

MONTANA PUBLIC DEFENDER COMMISSION
STRATEGIC PLANNING COMMITTEE MEETING

Goodkind Building
139 North Last Chance Gulch, Helena, MT 59601

January 18, 2012

MINUTES

(Approved at the February 10, 2012 Strategic Planning Committee Meeting)

Call to Order

Committee Chair Ken Olson called the meeting of the Strategic Planning Committee to order at 1:10 p.m.

Committee Members Present

Ken Olson, Great Falls; Chuck Petaja, Helena

Committee Members Absent

Bill Snell, Billings

Agency Team Members Present

Dave Stenerson, Interim Chief Public Defender; Joslyn Hunt, Chief Appellate Defender; Harry Freebourn, Administrative Director

Interested Parties

Larry Murphy, Contract Manager; Kristina Neal, Conflict Coordinator

Approval of Minutes from December 7, 2011 Meeting

The minutes were approved as drafted.

Review the Strategic Plan (updated to reflect current operations)

At the December meeting, the Committee agreed to modify the existing plan. Mr. Freebourn went through the updated plan page by page to show where changes were made. The Committee made suggestions for improvement on various pages.

The current 11-region configuration was discussed. Judge Tucker's judicial district is the only one that is "split" into two regions. He would prefer to have one region service his courts, currently serviced by Regions 4 and 5 (Helena and Butte). Chief Stenerson, Chairman Gillespie, and the two regional deputies met with Judge Tucker by phone and they have addressed his concerns. Reducing the number of regions, which was considered during the last legislative session, will not result in any savings because the number of office locations would not be reduced even if there were fewer regions. Committee and team members unanimously agreed to keep the regions intact.

The group talked about the Conflict Coordinator function, including the advantages and

disadvantages of creating a separate program. If there were FTE conflict attorneys, especially in areas where it is difficult to recruit contractors such as eastern Montana, it would make sense to create a separate program. However, if contractors are providing the conflict function, and those costs are charged back to the regions, the Conflict Coordinator would not be controlling the budget. There is a potential conflict with the current practice of sharing contractor costs out of the Program 1 budget. Currently the contractor costs are approximately 40% conflict and 60% non-conflict. The regions with few FTE routinely assign contractors to non-conflict cases, as do two of the larger regions.

The graphs on pages 43 and 44 show the FY 12 increase in conflict cases over FY 11 to date. There will be a budget item for the next biennium to increase the Conflict Coordinator position from .5 FTE to full time and add a staff position. Commissioner Petaja noted that this strategic plan is looking toward the future and asked how close we are to needing a real conflict office? Ms. Neal said that it might be more cost effective in the long run to have FTE conflict attorneys at least in certain offices, and it might even be considered in the short term. Mr. Freebourn noted the large increase in case numbers since last year and said part of it is due to the change in practice, with more conflict cases going out to contractors than before. Commissioner Olson said that based on the American University criticism of the agency's conflict handling, the Committee might want to recommend that the full Commission consider forming a separate conflict program. Commissioner Petaja agreed and said that the current conflict process is not likely to pass muster in the long haul.

One way to reduce the number of conflict cases (and possibly eliminate the need for a separate conflict program) would be to address the issue of DN cases. The number of DN cases has exploded since the agency began, due to various reasons including extensive changes to the DN laws, some courts' increased willingness to terminate parental rights, and a recent reaction to high profile cases with poor outcomes. The agency has no control over the number of services provided, and it is a resource drain in both man hours and dollars since OPD is required to provide FTE or conflict attorneys for the child(ren) and parent(s). This is a major policy decision for the full Commission to address: Is this a meaningful area of law the agency should continue to be involved in? Mr. Murphy will do some research on whether public defenders in other states are doing DN work.

The Committee reviewed the Goals and Objectives beginning on page 9. Chief Hunt asked that the Committee recommend advocating for parity in resources as a new goal. There is still a lot of disparity between the prosecution and the defense, especially in Program 2, and this was one of the issues specifically addressed in the ACLU's original lawsuit. Commissioner Petaja said that this should be an objective for both programs. It was also suggested that the Goals and Objectives address caseloads in both programs.

Mr. Freebourn reviewed the Major Crime Unit (MCU) graphs, which seem to show that the MCU doesn't have enough work. However, the current case weighting system (CWS) doesn't take into account the complexity and the amount of travel involved in these cases and the CWS may need to be adjusted. Mr. Murphy said that they do a lot of cases in eastern Montana, and it has been suggested that another MCU unit based in Billings should be formed. However, it would be very difficult from a supervisory perspective, and at this point the caseload doesn't

justify that kind of expansion. Mr. Freebourn asked if the MCU is still worthwhile from a strategic standpoint? Mr. Murphy said it would otherwise be difficult to handle these complex and high profile cases because the specialized skill sets required can't be available in all offices.

Chief Hunt has drafted some proposed legislation to handle postconviction relief cases which will be presented at the Commission meeting. She is seeing cleaner trials, which is a function of improved training within the system. More training on attorney discussions with the client to determine whether appeal, postconviction relief or sentence review is the client's best option could reduce the number of appeals with no basis that come in. Chief Hunt has been working on a CWS for appellate work, but was dissatisfied with the NLADA model. She is in constant communication with her attorneys regarding their workload, but will continue to work on a system to quantify it.

Employee turnover continues to be a problem. The appellate office has a 30% attorney turnover rate this year, compared to the single-digit goal of most agencies. One of the issues related to turnover is that terminating FTEs want to provide contract services to grow their private practice. The state's "six-month rule" prohibits former employees from contracting with the state for the same service, and the agency is complying with that rule while waiting for an opinion on whether it applies to OPD. Strategically, there are advantages to having more FTE and fewer contractors, so the agency may want to adopt a retention policy that would discourage FTE from leaving employment to enter private practice.

Discussion

Additional Tasks and Information Needed to Revise the Plan

A new draft plan will be prepared for the next Committee meeting.

Specialty courts, which will be discussed by the full Commission, should be included in the strategic plan.

Preliminary Recommendations

The Committee is not yet ready to make recommendations to the full Commission.

Public Comment

There was no public comment.

Old Business/New Business (*Action Items)

Set next meeting date

The Strategic Planning Committee will meet the day before the next regular Commission meeting.

Adjourn

The meeting adjourned at 3:45 p.m.