

# Public Defender News



## Chief's Corner

### Special points of interest:

- *Spot Light*
- *New Slogan for the OPD*

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Here's hoping everyone has had a chance to enjoy some of this beautiful Montana summer! The week of August 9, lawyers new to OPD will be attending the annual "Boot Camp." This has always been a popular, successful training and we hope this one will be also.

I am a member of the Commission on Courts of Limited Jurisdiction. We had a meeting on August 5 in which we learned about the Prime for Life program which is replacing the ACT program. It is more focused on behavioral changes and is currently used in nine other states with recidivism rates lower than 10%. It certainly sounds like a big improvement on the current ACT programs. Cost to the client will be more since they have to purchase a \$25 handbook. Each provider program submits their own budgets to set fees, and I heard a range of fees being charged from \$250 - \$410. I intend to have further conversations with the state program and licensing folks to request a sliding fee scale for our clients.

Keep up the good fight!

Randi

## Welcome New Commissioners!

*"On behalf of everyone in the Agency I extend to Tara and Mike our heartfelt gratitude and appreciation for everything you have done for the delivery of effective assistance of counsel for those who are entitled..."*

**Fritz Gillespie**

The Governor recently announced appointments to the Public Defender Commission. Commissioners Fritz Gillespie and Bill Snell were reappointed to three year terms expiring July 1, 2013. The Governor also appointed Raymond Kuntz and Margaret Novak, replacing Mike Sherwood and Tara Veazey, respectively. Ms. Novak, of Chester, is a member of an organization advocating on behalf of indigent persons. Mr. Kuntz is from Red Lodge, and he is an attorney nominated by the Supreme Court. Their terms also end July 1, 2013.

At the June meeting, the Commission elected Commissioner Gillespie as the new Chairman of the Commission, and Commissioner Kenneth Olson as Vice-Chair. Chairman Gillespie said, "On behalf of everyone in the Agency I extend to Tara and Mike our heartfelt gratitude and appreciation for everything you have done for the delivery of effective assistance of counsel for those who are entitled. You have helped make Montana a better place for all of its citizens."



Joslyn Hunt,  
Chief Appellate Defender

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## Appellate News

*By Joslyn Hunt*

The Office of the Appellate Defender welcomes its newest appellate attorneys: Garrett Norcott, Matt Wilcox, and Shiloh Hernandez. Garrett joins the ADO from Boston, Massachusetts, where he was in private practice. Matt just graduated law school from the University of St. Thomas School of Law in Minneapolis, Minnesota. And, Shiloh just completed a one-year clerkship with the Montana Supreme Court for Justice Leaphart. Shiloh also clerked for the Honorable Mike Salvagni. We are happy to have Garrett, Matt, and Shiloh join our appellate team.

Thank you to Jacob Johnson and A.J. Miller. They volunteered their time this summer for ADO and they will soon return to law school. They assisted ADO on several cases. We enjoyed their fresh perspective on cases and will miss having them around. Good luck in your future endeavors.

**ALERT:** The transaction rule is the issue to watch for! The Court has recently ordered supplemental briefing in *State v. 18th Jud. Dist. Court*, OP 10-0288, regarding “questions of the scope and applicability of M.R. Evid. 404(b), as well as the transaction rule.” Given this unusual request for supplemental briefing and the discussions in *Sage*, 2010 MT 156 and other recent decisions, such as *Lacey*, 2010 MT 6, *Derbyshire*, 2009 MT 27, and *Stout*, 2010 MT 137, the scope of the transaction rule and its interplay with 404(b) and *Just* is the Court’s issue *du jour* right now. **Challenge the State in your trial cases if the prosecutors are trying to put everything and the kitchen sink in through the transaction rule, especially if they attempt to get in conformity evidence that they could not get in otherwise under 404(b).**

*To improve communications within the agency we are empowering all employees and challenging them to “WIDA.”*

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## New OPD Slogan to Improve Communications: WIDA (When In Doubt Ask)

*By Barb Kain*

During the Administrative Support Staff training recently held in Butte, OPD released a new slogan for all employees to increase communications; reduce misconceptions; reduce preconceived ideas; reduce miscommunications and to challenge all employees to make sure that when they have a question or issue and when they are in doubt to ask the appropriate personnel to receive the correct answer to their questions or concerns.

To improve communications within the agency we are empowering all employees and challenging them to WIDA (WHEN IN DOUBT ASK) and offer the following tips to ensure that all employees have the correct answers, the knowledge to proceed and the assurance that their questions or concerns will be addressed in a timely manner.

- ◆ All staff will be treated with respect.
- ◆ When completing work assignments all staff should always feel that they can approach an attorney, an office manager, the managing attorney or the Regional Deputy Public Defender and/or Central Office personnel to get the correct answers in a timely manner.
- ◆ If you are asked a question and you do not know the answer, refer the individual to someone who does or ask the Regional Deputy Public Defender.

## WIDA (continued)

- ◆ If an employee does not receive an answer or a resolution to their problem through the office chain of command, they can e-mail Central Office staff (Eric Olson, Harry Freebourn, or Barb Kain) for assistance.
- ◆ All questions will be handled in a timely and confidential manner whenever possible.
- ◆ If you feel uncomfortable talking to a staff person and you are represented by the American Federation of State County and Municipal Employees (AFSCME), you can contact your field representative to have them work with OPD on your behalf to get the issue addressed and resolved.

When In Doubt Ask – it is the responsibility of each employee to direct questions or concerns to the appropriate staff member, office manager, supervising attorney, Regional Deputy Public Defender, Central Office staff or field representative.



## OPD SPOTLIGHT

### Great Falls Office Manager—Jason Kindsvatter By Matthew McKittrick

Jason Kindsvatter has been the Great Falls Office Manager since August of 2007. He consistently does his job in an excellent manner, and goes out of his way to keep our attorneys and staff organized so as to get through one busy day after another. He is always on hand to do whatever it takes to put out the fires that always seem to pop up in the world of public defender work. He is definitely a “go to guy” in the Great Falls office. Further, it’s clear that Jason has long term dedication to the Office of the State Public Defender. According to Jason, “If the Cubs win the World Series, I’ll retire. So you know I’ll be here forever.”



### Greg Paskell, Assistant Public Defender, Billings By David Duke

#### “Just keep your shoes on”

Greg has recently taken on DI cases in Billings. After several cases and trips to the Psych Ward, Greg noticed the patients (i.e., clients) were not wearing shoes, while the hospital staff and doctors all had shoes. This led Greg to give other attorneys the sage advice – “when visiting the Ward, whatever you do, whatever happens, just keep your shoes on and you will be alright.”

Prior to coming to OPD in October of 2008, Greg practiced law in Kalispell. In Billings, Greg practices in the District Courts. Greg has two grown sons enlisted in the military. Both will be attending boot camp and expect to be deployed to Iraq in the near future.

## Contractor Corner

by Larry Murphy, Contract Manager

I hope you all have been enjoying the summer. Unfortunately, I have been spending my non-working time remodeling my kitchen. Not a fun experience, especially when your last name is MURPHY. Something always goes wrong or is not anticipated.

As you may have noticed, Lynn has been forwarding the weekly summaries of Montana Supreme Court decisions. We hope these will be helpful. If you have questions or comments, please contact us. We are still in the process of developing a brief bank, so if you have any unique or interesting issues you have briefed, please share them with us.

Lynn tells me we have some housekeeping issues which need review.

- ◆ Do not pay third party costs! They must be billed directly to OPD.
- ◆ If you submit a handwritten claim make sure it is legible or it will be returned to you.
- ◆ Please close and report your case closures in a timely fashion. This is important for both internal operations and legislative funding. The attorney for a parent in a DN case should be closing the case upon termination of parental rights or upon dismissal of the case; whereas the case for the attorney for the child will remain open until placement of the child or dismissal of the case.
- ◆ Claims must be received by OPD within 45 days of the last day of the month for which you are billing or they will be denied.
- ◆ Bill for only one month at a time. This is an issue with our auditors, and claims with multiple months will be returned to you.
- ◆ Claims are being audited in a different region each month on a rotating basis. This audit is simply to ask why a case has remained open for more than a specified period of time (180 days for misdemeanors, and 250 days for a felony). Please bear with us during your audit month and respond to Lynn's email as quickly as possible.
- ◆ There will be no more post approvals of client costs. Please foresee the need for experts, investigators, and other costs, lock the provider into a set cost and seek pre-approval for the same. We will still entertain supplemental requests, but will require justification for the additional funding.

One of my statutory mandates is to complete a proficiency determination of each of the attorneys contracting with OPD. I started this process by asking you to complete a self evaluation. Lynn will be contacting those of you who haven't returned one. The next stage in the process is for me or your Regional Deputy to observe you in court and to meet with you personally. That stage will be commencing shortly. Please find time to meet with us and cooperate with this process. The final stage will be to contact the judge or judges you practice before and solicit their input. Once the entire process is completed, I will be contacting you individually to discuss the results.

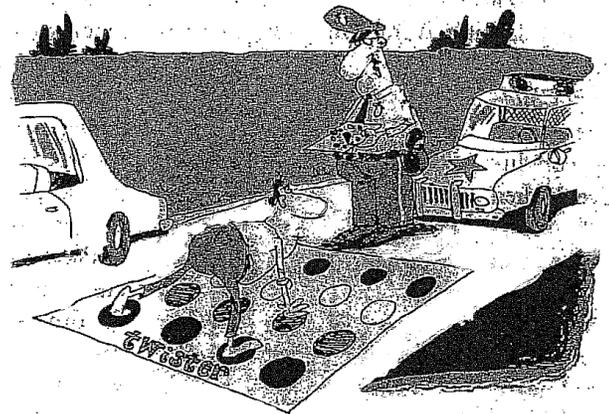
I hope to see you at OPD's annual conference in West Yellowstone in October. If you have any free time this summer and want to help remodel my kitchen, please give me a call.

Thanks for all you do,

Larry



*A statutory mandate is to complete a proficiency determination of each contract attorney. Phase one was a self evaluation. The next stage in the process is court observation and a personal meeting. That stage will be commencing shortly. Please find time to meet with us and cooperate with this process.*



The department budget cut back on breathalyzers. Left foot yellow.

## Support Staff Training

by Diane Stenerson, Hamilton

*“It was great to put faces with names and spend time with co-workers you’ve never met but talk with frequently.”*

On June 22 and 23, 2010, OPD statewide support staff training was held at the Montana Tech facility in Butte, attended by all but a very few. It was great to put faces with names and spend time with co-workers you’ve never met but talk with frequently. Much of the training was geared toward JustWare (which was a repeat for some)—but hopefully it brought everyone to the same user level and uniformity throughout OPD. Other topics included mindfulness in the workplace, legal case dynamics, professional responsibility, records and file retention, appellate procedures, contract procedures and the “blue sheets.” Our appreciation to the various presenters for the time and effort put forth and for a job well done.

We also had an opportunity to get to know the Central Office team and find out what they do and how we can all help each other. The highlight was a barbeque held at Carleen Green’s home, courtesy of the Central Office staff. A sincere thank you for your hospitality, good eats, and the chance for all to get to know each other better! Thanks, too, to all that helped man the phones and put out fires on the home front, making our return to reality less painful.

All in all, despite a slight computer glitch, the conference was reported to have been a success. We encourage all support staff to pass on suggestions and comments for future training ideas to Eric Olson. We need your input to make these sessions worthwhile and to cover the subjects that are important to you.

## Another Successful Boot Camp

OPD recently completed its 4<sup>th</sup> Annual Trial Skills Boot Camp at the UM Forestry Conference Center.

Eighteen attorneys from across the state, including two private attorneys who provide contract work for OPD, were in attendance for the three day workshop.

Eight senior trial attorneys, including Chief Public Defender Randi Hood and PD Commissioner Jim Taylor, provided insight and instruction in all aspects of trial activity.

Here are comments from the two private attorneys that attended this year’s training:

*“I would strongly recommend that every contract attorney take advantage of the training opportunities offered by the OPD.”*

As a contract attorney, I truly appreciate the training opportunity offered at OPD Boot Camp. The materials, presentations and exercises were not only relevant, but also a refreshing education on how to properly and effectively advocate for all my clients, both private and OPD. While my practice is not composed solely of OPD cases, those cases are an integral part of my practice, as it is my pleasure and calling to continue to assist individuals that face injustice, especially when that individual is unable to pay for a proper defense. I would strongly recommend that every contract attorney take advantage of the training opportunities offered by OPD.

*Marta N. Farmer*

Thank you, Office of the State Public Defender, for extending to me the opportunity to attend the Boot Camp offered August 09-12, 2010. The information and hands-on training you provided on voir dire and cross-examination were invaluable. I would recommend to my colleagues who do contract work for OPD to take advantage of these training opportunities.

*Robert Greenwell*

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## Comings and Goings

### Region 1 (Kalispell)

Additions: Ashley Young and Ted Fellman, Attorneys

Departures: Brian West, Attorney; Mary Leffers, Attorney (transfer to Billings)

### Region 2 (Missoula)

Additions: Malori Brinda, Legal Secretary

### Region 9 (Billings)

Additions: Audrey Schultz, Mike Park, and Jared Frickle, Attorneys, Mary Leffers, Attorney (transfer from Kalispell)

Departures: Stacy Sampson and Colin Rubich, Attorneys

### Region 10 (Glendive)

Additions: Matthew Pavelich, Attorney

### Central Office

Additions: Marsha Parr, JustWare Computer Support Specialist

Departures: Sandra Law, Operations Manager

### Major Crimes

Additions: Steven Scott, Attorney; Katrina Sherman, Legal Assistant (transfer from the Appellate Office)

Departures: Todd Chatman, Attorney; Christopher Connor, Management Analyst; Bonnie Martello, Legal Assistant

### Appellate Office

Additions: Garrett Norcott, Shiloh Hernandez, Matthew Wilcox, Attorneys; Rachel Smith, Legal Secretary

Departures: Katrina Sherman, Legal Assistant (transfer to MCU)



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## In Case of Accident: You said WHAT??!!

*Words of Advice from the Risk Management Division*

### Did I Say That?

“Going to work at 7:00 a.m. this morning, I drove out of my drive-way straight into a bus. The bus was 5 minutes early.”

“I started to slow down but the traffic was more stationary than I thought.”

“The car in front of me hit the pedestrian, but he got up so I hit him again.”

“My car was legally parked as it backed into another vehicle.”

“The faster you drive through a red light, the smaller the chance you have of getting hit.”

“Gee, Officer! That's terrific! The last officer only gave me a warning, too!”

Fortunately, none of these statements were made by state employees. However, they are examples of what was actually said at accident scenes.

Remember, a simple “I'm sorry” can be interpreted as an admission that the driver caused the accident when all they meant was that they were sorry that the accident happened, no matter who caused it.

The “who pays” decision often depends on who caused the accident. Statements made by drivers at the scene are powerful evidence. When a driver blurts, “I'm sorry. I didn't see you!” such a statement may be considered as strong evidence that the driver caused the accident. Maybe they did . . . but, maybe not! Maybe the other driver wasn't seen because he/she ran through a red light or he/she didn't have his/her headlights on when they should have— and they were as much at fault as the one admitting responsibility.

**What you say can make a difference**, only it may not be the outcome that you intended. Be brief and stick to the facts! Let Risk Management do the investigating and the talking.



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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 Fritz Gillespie. For more information, please visit our website, [www.publicdefender.mt.gov](http://www.publicdefender.mt.gov).

See you  
at the  
**Annual Meeting!**  
October 20-22  
West Yellowstone



### Upcoming Training Events

**October 20-22:** *Annual Meeting and Training Conference* (West Yellowstone)

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#### *Satellite Presentations*

The following 2010 satellite presentations will be presented on Fridays from 3:15-4:45 unless otherwise indicated. (Presentations will resume in the fall.)

**September 24:** *Montana Sentencing Law and Practice* (District Judge Hon. Blair Jones / Date subject to change)

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#### *Lunch Hour Civil Practice Update Conferences*

These discussions intended for practitioners within specific focus areas will resume in the fall.