3 On September 6, 2013, OPD advised the State that Assistant Public Defender Jon King
4 would represent Mr. Phillips

5 **THE OPD MOTION AND BRIEF**

6 The *Motion to Rescind Appointment in Pending Case and in Additional Cases*, along
7 with the supporting Brief filed by the Chief Public Defender for OPD outlines the statutory
8 scheme set forth in Title 47 MCA, by which OPD assigns attorneys and the statewide standards
9 established by the Public Defender Commission for OPD attorneys. The Motion specifically
10 discusses the statewide standards developed by its Commission to monitor caseload and
11 workload protocols as discussed in Mont. Code Ann. § 47-1-105(2)(b). *See Motion*, pp. 5-7.

12 The Motion concludes by requesting the Court "hold a hearing . . . and accept evidence
13 and testimony" before entering Orders:

- 14 • Rescinding the appointment of OPD to represent Mr. Phillips;
- 15 • Assigning a private attorney to represent Mr. Phillips;
- 16 • Vesting the Chief Public Defender and the Region Four Deputy Public Defender with
17 the authority to decline to accept appointments for OPD to represent indigent criminal
18 defendants and civil litigants for a defined period of time until OPD decides its
19 attorneys can represent the poor in a way that is consistent with their decision they can
20 meet the ethical, constitutional and statutory obligations owed to indigent clients;
- 21 • Order private attorneys to represent indigent until OPD decides it has the time to
22 represent them;
- 23 • Order the State to pay the costs associated with private attorneys representing the poor
24 from some resource other than the OPD budget;

- 1 • Dismiss any existing cases and not pursue any new cases until either OPD decides it has
2 the time to represent the poor or the Court appoint private attorneys to represent the
3 poor at State expense, other than the OPD budget.

4 *See Motion*, p. 13-14.

5 The Motion is supported by a Brief generally setting forth broad principles interpreting
6 state and federal constitutional guarantees to effective assistance of counsel which address the
7 idea that workload issues can – *at some point* -- affect the ability of counsel to provide effective
8 assistance, and workload issues can – *at some point* – give rise to ethical issues under the
9 Montana Rules of Professional Conduct.

10 The Motion and Supporting Brief do not indicate the specific ways this particular
11 defendant is or will receive ineffective assistance of counsel or why this Court should set aside,
12 on an emergency basis the political decisions reached by Montana’s legislature which has had
13 the benefit of hearing, deliberating and deciding what resources OPD needs to address the
14 issues raised by OPD in this Court. OPD has funds to contract with private counsel. If the
15 legislature needs to engage private attorneys to represent the poor, then OPD, not this Court
16 should allocate the resources necessary to pay those attorneys, as directed by the legislature.

17 ARGUMENT

18 I. Joinder in Arguments Advanced by the City of Helena

19 As the Court is aware, OPD filed an identical motion in a separate misdemeanor
20 proceeding now pending in the Helena Municipal Court. (*City of Helena v. Mark Lee*, 2013-
21 NT-5172). By agreement, the hearing on that motion is scheduled to take place in a joint
22 hearing on October 1, 2013, with Judge Swingley presiding. The City filed a response to the
23 motion filed in Municipal Court, a copy of which the State will file with this Court and to
24 which the State joins as though the City’s arguments were fully set forth herein.
25

1 **II. Justice Court Does Not Have Jurisdiction to Remove OPD From All Future Cases.**

2 Although this Court has jurisdiction to control its courtroom and appoint OPD to represent
3 indigent defendants, it does not have authority to ignore Legislative directives and deprive Mr.
4 Phillips as well as other indigent defendants of their constitutional and statutory right to receive
5 representation until some amorphous point when OPD determines it has time to meet its
6 statutory obligations. The workload of OPD attorneys are an internal matter governed by OPD
7 and the Public Defender Commission subject to the oversight of the Legislature, not this Court.
8
9 The Supreme Court has discussed the power of Justice Courts to control their functions:

10 Justice Courts undoubtedly possess the inherent power to do those acts necessary to
11 ensure their proper functioning. The concept of inherent power is codified at Mont.
12 Code Ann. § 3-1-113, which provides that when jurisdiction is conferred on a court or
13 judicial officer, all the means necessary for the exercise of that jurisdiction are also
14 given. A court's exercise of inherent power, however, is not without limitations. *A court*
15 *could exercise its inherent power only when the established methods for addressing*
the court's needs failed or when an emergency arose that was not remedied by the
established methods. It is required that inherent power be exercised only when
established methods fail or an emergency arises.”

16 *Clark v. Dussault*, 265 Mont. 479, 486-487, 878 P.2d 239, 1994 Mont. LEXIS 153 (Mont.
1994) *emphasis added*

17 Montana Code Annotated § 3-1-113 provides:

18 When jurisdiction is, by the constitution or any statute, conferred on a court or judicial
19 officer, all the means necessary for the exercise of such jurisdiction are also given. In
20 the exercise of this jurisdiction, *if the course of proceeding is not specifically pointed*
out by this code, any suitable process or mode of proceeding may be adopted which
21 may appear most conformable to the spirit of this code. (Emphasis added).

22 The Montana Public Defender Act (Act) in Title 47 outlines the specific procedures to
23 use when an indigent defendant is entitled to appointed counsel. The Act was enacted to:
24
25

1 (1) establish a statewide public defender system to provide effective assistance of
2 counsel to indigent criminal defendants and other persons in civil cases who are entitled by law
3 to assistance of counsel at public expense;

4 (2) ensure that the system is free from undue political interference and conflicts of
5 interest;

6 (3) provide that public defender services are delivered by qualified and competent
7 counsel in a manner that is fair and consistent throughout the state;

8 (4) establish a system that utilizes state employees, contracted services, or other
9 methods of providing services in a manner that is responsive to and respective of regional and
10 community needs and interests;

11 (5) ensure that adequate public funding of the statewide public defender system is
12 provided and managed in a fiscally responsible manner; and

13 (6) ensure that clients of the statewide public defender system pay reasonable costs for
14 services provided by the system based on the clients' financial ability to pay.

15 Mont. Code Ann. § 47-1-102 (3).

16 The Legislature, therefore, obligates OPD “to deliver public defender services in all
17 courts in this state.” Mont. Code Ann. § 47-1-104(1). “When a court orders the office or the
18 office of appellate defender to assign counsel, the appropriate office shall immediately assign a
19 public defender qualified to provide the required services.”
20

21 These laws do not authorize a justice court to abandon these goals and ignore these
22 mandates.

23 OPD is directed and supervised by a commission, Mont. Code Ann. § 47-1-105(1),
24 which may “establish a regional office to provide public defender services in each region, as
25

1 provided in 47-1-215, establish a contracted services program to provide services in the region,
2 or utilize other service delivery methods as appropriate and consistent with the purposes
3 described in 47-1-102.” Mont. Code Ann. § 47-1-104(2). The commission has numerous
4 duties, including the establishment of statewide standard for qualification and training of
5 attorneys providing public defender services to ensure that services are provided by competent
6 counsel and in a manner that is fair and consistent throughout the state, and the establishment
7 of policies and procedures for handling excess caseloads. Mont. Code Ann. § 47-1-105.

8
9 With respect to contracted services, “the commission shall establish standards for a
10 statewide contracted services program that ensures that contracting for public defender services
11 is done fairly and consistently statewide and within each public defender region.” The
12 commission “shall adopt rules to establish reasonable compensation for attorneys contracted to
13 provide public defendant . . . services.” Mont. Code Ann. § 47-1-216(7). Pursuant to this
14 authority, the commission has adopted the following rule:
15

16 (1) The commission shall meet at least biannually to review and approve
17 the compensation rates based on criteria the commission deems
18 appropriate.

19

20 (3) Any contracts for attorney or related services shall use these approved rate of
21 compensation.
22

23 A R.M. 2.69.601.

24 In addition, the commission also shall establish and oversee a conflicts office “to
25 contract for attorneys to represent indigent defendants in circumstances where, because of

1 conflict of interest, the public defender program is unable to provide representation to a
2 defendant.”

3 **A. Established Methods Have Not Been Addressed.**

4 **i) Motion to Rescind Based on Financial Status.**

5 OPD’s Motion discusses ineligibility for services based on financial status, stating that
6 if the office determines that is person is not eligible, OPD will notify the court so that the
7 court’s order will be rescinded. *Motion pg 3* (citing Mont. Code Annotated §§47-1-111(1)(v),
8 (c), and 46-8-101(2)). The motion argues that this is an option, but neither the Motion nor the
9 supporting brief indicate OPD has attempted to employ this procedure or if it has, the effect it
10 has had to reduce its case load. To the contrary in both Justice Court and Municipal Court
11 OPD has been rescinding appointments based on financial status. They have not provided even
12 prima facie evidence of how this established method has not alleviated their workload
13 concerns.
14

15
16 **ii) Workload Monitoring**

17 OPD’s motion also discusses the policies and procedures to control the caseload/
18 workload of each public defender internally. Again OPD addresses how they are supposed to
19 manage themselves, but never states they have actually followed these procedures, and if these
20 procedures have worked or not worked. OPD has not provided prima facie evidence to the
21 Court that it has taken the necessary steps to alleviate the caseload burden, the Court has no
22 authority to act. Their brief also specifies that OPD has the option to contract or conflict
23 counsel. OPD has not stated if they have the ability to do that in Region Four.
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2 **B. There is No Emergency.**

3 The OPD Brief in Support states in its conclusion that the Public Defender's Office is in
4 a state of crisis "not of its own making." There is nothing in the affidavits, brief or motion that
5 supports an argument of an emergency. Each attorney simply states they do not have enough
6 time; however, the pleadings do not nominate a defendant who has received ineffective
7 representation because of its workload. In fact, the Defendant in the current case has not
8 submitted an affidavit, or any information to make any allegations he has not had adequate
9 counsel. Ms. Kaleczyc states that there is too much turn over and not enough time to train to
10 have adequate support in the office to handle the amount of cases. Yet, there is no prima facie
11 evidence that there has been any attempt to address these issues with methods already in place.
12 There is no prima facie showing of any emergency other than simply stating there is a crisis.
13

14
15 There is no doubt that this court has the power and authority to adjudicate this criminal
16 matter. However, OPD contends the power to hear this criminal matter, in conjunction with
17 the inherent powers described in Mont. Code Ann. § 3-1-113 confers, on this court the power
18 to:

- 19 1) issue an order rescinding the order appointing it to represent the
20 defendant in this case;
21 2) assign defendant new, private counsel not associated with OSPD;
22 3) "declar[e] that the . . . Chief Public Defender, and regional deputy public
23 defender, may . . . legally decline to accept appointments to represent indigent criminal
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1 defendants and indigent civil litigants, for a defined period of time, at which further inquiry
2 may be had;”

3 4) order that if the State prosecute a defendant whose appointment OSPD
4 has unilaterally declined, counsel must be appointed and “paid with funds from the State” or
5 the charges against such defendants must be dismissed.”

6 (Motion at 13-14.)

7 The Office of Public Defender has many routes available to address their workload;
8 many of them start within their own agency and commission. After working within their
9 agency, it is the State’s belief that they need to address their systemic issues with the legislative
10 body that created the agency. Only after all those methods are attempted and fail is it within the
11 Court’s authority to address.

12 “The separation of the government into three great departments does not mean that
13 there shall be no common link of connection or dependence, the one upon the other in the
14 slightest degree; it means that the powers properly belonging to one department shall not be
15 exercised by either of the others.” *Clark v. Dussault*, 265 Mont. 479, 486-487, 878 P.2d 239,
16 1994 Mont. LEXIS 153, 51 Mont St. Rep. 642, (Mont. 1994)

17 OPD’s argument ignores the fact that the Legislature has not remained silent regarding
18 the provision of counsel for indigent defendants. *Cf. State v. Randolph*, 800 N.W.2d 150, 159
19 (Minn. 2011) (invoking inherent authority to appoint appellate counsel in misdemeanor appeals
20 where the legislature failed to enact a statute to address this subject). To the contrary, the
21 Montana Legislature has spoken and has conferred upon OPD, as an executive branch agency
22 of the State of Montana, the exclusive duty to assign, manage, and pay for competent counsel
23 for indigent defendants. The Act contains no mechanism by which this court can rescind an
24 appointment where one has been lawfully made because the defendant is statutorily-entitled to
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1 court-appointed counsel at state expense, nor does it give OPD the authority to request this
2 court to stop making future appointments to it.

3 Again, the Act provides once an appointment is properly made, “the appropriate office
4 *shall* immediately assign a public defender qualified to provide the *required services*.” The
5 Legislature intended there to be a single system of public defense, rather than the hodgepodge
6 of systems that existed prior to, and frankly contributed to the need for its enactment.
7 Essentially, OPD is attempting to shirk its statutory responsibilities to provide a statewide
8 system of public defender services, to deliver public defender services in all courts in this state,
9 and to ensure that public defender services are provided by competent counsel. The Act clearly
10 places the burden of effectively managing State resources and ensuring effective, conflict-free
11 representation on OPD, not the judicial branch, or the County or the City, or the private bar for
12 that matter.

13 In order for this Court to grant the relief OPD requests, this court would have to ignore
14 the statutes that created OPD and that govern the provision of indigent defense services and
15 tear down the statewide system currently in place. Nothing in Mont. Code Ann. § 3-1-113
16 grants this court the power to dismantle the statewide system of public defense created by the
17 Act.

18 It is the State’s position that the Public Defender’s Office has not met their burden of
19 addressing their systemic issues before presenting the issue to the Court. The Justice Court
20 does not have authority to take on the internal workings of the Public Defender System before
21 the system has worked through all other established methods for relief.

22 If the Court determines it has the authority to act in this case the State would argue the
23 following:
24
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1 **III. There is no Justicible Controversy.**

2 In the OPD motion and brief there are no representations or of how, in the context of
3 this particular case, the services being provided to Mr. Phillips and by his assigned counsel Mr.
4 King are somehow constitutionally deficient currently, or even how Mr. King might become so
5 during the course of the prosecution. OPD in its Brief, notes the New York Court of Appeals
6 as follows:
7

8 Defendants reason that the prescribed, deferential . . . and highly context sensitive
9 inquiry into the adequacy and particular effect of counsel’s performance cannot occur
10 until a prosecution has concluded in a conviction, and that, once there is a conviction,
11 the appropriate avenues of relief are direct appeals and the various other established
12 means of challenging a conviction such as . . . motions and petitions for writs of
13 habeas corpus or coram nobis. They urge, in essence, that the present plaintiffs can,
14 based upon their ongoing prosecutions, possess no ripe claim of ineffective assistance
and that any ineffective assistance claims that might eventually be brought by them
would, given the nature of the claim, have to be individually asserted and determined;
they argue that a finding of constitutionally deficient performance – one necessarily
rooted in the particular circumstances of an individual case – cannot serve as a
predicate for systemic relief

15 *See Hurrell-Harring et al. v. State of New York et al.*, 15 N.Y.3d 8, 17, 930 N.E.2d 217, 220-
16 21. The Court went on further to note that “a fair reading of *Strickland* and our relevant state
17 precedents support defendants’ contention that ineffective assistance is a judicial construct
18 designed to do no more than protect an individual defendant’s right to a fair adjudication; it is
19 not a concept capable of expansive application to remediate systemic deficiencies.” *Id.*

20 The case presently before the Court – Mr. Phillips’s prosecution for alleged Partner
21 Family Member Assault– does not involve any ineffective assistance of counsel, nor is OPD
22 even alleging that such ineffective assistance might occur in this particular case. OPD
23 consistently acknowledges the alleged “systemic” basis for the Motion -- “[t]he pending
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1 motion is premised on the representation that Region Four public defenders are unable to
2 provide the level of representation demanded by the state and federal constitution and rules of
3 ethics” (See *OPD Brief*, p. 11)

4 Current pending criminal cases are not appropriate for OPD to advance “systemic”
5 arguments concerning the present circumstances in Region Four. Judges in the Florida
6 litigation cited in OPD’s brief have stated, “. . . this action is nothing more than a political
7 question masquerading as a lawsuit, and should be dispatched on that basis.” See *State of*
8 *Florida v. Public Defender, Eleventh Circuit*, 12 So. 3d 798, 806 (Fl. 3rd District Court of
9 Appeal 2009) (Shepard J., specially concurring), reversed on appeal in *Public Defender,*
10 *Eleventh Circuit v. State of Florida*, 115 So. 3d 261 (Fl. 2013).

11
12
13 **A. An Excessive Caseload Does Not, in and of Itself, Constitute a Constitutional**
14 **Violation.**

15 In order to obtain relief on an ineffective assistance of counsel claim, a defendant must
16 show both that his counsel provided deficient assistance and that he suffered prejudice as a
17 result. *Strickland v. Washington*, 466 U.S. 668 (1984). The challenger's burden is to show
18 “that counsel made errors so serious that counsel was not functioning as the 'counsel'
19 guaranteed the defendant by the Sixth Amendment.” *Id.* at 687. The question is whether an
20 attorney's representation amounted to incompetence under “prevailing professional norms,” not
21 whether it deviated from best practices or most common custom. *Id.* at 690. With respect to
22 prejudice, a challenger must demonstrate “a reasonable probability that, but for counsel’s
23 unprofessional errors, the result of the proceeding would have been different. A reasonable
24 probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. It
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1 is not enough “to show that the errors had some conceivable effect on the outcome of the
2 proceeding.” *Id.* at 693.

3 In particular, the Montana Supreme Court has been reluctant in the past to presume
4 prejudice from a systematic OPD practice unless an individual defendant is able to show actual
5 prejudice. *See, e.g., State v. St. Dennis*, 2010 MT 229, 358 Mont. 88, 244 P.3d 292. In *St.*
6 *Dennis*, the defendant contended his right to counsel was violated because an actual conflict of
7 interest existed between his OPD attorney and the OPD attorney representing his co-defendant
8 who testified against him at trial. *St. Dennis* asked the Court to adopt the rule that joint
9 representation of co-defendants by OPD attorneys is a per se conflict of interest requiring
10 reversal without any showing of prejudice required. The Court refused to apply a per se rule
11 and to presume prejudice, opting instead for a case-by-case approach.
12

13 Here, OPD asks this court to adopt best practices as described by the American Bar
14 Association as the standards for effective representation, to presume excessive caseloads will
15 prevent a defense attorney from following those best practices, presume prejudice will result
16 from a failure to follow those both best practices, and to accordingly take preemptive, systemic
17 action to prevent future possible prejudice. OPD’s motion turns both the *Strickland* standard
18 and the judicial branch’s role to adjudicate concrete, present claims of actual violations of
19 constitutional rights on their heads.
20

21 Notably, the affidavits provided by the Region 4 attorneys do not indicate that they
22 previously provided deficient performance as a result of excessive caseloads that prejudiced a
23 defendant’s case to the point that their failures undermined confidence in the outcome of the
24 proceedings or resulted in a reversal of a conviction; do not indicate that they ever made a
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1 record in a particular case indicating that they provided ineffective assistance that prejudiced
2 their clients, or indicated to their clients that they could not advise them to accept or reject a
3 plea offer because they had failed to sufficiently investigate and research the case in order to
4 make such a recommendation, or that they ever indicated that a client's plea was not made
5 knowingly, intelligently, and voluntarily due to their ineffectiveness. They do not indicate that
6 the Office of Disciplinary Counsel has ever found any of them in violation of the Rules of
7 Professional Conduct as a result of their excessive caseloads, or that they have been sanctioned
8 as a result of such violations. Indeed, OPD acknowledges their motion "is premised on the
9 *representation* that Region Four public defenders are unable to provide the level of
10 representation demanded by the state and federal constitution[]s and rules of ethics" -- not on
11 any proof or evidence -- and that the motion was brought "in order to keep" the attorneys in
12 Region 4 in compliance with their ethical and duties. (*See* Motion at 13; Brief at 11.)

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15 **B. This Court Should Abstain From Deciding this Non-Justiciable Political**
16 **Question.**

17 OPD's motion is an indirect challenge to the funding it received during the 2013
18 Legislative Session. Essentially, OPD contends the funding it received is inadequate to hire the
19 employees or contract counsel it needs to fulfill its mission in Region 4. (*See* Motion at 12.)
20 This is at its heart a political question, not a legal one.

21 The court's duty of judicial review normally works "to prevent the translation of
22 popular wishes into governing rules rather than to produce laws that are contrary to majority
23 sentiment." J. Choper, *The Supreme Court and the Political Branches: Democratic Theory and*
24 *Practice*, 122 U.Pa.L.Rev. 810, 830-32 (1974) (emphasis in original). In other words, judicial
25

1 review generally checks the legislative branch from acting in a manner that tramples the rights
2 of the political minority. It is the rare case in which a court affirmatively mandates the
3 undertaking of governmental action. OPD's motion here seeks such a rare affirmative mandate
4 of governmental action: the appointment of private persons to fulfill a State obligation and the
5 expenditure of public funds to pay such private persons beyond those expenditures deemed
6 necessary by the Legislature.

8 The Montana Supreme Court in *Marbut v. Secretary of State*, 231 Mont. 131, 135, 752
9 P.2d 148, 150 (1988), defined the boundaries of a justiciable controversy. *See also Gryczan v.*
10 *State*, 283 Mont. 433, 442, 942 P.2d 112, 117 (1997) (discussing the limitation on justiciability
11 presented by "purely political" questions). The U.S. Supreme Court in *Baker v. Carr*, 369 U.S.
12 186, 217 (1962), set forth the following relevant criteria to gauge whether a case presents a
13 non-justiciable political question: (1) the text of the constitution commits the issue to another
14 branch of government; (2) there are no judicially discoverable and manageable standards for
15 resolving the issue; and (3) in order to decide the case, the court would be required to make an
16 initial policy determination of the kind that clearly involves non-judicial discretion.

18 Here, the Montana Constitution power commits the power to appropriate State funds to
19 the Montana Legislature. The Legislature created OPD to effectuate the constitutional right to
20 counsel and used its power of the purse to determine the funding level for that agency.

21 Although the judiciary has the power to adjudicate criminal matters which includes the power
22 to reverse convictions that were obtained in contravention of the defendant's constitutional
23 rights that probably affected the outcome of the proceedings, OPD's motion is not seeking this
24 type of judicial review. It calls upon this Court to determine whether the Legislature's funding
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1 was adequate, whether OPD's management was adequate, and whether, in the future, someone
2 may be harmed. This is not a role this court should take on.

3 Moreover, there are no judicially discoverable and manageable standards for resolving
4 this issue. Again, although the *Strickland* standard applies when deciding whether a
5 defendant's conviction should be invalidated due to the provision of ineffective assistance, that
6 standard does not translate into a numerical amount of funding, a certain number of employees,
7 or an adequate contract rate.

8
9 Not only does the OPD Motion and Brief not give any information on how Mr. King is
10 ineffective on the current case, there is no mention of any specific facts or claims of ineffective
11 assistance of counsel by any attorney in OPD that have been upheld. The Montana Supreme
12 Court has ruled that Attorneys are presumed to be competent in *State v. St. Dennis*. There are
13 also no facts to support any claims to the State Bar or Disciplinary Counsel that have been
14 upheld as a result of the high caseload. Without this information, there is simply no issue for
15 the court to resolve.
16

17 **IV. The Amount of Prejudice to Proceed in this Venue is Too Great for the State.**

18 **A. Lack of Ability to Inquire into Mr. Phillips' Case or any other cases.**

19 Mr. Phillips' case is currently scheduled for an Omnibus hearing in Justice Court on
20 October 16, 2013. At that time it is likely to be set for trial. There will be continuing discovery
21 and representation of Mr. Phillips by Mr. King and OPD. There is simply no way to investigate
22 and inquire into and ongoing case to the extent needed. There is no current prima facie showing
23 of ineffective assistance of counsel by Mr. King and there is no legal way for the State to
24 obtain discovery in an ongoing case for ineffective assistance of counsel.
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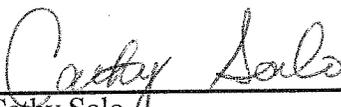
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Brief in Opposition to Motions To Rescind OPD Appointments* was served on the following on this 1st day of October, 2013:

William F. Hooks
Chief Public Defender
44 W. Park Street
Butte, MT 59701

Jon King
Asst. Public Defender
Public Defender wall pocket
Helena Municipal Court
228 Broadway
Helena, MT 59601



Cathy Salo