



Steve Bullock
Governor

OFFICE OF THE APPELLATE DEFENDER STATE OF MONTANA

Chad Wright
Chief Appellate Defender

Date: March 31, 2017
To: Montana Public Defender Commission
From: Chad Wright, Chief Appellate Defender
RE: Office of the Appellate Defender Report to the Commission

1. OAD status

OAD was fully staffed for the last quarter with three support staff and 12.5 attorneys.

2. Strategic Plan Goals

OAD reports on the following goals applicable to the OAD as identified in the Strategic Plan:

Goal 1.4.1: Develop Strategic Relationships with Stakeholders.

In addition to the necessary legislative contacts, OAD has been busy responding to a proposed change to Rule 6 of the Montana Rules of Appellate Procedure requested by the Montana Supreme Court. The Court is proposing to do away with appeals from lower courts of record, shifting that responsibility solely to the district courts. OAD has been in direct contact with the Chief Justice, Court staff, the Montana Association of Criminal Defense Lawyers, and OPD attorneys who practice in these lower courts about the proposed rule change. After reviewing the input we received from all of these parties, OAD submitted a formal comment on March 30, 2017.

Goal 2.2.2: Establish regular strategic planning meetings.

I have met regularly with Bill Hooks, Kristina Neal and Peter Ohman regarding issues arising during the 2017 Legislative session.

As with previous reports, the following sections report case outcomes consistent with the goals of the Strategic Plan.

3. Opened Cases and Filed Briefs

a. Opened/Closed Cases

For this quarter, 71 new appeal cases were opened in the office. Of those, 12 were DN cases and three were DI cases, which amounts to 21% of new cases received. During this quarter, OAD and contract attorneys closed 46 cases.

b. Filed Briefs

The attorneys in the OAD filed 13 opening briefs submitted on the merits, 15 reply briefs, seven *Anders* briefs (where the attorney submitted that there were no meritorious issues) and

10 motions for voluntary dismissal, (where the client agreed to dismiss the appeal without filing a brief). In the 59 business days in this time period our support staff still kept up the pace of every other day editing, formatting and filing briefs in the Montana Supreme Court.

4. Positive Results

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

- a. *State v. Chylik*, Alex Pyle (State concession – missed lower court appeal deadline)
- b. *State v. Watts*, Moses Okeyo (State concession – credit for time served)
- c. *Matter of R.H.*, Moses Okeyo (Court opinion – insufficient findings regarding involuntary medication in mental commitment case)
- d. *State v. Pope*, Jennifer Hurley (Court opinion – discovery violation)
- e. *State v. Collins*, Alex Pyle (State concession – improper court technology fee)
- f. *State v. Buck*, Chad Wright (Stipulation – MSP to DOC commitment)
- g. *State v. Vert*, Jennifer Hurley (Stipulated remand – improper fine)
- h. *State v. Madplume*, Chad Wright (Court opinion – upheld conviction but unsupported fees)
- i. *State v. Harrison*, Nancy Schwartz – contract attorney (Court opinion – blood in body is not evidence under tampering statute)
- j. *State v. Eskew*, Koan Mercer (Court opinion – involuntary statement not admissible)

5. Significant Cases

In *State v. Eskew*, Koan Mercer obtained a fantastic decision for his client following the oral argument in December, 2016. The Court held that the misleading investigative techniques and pressure put on Ms. Eskew while she was being interviewed about her infant daughter who was in the hospital rendered her statement involuntary. As mentioned before, this important issue was preserved on the assault conviction after Jennifer Streano and Brian Smith did amazing work to acquit Ms. Eskew on the deliberate homicide charge at trial. During the later stages of the appeal, Koan was able to collaborate with the Montana Innocence Project, who in turn recruited the services of Paul Leisher for an excellent national perspective on the problems caused by police interview techniques that can lead to false confessions – like the one that occurred in this case.

I was proud of how well OAD helped Koan prepare for the oral argument last December. Oral arguments in the Montana Supreme Court have become rare events, but still provide a unique opportunity to advance our client's interests in the appeal process. I am excited for another chance to help for oral argument. On May 1, 2017, OAD attorney Kristen Peterson will present oral argument about the harmful impact of a prior conviction introduced during her client's deliberate homicide trial. *State v. Blaz*, DA 14-0807. The argument will take place at the Student Union Building in Bozeman, so I invite all those available to attend.