

# Public Defender News



## Chief's Corner

### Special points of interest:

- [Budget Update](#)
- [Duncan Decision](#)
- [OPD Attorneys chosen for Pilot PD Program](#)



Despite mostly blue, sunny skies in Butte this summer, we in the central office have been busy on a number of projects. As many of you know, my focus has largely been on taking a close look at the day to day operation of our offices. The need to do this has grown out of the visits made by Diane Stenerson and AFSCME field rep Robin Haux to each office, the office audits, support staff training, etc. While I don't believe in change for change's sake, I would like to see what we can do to free up more staff time to provide assistance on case work and to attorneys. I am hoping to be near completion of this project by October 1.

As an adjunct to the attention on support staff, we have also been working to improve management. Several management teams have spent time with Julie Benson-Rosston, our consultant on management and personnel issues. Additionally, we have scheduled the fifth Management Training session for December. Julie, as well as others not yet named, will work with us at that training.

I know that access to social network sites is a desire of many of you. The state has just developed some IT policies relating to those sites. We continue to look for the best way to provide access while minimizing risk.

The death penalty case in Kalispell continues to progress. From the beginning, Noel Larrivee and Nikki Ducheneaux have been the trial team. Ed Sheehy has been heading up the mitigation team, but since he is running for the Supreme Court, he will move off of that team and a replacement will be determined soon. Whitney Carlson was hired to provide administrative support. Doug Ziglar, an investigator from Region 1, has been assigned to do the investigation following Tom Adamo's retirement. Several renowned experts in mitigation, addiction behavior, neuro-psych issues and jury consultation are being hired. My hope is that knowledge and information generated by this case can be shared with all of us once the case concludes.

In July I spent a week visiting our offices in central and eastern Montana—1100 miles in four days all of which I thoroughly enjoyed. I enjoyed every mile!

*Randi*

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## Randi Hood Resigns as Chief Public Defender

Public Defender Commission Chair Fritz Gillespie announced Randi Hood's resignation as Chief Public Defender on September 9, 2011. He expressed his gratitude and appreciation for the effort, dedication, and accomplishment Randi has given the agency.

Randi, a 1975 graduate from the University of Montana School of Law, has dedicated her entire career to criminal defense, serving as chief public defender for Lewis and Clark County for 17 years. She was hired by the Public Defender Commission to be the first Chief Public Defender of the new statewide system in October 2005, and began work in November of that same year.

Randi enjoys sewing and spending time with her husband, children and grandchildren and is looking forward to trying a few more cases as a staff attorney before retiring.

*"I could go on about her dedication, but I'll simply say, a job well done Randi, Thank you."*  
—Fritz Gillespie

## Budget Update

By Harry Freebourn



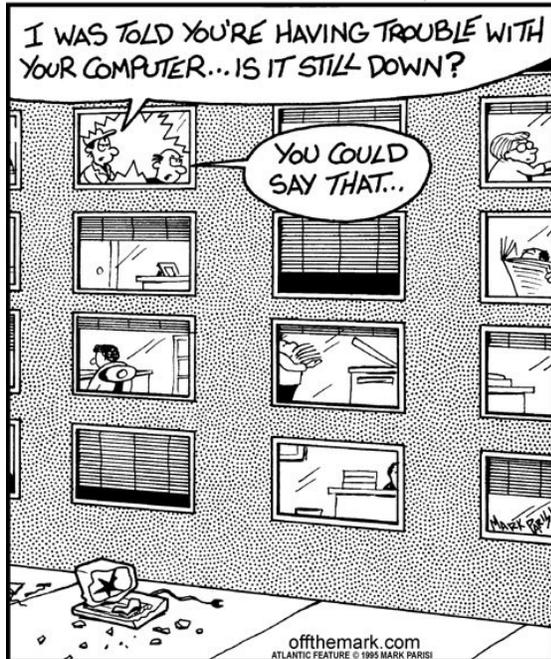
*“If you have any questions about the longevity allowance, contact Barb Kain”*

In the spring newsletter I updated you on the outcome of our funding as provided by the last legislature that adjourned in April. Now I would like to tell you about our current budgeting process and how we are proceeding. As I mentioned previously, we received two separate pots of funds from the legislature. One pot funds our normal operations and one covers costs related to any capital defense activity. However, to make it crystal clear: we were not funded to provide pay raises for any employee and we were not funded to allow any employee to progress up their union negotiated pay ladder. However, an unfair labor practice law suit has been brought against the state by labor unions to challenge this situation. Your union can update you on the status of this case.

Since our agency is now five years old, we have several employees who have completed five years of uninterrupted state service (or 10,400 hours) and will receive a 1.5% increase to their base salary. This pay adjustment is provided under MCA 2-18-304, longevity allowance. If you have any questions about this benefit, please contact Barb Kain.

Currently, we are meeting with agency managers to consider budget requests for the current fiscal year (July 1, 2011 through June 30, 2012). We expect that all budgets will be finalized shortly. One positive note is that for the first time in our short history our current expectation is that we will have enough funding to stay in the black during this fiscal year.

**off the mark**.com by Mark Parisi



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## Commission Hires Conflict Coordinator

As you may know, the last legislature passed SB 187 revising the Montana Public Defender Act. One of the statutory changes requires the Public Defender Commission to “establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards.”

In response, the Commission’s personnel committee undertook a process to hire a conflict manager to report directly to the Commission. Kristina Neal was selected from a pool of extremely well-qualified applicants.

Kristina has served OPD in various other capacities, including regional deputy public defender in both the Great Falls and Helena offices. We welcome Kristina in her new role, and look forward to working with her as she and Chairman Gillespie collaborate on modifying current policies and procedures to integrate the new position.



## OPD SPOTLIGHT

### **Nikki Ducheneaux, Assistant Public Defender, Polson**

*By Steve Eschenbacher*

We all know that being a public defender is a hard, and often thankless, job. But if we were to build the perfect defender, what would he or she look like?

Intelligence is a prerequisite, creativity an essential skill, and patience a mandatory virtue. Empathy plays a big part in understanding both the client and the jurors. The counterpart to empathy is the ability to be properly outraged when it is merited. Without that outrage, tyranny is allowed to continue its slow and steady pace of taking over.

Finally, a good public defender has a certain amount of Oppositional Defiance Disorder. When the weight and majesty of the law is brought down on our clients, we need someone who is willing to say “This is wrong and I will not let it stand!” to anyone from the police to the prosecutor to the judge. Throw in getting kicked out of Catholic school as a young girl, and you have Nikki Ducheneaux.

Nikki was fated to the law, because her father served as counsel for the House of Representatives Committee on Indian Affairs. Following graduation from the University of Montana School of Law, Nikki clerked for Supreme Court Justice Morris for a year, and was then hired to work in the Polson OPD office. *(Continued on page 6)*



### **Tom Adamo, Investigator, Missoula**

*By Mori Woods and David Stenerson*

Region 2 Criminal Investigator Tom Adamo retired after 35 plus years of working in the criminal justice system on July 29, 2011.

Tom began his career in 1969 as a Detective with the Las Vegas Metropolitan Police Department and came to Montana in 1974 to work for the Missoula County Sheriff’s Office. He worked there until he took a position with the Montana Department of Justice, Criminal Investigation Bureau in 1981. He was promoted to the Chief Criminal Investigator for the Narcotics Investigation Bureau and Criminal Investigation Bureau until he retired (the first time) in 1998.

Tom worked private investigations after that, and then came to work as a Criminal Investigator for the Office of the State Public Defender in Region 2, in January 2008. Tom has been a very trusted and valuable member of not only the OPD Region 2 team, but regions throughout the state. He was quickly called upon to work many of the most complex cases statewide and was relied upon by his fellow defense team members for his expertise and experience.

In honor of his years of dedicated service in the pursuit of justice, Tom was awarded a Lifetime Achievement award at the recent investigator training. Thank you, Tom. We wish you well in your retirement.



## Comings and Goings

### **Laura Wendlandt**

Our mental health professional, Dr. Laura Wendlandt, has become the clinical director for the Yellowstone Girls and Boys Ranch. We will miss her. She made an important contribution to this agency by developing the mental health protocol. As a result of her work, we have been able to show the legislature that we are cost-conscious. Dr. Michael Scolatti is filling in on a short term basis since Dr. Laura's departure, and we are developing a request for proposals to contract with a private mental health professional for a permanent replacement.

### **Garry Bunke**

Garry Bunke, our regional deputy in Miles City, will be retiring in early September. He has been a terrific boss, the best anyone could ever have and he will be greatly missed. We don't want him to go but he wants to join a motorcycle gang (the carebears) and go fishing. He's worked hard for many years and totally deserves this. Thanks, Garry!

### **Mark Beck**

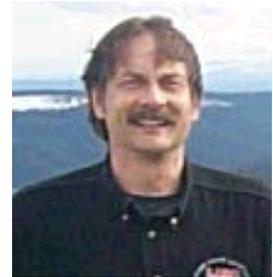
Welcome to Mark Beck, the new criminal investigator for Region 2. Mark began his public safety career with the Laramie, Wyoming fire department, then spent 22+ years with the Laramie police department as a patrol officer, motor officer, patrol sergeant, acting lieutenant of investigations, supervisor of records and communications, swat team member, and training officer. He was the supervisor of the Investigations Unit with the rank of detective sergeant when he retired. Shortly after leaving the LPD, Mark, his wife Teresa and their two golden retrievers moved to Anchorage Alaska to experience... "Alaska, the last frontier."

After tiring of mosquitos and winter darkness, the family moved back to the Rockies to experience... "Montana, the last frontier." (Hmmm...wonder who really is the "last?") Mark took a job at the Montana State Crime Lab as a forensic scientist/latent print examiner, but the prospect and challenge of giving something back and the opportunity to work with a group of highly motivated people dedicated to fair and equal justice for all brought Mark to the OPD.

### **Jenny Wilson**

Jenny is also new to the Missoula office. She is a native Missoulian, but most recently moved from Boulder, CO to take a position with us as a valued member of our support staff. Jenny attended Carroll College with a major in Social Work, then moved on to the University of San Diego where she obtained her Paralegal Certificate. She has worked with teen parents during her time in the social work field and has worked for private law firms engaged in both criminal and civil litigation practice. She revealed in an interview that this job seemed to be created just for her. Jenny replaced Malori Brinda, who took a part-time position with a private law firm in Missoula and intends to return to school. Other than "living the dream" working for four attorneys in the Missoula office, Jenny spends as much time as she can on Flathead Lake. Her two cats, Bruce and Yoshimi keep her company at home and, most importantly, her favorite color is pink. Welcome, Jenny.

*Dr. Michael Scolatti is filling in on a short term basis since Dr. Laura's departure.*



Mark Beck

## Appellate News

*By Joslyn Hunt*



*“ Mr. Howard wishes to thank Mr. Ed Sheehy, who provided invaluable expert testimony at the postconviction hearing.”*

Alvin Duncan was released from prison due to the wonderful efforts by his counsel, Joe Howard, on postconviction relief. Mr. Howard does contract/conflict work for the Office of the Appellate Defender, including direct appeals and postconviction relief.

In Duncan’s case, the district court found two issues dispositive: (1) Duncan received ineffective assistance of counsel when trial counsel failed to object to the prosecutor’s statement during closing argument; and (2) Duncan received ineffective assistance of counsel when trial counsel mischaracterized the burden of proof during closing argument.

The Order granting Duncan’s relief discussed at length the case law surrounding the issues presented. Importantly, the district court found determinative the fact that the prosecutor repeatedly stated that Duncan did not refute the evidence presented, asserting that the law obligated him to do so. This infringed on Duncan’s constitutional right to a presumption of innocence. When trial counsel failed to object to the prosecutor’s repeated statements, the district court found trial counsel was ineffective and Duncan was prejudiced thereby.

The Order is located on the public defender website (<http://www.publicdefender.mt.gov/DuncanOrder.pdf>) and is worthy of a close read, given the detailed analysis it provides regarding prosecutors’ comments and how Mr. Howard proved prejudice. Mr. Howard wishes to thank Mr. Ed Sheehy, who provided invaluable expert testimony at the postconviction hearing.

## OPD Attorneys Chosen for Pilot PD Program

Katie Green, assistant public defender from Region 2, and Douglas Day, Region 7 regional deputy public defender, have been selected to participate in the Pace University pilot Public Defender Fellows Program.

*Congratulations Doug and Katie!*

The first part of the program will include an orientation and two-day IDTTAP forensics training session to be conducted at the William S. Boyd School of Law in Las Vegas, September 9-10, 2011. During the fall of 2011, if desired and if practicable for the offices, they will be placed in mentor host public defender offices, where they will work alongside a public defender or a team of public defenders for a week.

During their placement at host offices, they will have the opportunity to engage in valuable day-to-day experiential learning. For example, they will be able to study the organizational structure of the host office and observe myriad best practices in indigent defense.

OPD would like to congratulate Katie and Doug on their acceptance into the program.



### Upcoming Training Events

**Friday Satellite Presentations (3:15-4:45)**

**September 16: OPD Brief Bank**

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**October 12-13: 6th Annual OPD Statewide Meeting and Training Conference**  
(Whitefish)

## If you want something done . . .



The Central Office went to the dogs at the end of the fiscal year. Daisy touts the fact that she is loyal, dependable, faithful, and will work for snacks as the reason she was chosen for this position.

## Ducheneaux *(continued)*

Nikki's experience with the Indian Child Welfare Act makes her a force to be reckoned with in family law, but she also attacked the criminal cases that were assigned to her. Her briefing skills initially kept her from getting a lot of trial experience. But Nikki persevered and on her assignment as a second chair on a deliberate homicide case she really came into her own. Nikki developed a complete and credible theory of who actually committed the murder, and the case was dismissed without prejudice.

Recently, Nikki was chosen to be second chair in the Miller homicide, the death penalty case in Kalispell. Working closely with the lead attorney in that case, she has been instrumental in developing strategies and briefs in support of her client. Nikki attended training to become "death qualified" while at the same time maintaining her humanity in the face of an inhumane punishment.

When she is not working on the death penalty case, she is in the Polson office where she is always a joy to be around. Her sense of humor is infectious and her knowledge of ICWA is the best in the office. After hours, Nikki loves to spend time with her children ("Irish twins" Sidney and Esther, born 11 months apart) and her husband Theo, and really enjoys martinis and the Jersey Shore.

## Top 10 Arguments for Leniency in DUI Convictions

By Brian Yowell

10. We've been here before, and it apparently didn't work...
9. Baccus made him do it...
8. My client did not know there was codeine in the cough syrup...
7. The ossifer was mean to him...
6. The punch at the church social must have been spiked with Everclear...
5. My client could, in effect, teach the ACT program so he shouldn't have to take it...
4. My client is a better driver buzzed than when sober...
3. Someone must have disabled his ignition interlock...
2. The HGN is voodoo science ... and,
1. Cheap vodka is its own punishment.

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**ENSURING EQUAL ACCESS  
TO JUSTICE STATEWIDE**



The Office of the State Public Defender is responsible for statewide Public Defender Services, provided statewide through Regional Offices.

The mission of the Office of the State Public Defender is to ensure equal access to justice for the State's indigent and those who are statutorily entitled to services in civil cases, as well as to provide appellate representation to indigent clients.

Randi M. Hood is the Chief Public Defender for the State of Montana. She was appointed by the Public Defender Commission, currently chaired by Fritz Gillespie. For more information, please visit our website, [www.publicdefender.mt.gov](http://www.publicdefender.mt.gov).

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## Jeb Myren Featured in the Missoulian



Our own Jeb Myren, OPD system administrator in Missoula, recently made the Missoulian's front page. He has turned what was once a weed-filled lot on the corner of Mount Avenue and East Crosby Street - a blight in Missoula's Slant Street neighborhood - into a breathtaking display of black-eyed Susans that has neighbors knocking on his door with their thanks.

Myren assumed the city owned the square patch of land, but eventually got tired of looking at the vacant, neglected lot.

Two years later, his field of flowers stops traffic and is a photo setting for high school senior portraits.

*MICHAEL GALLACHER / Missoulian*