



Steve Bullock
Governor

OFFICE OF THE APPELLATE DEFENDER STATE OF MONTANA

Chad Wright
Chief Appellate Defender

Date: June 27, 2016

To: Montana Public Defender Commission

From: Chad Wright, Chief Appellate Defender

RE: Office of the Appellate Defender Report to the Commission

Currently, the Office of the Appellate Defender (OAD) consists of eleven full-time assistant appellate defenders, one half-time assistant appellate defender, three support staff, and the Chief Appellate Defender.

1. Staff Changes.

OAD hired Daniel Tenenbaum to fill the newly created assistant appellate defender position. Danny previously worked with the Tribal Defenders of the Confederated Salish and Kootenai Tribes and interned with the Bronx Defenders while he was attending the New York University School of Law. These two experiences gives him some unique perspectives on the holistic defense models. Also, OAD was sad to see the departure of Natalie Wicklund, a tireless advocate who also was heavily involved in the Montana Innocence Project. To replace Natalie, OAD hired Deborah Smith, an attorney who previously worked at the OAD. Deborah left for a teaching stint at the University of Idaho in her field of expertise – immigration law. She returns to the OAD bringing both her specialized immigration knowledge and past criminal appeal experience. As the numbers show, both these fine attorneys have had to hit the ground running to keep up with the ever increasing caseload.

2. Opened Cases and Filed Briefs

a. Opened Cases

Tentative numbers near the end of the fiscal year show that OAD opened 303 cases in FY 2016. This total includes both FTE and contractor appellate case openings. If these opening numbers hold true, there was a 5.5 % increase from the 287 opened appellate cases for FY 2015. OAD hopes to identify the type of cases driving this increase after the close of the fiscal year.

b. Filed Briefs

The FTE attorneys in the OAD filed 37 briefs in the 60 business days constituting the last quarter, including 16 opening briefs, 15 reply briefs and 6 *Anders* briefs. While we require contractors to electronically file their own briefs, our staff print and bind the paper copies of the contractor briefs for filing in the Montana Supreme Court in addition to filing our own FTE briefs. Thus, on a near daily basis, OAD is filing some sort of substantive brief with the Montana Supreme Court. The Montana Supreme Court reports that criminal and dependent and neglect cases

make up over 50% of their appellate filings. OAD has seen an increased number of direct appointments by the Montana Supreme Court, evidencing that the Court relies on the OAD for its filing and case management expertise.

3. Positive Results.

Since the last report, FTE and contract attorneys obtained relief for their clients in the following cases:

- a. *State v. Armstrong*, (dismissal of State appeal)
- b. *State v. Foster*, Koan Mercer (State concession)
- c. *State v. Weber*, Nick Brooke- contractor (Court order)
- d. *State v. Hancock*, Koan Mercer (Court order)
- e. *State v. Blank*, Haley Connell (unpublished Court order)
- f. *State v. Galina*, James Reavis (State concession)
- g. *State v. Ackerman*, Craig Shannon - contractor (State concession)
- h. *State v. Many Whitehorses*, Natalie Wicklund (State concession)
- i. *State v. Suter*, Colin Stephens- contractor (State concession)
- j. *State v. Lawrence*, Kristen Peterson (State concession)
- k. *State v. Westfall*, Alex Pyle (State concession)
- l. *State v. Rigsbee*, Alex Pyle (State concession)
- m. *State v. Harties*, Paul Leisher (negotiated PCR relief)
- n. *State v. Johnson* (dismissal of State's appeal)

One quick takeaway from these cases is that numerous errors are being made by lower court judges during the sentencing process that go largely unnoticed because the State is resolving these cases with concessions.

4. Significant Cases

On May 19, 2016, the United States Supreme Court issued its opinion in *Betterman v. Montana*. Unfortunately, the Court ruled against Mr. Betterman, finding that the Sixth Amendment's speedy trial protections only apply to trial level proceedings and not the sentencing process. However, due process claims remain a viable option for those clients facing oppressive delays until their sentencing is complete.

OAD learned a valuable lesson from the *Betterman* case as the Montana Attorney General was able to seize most of the press coverage (including an article in the *Montana Lawyer*). OAD did not take the opportunity to explain how it had identified the issue worthy of full review by the United States Supreme Court in furtherance of a client's interests. If OAD has the rare opportunity to once again be involved in meaningful litigation before the United States Supreme Court (James Reavis is working with the same clinic about non-attorney lower court judges) then it must take the lead to talk about how our work not only affects our clients but can have a broad impact for other similarly situated defendants.

5. Budget

OAD appears to be largely within its overall budget projections for FY 2016. OAD was helped significantly by personnel savings while the Chief Appellate Defender position remained open and the influx of money from the Commission's grant of discretionary money to fund the new assistant appellate defender position. However, one consistent shortfall category is the budget for transcript costs. OAD has been over budget for transcript costs for the last five years and with the influx of new cases will be significantly over budget in FY 2016 for transcript costs as well. OAD takes every step to order only those transcripts that it deems necessary for the appeal, but it cannot function without paying for the essential trial transcripts. As caseloads increase, OAD needs to explain how it can no longer underfund its budget requests for transcripts.