

Public Defender News



Chief's Corner

Special points of interest:

- *Management Teams established to address vision goals*
- *The Power of Information*



I have finally returned to the job of Chief Public Defender after spending six weeks in Billings in trial. I enjoyed the trial but I hope the experience helps me keep in touch with the work everyone does in this system.

Harry and I are beginning the budget process for the next legislative session. We are experiencing a fair amount of uncertainty created by the static economy in Montana. It is not yet clear what limitations, if any, will be placed on our budget requests. Despite that uncertainty, we are beginning the process of talking to each of the regions and offices about their needs for the next 2-3 years. We will be asking the regional deputies to talk to everyone working for us in their region for input in this process. The process is lengthy but it is important to realistically assess our needs.

DUI is the crime that has captured the legislative interim committees' interest. The Law and Justice Interim Committee is looking at a number of changes in the law to 'crack down on drunk driving.' We have representatives at each of their meetings as well as participants for some of their panel discussions. Certainly not all of the changes discussed will make it into legislative bill or law but I predict we will see some serious attempts to increase the punishments for the various levels of DUI.

Now that spring is here, although I am looking out my window as it snows, I hope to get on the road to stop in and visit with all of you.

Keep up the good work!

Randi

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Management Teams to Address Vision Goals

By Harry Freebourn

Last December OPD managers met in Great Falls for a two-day manager training workshop arranged by Eric Olson, OPD Training Coordinator, and conducted by Jeff Sherr, Education and Strategic Planning Manager for the Kentucky Department of Public Advocacy and co-chairman of the National Legal Aid and Defender Association Defender Trainer Section. Jeff developed the workshop to address concerns raised in the audit report prepared by a team from American University regarding OPD management.

Prior to the workshop, each Regional Deputy Director and the Chief Appellate Defender developed management plans, and the Central Office prepared a detailed organizational chart. These tools were provided to Jeff and all other attendees of the training workshop.

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“...If our efforts are not united, we shall hang separate. Of that, there can be no doubt.”

The Power of Information

By Brian Smith

“Gentlemen (and ladies) we must all hang together or we shall most assuredly all hang separately.” This quote from Benjamin Franklin has long been used by the criminal defense bar to describe the close knit criminal defense community and the reality of our profession. No one particularly likes the criminal defense attorney. We don’t get the press. We represent the unpopular. Others only like us when we don’t get in the way. The citizen who hasn’t run afoul of law enforcement doesn’t understand us. Those that haven’t been falsely accused can’t imagine being in the position of needing us. The largest problem our agency faces right now is that the citizen legislature doesn’t clearly understand our mission. How do we turn the tide?

We turn the tide by showing the legislature a case isn’t a case isn’t a case. We show the public that our clients aren’t guilty of the things they are accused of doing. We show them that it takes time, effort and resources to do the job properly. We show them that we are taking cases to trial, filing motions, holding the State to its burden, protecting the constitution, and winning. But, the real shame is we can’t show it.

This hit home when the Chair of the Public Defender Commission made a simple request last week. He asked how many felony cases we took to trial last year and the results. The Chair wasn’t looking for a winning percentage; he was actually looking for information at the request of a district court judge. We had a golden opportunity to do it better than the rest, or at least better than FullCourt. We could have taken the first steps to actually show we can keep track of, and report on relevant/important case related information. Instead, the Chair will have to tell the district court, we are working on it.

The missed opportunity and the importance of that request should not be lost on anyone. We can’t miss another.

We all share some responsibility. No one is blameless. But the agency can’t collect the information alone. It will take everyone’s effort. In the end it will help us represent our clients. Whether that help is in the form of information to convince the prosecutor that they are “off their rocker,” seek out proven defense techniques or convince a legislature that we are underfunded and out-resourced, it will help. It has to help. Have faith! But...if our efforts are not united, we shall hang separate. Of that, there can be no doubt.

Appellate News

By Joslyn Hunt

The Montana Supreme Court has been scheduling oral arguments more frequently. The following cases indicate the types of issues that were or will be argued. If you have any questions regarding these cases or have similar issues, please feel free to contact the Appellate Defender Office at 444-9505.

Driver v. Sentence Review Division, DA 09-0609: Argued January 27, 2010. Petitioners requested the Montana Supreme Court clarify the standard of review the Sentence Review Division applies to its cases. Instead of the Division reviewing its cases to determine whether the sentence was “clearly inadequate or excessive,” it was argued that the Division should review the cases for an abuse of discretion. Noteworthy is the fact that the Division believes the following standard should be applied, which is a direct quote from the Division’s Order: “The rules and practices of this division have considered sentences to be unjust or inequitable if they are so greatly disproportionate to the crime as to constitute cruel and unusual punishment.”

State v. Haagenson, DA 09-0471: Argued February 24, 2010. The issue was whether when a probation officer seeks an intervention hearing--at which the defendant is sanctioned--and then the State pursues a revocation hearing based on the same violation, does the district court exceed its statutory authority--and thereby violate the defendant’s right against double jeopardy--by revoking that defendant’s suspended sentence on those facts.

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*Joslyn Hunt,
Chief Appellate Defender*

Comings and Goings

As our public defender system grows and evolves, so too does our staff. Welcome to all our new staff members!

Region 1 (Kalispell)

Additions: Daniel Nelsen, Crime Investigator (transfer from Great Falls)
Departures: Tyrone Massey, Crime Investigator (Kalispell)

Region 2 (Missoula)

Additions: Angela Johnson, Legal Secretary; Kim Deschene, Lawyer (transfer from Billings)
Departures: Ethan Lerman, Lawyer; Coralee Ruth, Legal Secretary; Whitney Carlson, Legal Secretary

Region 3 (Great Falls)

Additions: Ronald Steffens, Crime Investigator; Cassidy Blomgren, Lawyer

Region 4 (Helena)

Additions: Thaddeus Adkins, Lawyer; Anne Marie Peterson, Lawyer; Brendan McQuillan, Lawyer (transfer from Billings)
Departures: Zach Zipfel, Lawyer

Region 5 (Butte)

Additions: Brad Custer, Lawyer
Departures: Bree Williamson, Lawyer

Region 6 (Havre)

Additions: Karla Mae Bosse, Lawyer

Region 8 (Bozeman)

Additions: Melissa Murphy, Legal Secretary; Jennifer Infanger, Legal Secretary
Departures: Heidi Henry, Administrative Assistant; Charles Heidbreder, Legal Secretary

Region 9 (Billings)

Additions: Jessee Myers, Lawyer; Michael Usleber, Lawyer; David Arthur, Lawyer; Colin Rubich, Lawyer; Joan Mickelson, Legal Secretary
Departures: Darcy Critchfield, Lawyer; Heather Gallagher, Legal Secretary

Appellate Office

Additions: Eileen Larkin, Lawyer; Chase Rosario y Naber, Lawyer (transfer from Great Falls)
Departures: Jim Wheelis, Lawyer; Tammy Hinderman, Lawyer

Central Office

Additions: Aleta Richardson, Administrative Assistant; Daun Wick, Accounting Technician; Kyle Belcher, Network Administrator (Great Falls)
Departures: Jessie Kostoff, Network Administrator (Great Falls)

Major Crimes

Additions: Jennifer Streano, Lawyer (transfer from Helena); Christopher Abbot, Lawyer (transfer from Helena); Scott Spencer, Lawyer (transfer from Missoula)



The centralized storage project is also “coming” along, funded by a grant from the Montana Board of Crime Control.



Appellate News, continued



(continued from page 2)

State v. James, DA 09-0280: Argument set for April 30, 2010. One issue involves whether the district court erred in allowing the defendant to be subjected to double jeopardy. The argument is that the State and the district court lacked subject matter jurisdiction, as the State failed to recognize its prosecutorial authority over an Indian's conduct with the Flathead Nation was proscribed by a State/Tribal cooperative agreement. Another issue involves whether the district court erred in denying the defendant's *Batson* challenge and allowed the State to discriminate and eliminate all prospective Indian jurors from the jury.

State v. Allen, DA 09-0091: Argument set for May 4, 2010. One of the issues concerns whether the district court erred in denying the defendant's motion to suppress the warrantless, nonconsensual recording of a telephone conversation between the defendant and a confidential informant. Application of the *State v. Goetz* and *State v. Hamper*, 2008 MT 296 to that telephone recording will be discussed.

Management Teams, continued

(continued from page 1)

The workshop developed practical vision goals for the upcoming year and then identified challenges and barriers to achieving the goals. The workshop then asked OPD managers to identify solutions to the challenges and barriers. Finally the workshop established five teams (one for each vision goal) and asked that each team identify actions to attain each goal and set deadlines.

The five teams are:

Improve the OPD's information gathering process – this team has two objectives. First it intends to review all of the reports currently generated by the agency and determine if they are useful and if not – fix it or dump it. Second, the group intends to gather all of the information required by the agency's stakeholders and design reporting. The team leader is Harry Freebourn and its other members include Brian Smith, Joslyn Hunt, and Garry Bunke.

Establish better communications with the public – Team leader Eric Olson is joined by Dave Stenerson, Randi Hood, and Steve Eschenbacher. Their charge is to help the agency's message be heard by the citizens of our state by fostering contacts in our local communities and developing a communications officer or network.

Identify and improve structural problems within OPD – This team has four objectives: (1) define management duties, (2) determine how many managers are required for each region, (3) allocate management duties, and (4) determine the appropriate manager caseload. Randi Hood is the team leader and is joined by Doug Day, Sherry Staedler, John Putikka, and Roberta Drew.

Expand the agency training program – Garry Bunke is the team leader and team members include John Putikka and Peter Ohman. They are charged with reviewing the current training program and offering suggestions to expand attorney and non-attorney training for the system.

Increase recruitment and retention – Jon Moog is the team leader and is joined by Betty Carlson, Joslyn Hunt, Matt McKittrick, and Roberta Drew. They will reformat the performance evaluation process, identify ways to create workplace and career incentives, review the laws that are seeking to mitigate student loan indebtedness, and complete the development of the career ladder.

We will provide an update of each team's effort in future newsletters.

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Contractor Corner

By Larry Murphy, Contract Manager

Apparently I have limited space, so here are some quick thoughts pertaining to the contract arena.

Please expect to receive a new MOU either in your email or regular mailbox in the next week or so. You will note it has a new format and some new items for your review. There are links to the OPD website, specifically our Standards and various policies which are pertinent to contract attorneys, investigators and mental health professionals. We are asking that you read those and initial each, thereby acknowledging your understanding and agreement to abide by the same. The MOU must be signed and returned by June 1, 2010.

Attached to the contract attorney MOU is a Self Evaluation form. This must be completed and returned with the MOU. This form asks you to evaluate yourself in a number of areas, and solicits your comments on OPD. It will be used as the initial tool to evaluate the proficiency of each contract attorney. Thereafter, during the next year, OPD will be observing your performance in Court proceedings and speaking with judges you appear before. A proficiency determination will then be completed, as required by our Standards and policy, and you will each be advised of the result. OPD will also use the information we obtain from you to evaluate the agency and its policies and procedures. Your input is invaluable to this process.

Finally, contract attorneys will be receiving a separate email or letter from me seeking your input on how OPD can help you obtain an increase in the hourly rate. This input will be forwarded to the Commission in their attempt to achieve this goal. I believe that Lisa Kaufmann, a contract attorney, has taken it upon herself to rally you folks to become a voice before the Legislature. You might be hearing from her shortly.

Keep up the good work.



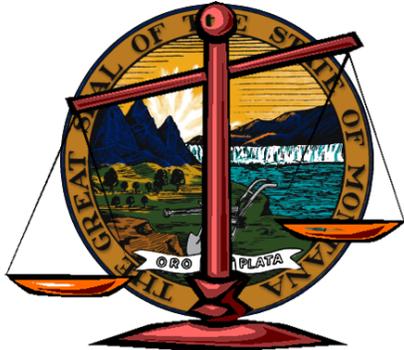
*The FY 2011
MOU is almost
ready for
distribution;
deadline for
return is June 1.*



“You’re doing fine. A little more perjury and you’ll be out of the woods.”

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**ENSURING EQUAL ACCESS
TO JUSTICE STATEWIDE**

On July 1, 2006 the Office of the State Public Defender assumed responsibility for statewide Public Defender Services, previously provided by cities and counties. These services are now provided statewide through Regional Offices of the State Public Defender. The mission of the Office of the State Public Defender is to ensure equal access to justice for the State's indigent and 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 Mike Sherwood. For more information, please visit our website, www.publicdefender.mt.gov.



Upcoming Training Events

April or May: *Mental Health Advocacy Training* (Montana State Hospital, Warm Springs) Contact the OPD Training Coordinator for specifics.

July 6-8: *Oral Advocacy Workshop* (Lubrecht Center)

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

April 23: *Understanding Domestic Violence, Part 2* (from Missoula)

May 21: *Understanding Domestic Violence, Part 3* (from Great Falls)

June 11: (Time To Be Determined) – *Advocacy, Communication and Elimination of Bias (3rd)* (NCBI / Sites pending)

June 18: *Montana Sentencing Law and Practice*
(District Judge Hon. Blair Jones / Date subject to change)

June 25: *Understanding Domestic Violence, Part 4* (from Kalispell)

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Lunch Hour Civil Practice Update Conferences

These discussions will be conducted by telephone conference call and will include guest speakers. Intended for practitioners within the focus area. **April 16:** DN; **May 14:** DJ; **June 4:** DI

Words of Wisdom

You can only protect your liberties in this world by protecting the other man's freedom. You can only be free if I am free.

- Clarence S. Darrow



Knowledge is a treasure, but practice is the key to it.

- Thomas Fuller



The pure and simple truth is rarely pure and never simple.

- Oscar Wilde