



# OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

## MEMORANDUM

TO: Montana Public Defender Commission

FROM: Wendy Johnson, Contract Manager

DATE: January 19, 2017

RE: PROPOSAL TO ADOPT TRAVEL RATE FOR CONTRACTORS

On January 12, 2017, I gave notice to the contractor workforce of the above described agenda item that would be discussed at the Public Defender Commission meeting on January 20, 2017. I advised all contractors that they would have an opportunity to provide public comment at the meeting on the 20<sup>th</sup>, and further advised that if they were unable to attend that they could submit written public comment to me. Attached to this memo you will find numerous email responses that I received.

I also received several telephonic responses and there were a few email responses that contain client information that I did not want to provide to the public. I would note that most of the feedback I have received thus far has been negative. Some of the responses I received could be paraphrased as follows:

- The logic behind the proposal is troubling to some of the contractor workforce. Double billing is a violation of the rules of professional responsibility and it is offensive to some contractors to suggest that this is happening on a regular basis.
- Many believe that they are being punished for the actions of a small minority. Several contractors have let me know that it is not a good business practice to punish all contractors for the actions of a few who may have taken advantage of the system and might be padding their bills or double billing.
- There were several contract attorneys who have advised that they will no longer accept cases that would require travel until this matter is resolved.
- Many contractors who I have had contact with have advised that the 50% cut that is being proposed is too drastic and some of them would not be able to continue taking on OPD work should such a change be made.

## Johnson, Wendy

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**From:** Judy Williams <judywms@aol.com>  
**Sent:** Thursday, January 19, 2017 12:28 PM  
**To:** Johnson, Wendy  
**Subject:** Cutting travel rate

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Wendy,

I represent children in DN proceedings in the 16th Judicial District (Miles City, Forsyth & Hysham so far), traveling from Billings. The \$62/hour rate at which I'm paid is a small fraction of my private practice rate. I do the work because I strongly believe in children having a voice in what happens to them.

As often as possible I appear at the hearings by JVN. My firm went to the expense of installing a system at our office for my convenience. Therefore I already save the OPD substantial travel payments.

Some cases require a personal appearance for effective advocacy. And some judges prefer a personal appearance unless there is inclement weather.

The proposal to pay me \$31/hour for travel because I might double bill by talking on the phone about other cases while I drive is both unrealistic and insulting. As a practical matter, much of the area I travel through doesn't even have reliable cell service. If I do manage to receive a call it is usually about the case I'm traveling for.

Accepting OPD cases is a public service. I only accept cases representing children because I care about the kids. But I have to pay the overhead in my practice and make a living. Cutting my reimbursement for travel may mean I can't accept the assignments and/or I will need to withdraw from the cases I've been assigned.

Taking the action proposed will penalize those of us accepting OPD assignments in underserved area of the state. Please do not take the proposed action.

Judy A Williams, CWLS  
Goodrich & Reely, PLLC  
Box 1899  
Billings MT 59103-1899  
406-256-3663

Sent from my iPhone

## Johnson, Wendy

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**From:** Jana McGill <janarmcgill@gmail.com>  
**Sent:** Tuesday, January 17, 2017 11:09 AM  
**To:** Johnson, Wendy  
**Subject:** Travel Rate for Contract Attorneys

Wendy:

Thank you for providing information about the upcoming Commission meeting and the agenda item regarding a decrease in the travel rate for contract attorneys.

I certainly understand the need to mitigate costs and travel costs may be one of those to be checked. However, at this juncture the current travel rate of \$62 (the same as the attorney rate) makes the contract work viable for me. My attorney rates in my private practice are, at a minimum, double the OPD contract rate. Given the travel conditions during a good part of the year with inclement weather, windshield time and mileage helps alleviate the stress of making those 9:00 a.m. hearings on time!!

In the interest of fairness, if the Commission decides to reduce the rate for travel time, then I hope the attorney rate is increased. Anyone that has represented indigent clients and been a public defender knows the challenges firsthand. And the OPD contract rate has not been increased since the inception of the agency while the costs of maintaining an office, staff, and other services have increased.

I could go on and on, but we are both busy people. I hope that my words will help you advocate a favorable position for the contract attorneys. Thank you.

Jana R. McGill  
McGill Law Office, PLLC  
17 S. Main Street, Second Floor  
PO Box 53  
Butte, MT 59703  
Telephone: (406) 782-5446; Fax: (406) 723-0118

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## Johnson, Wendy

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**From:** Richard Buley <rich@tippandbuley.com>  
**Sent:** Thursday, January 12, 2017 7:27 PM  
**To:** Johnson, Wendy  
**Subject:** Contractor travel rates

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ms. Johnson,

I would like to submit this comment in opposition to the proposal to reduce travel time compensation by 50%. I am very concerned that this proposal, while it undoubtedly would save money, encourages unsafe behavior. The proposal states that attorneys (and I assume investigators) can perform legal tasks while driving and therefore can double bill. Quite frankly, that assertion is ridiculous. I don't try to do other work while driving as I value my life as well as others. I drive Highway 200 and Highway 93 routinely as a contract investigator and those roads are dangerous enough without trying to make phone calls, text, or e-mail while driving. I worked as an attorney in this state for 35 years prior to becoming a private investigator and never, ever attempted to work while driving, nor did I ever double bill.

The proposal actually encourages contractors to try to work while driving to make up for the 50% reduction in pay. I also would anticipate that contractors will be unwilling to work in more remote counties since the travel would not be worth the pay.

Sincerely,  
Richard Buley  
Contract Investigator

## Johnson, Wendy

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**From:** Richard Buley <rich@tippandbuley.com>  
**Sent:** Friday, January 13, 2017 3:30 PM  
**To:** Johnson, Wendy  
**Subject:** Re: Contractor travel rates

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

This is a further comment to the proposal to reduce pay for travel. I notice that there is no proposal to reduce the salaries of non-contractual attorneys and investigators for their travel time. Why not? If contractors are expected to bear the brunt of the cost savings, why not save more money by reducing the pay of others by the same amount?

Richard Buley  
Contract investigator

On Jan 12, 2017 7:26 PM, "Richard Buley" <[rich@tippandbuley.com](mailto:rich@tippandbuley.com)> wrote:  
Dear Ms. Johnson,

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The proposal actually encourages contractors to try to work while driving to make up for the 50% reduction in pay. I also would anticipate that contractors will be unwilling to work in more remote counties since the travel would not be worth the pay.

Sincerely,  
Richard Buley  
Contract Investigator

----- Forwarded message -----

From: Eastman Law Office <[Info@eastmanlawoffices.com](mailto:Info@eastmanlawoffices.com)>

Date: Jan 20, 2017 8:09 AM

Subject: Commission Meeting

To: "Johnson, Wendy" <[WJohnson@mt.gov](mailto:WJohnson@mt.gov)>

Cc:

Dear Wendy:

The following is what I would tell the Commission if I was there in person.

When I started practicing law in 1995 I was in Fergus county. I was paid \$65 per hour, including windshield time, for public defender representation. The District Court Judge increased that rate to \$75 an hour in about 1998. He said we should get paid at least what the copy repairman in town was making per hour.

I am already working for less pay per hour than I was 22 years ago, and about \$50 less per hour than my current copy repairman.

I charge \$200 per hour for private pay clients. I turn down work every week. I have a professional web site I have never turned on because I prefer to do indigent defense.

However, at some point money does become an issue. I believe that point has been reached.

For example, I have a client in Dillon. We have sentencing in a week. Sentencing will take less than an hour, but with my drive it will take up my entire day. The only reason it is worth my time to take a case in the boonies is because of windshield time.

If windshield time gets cut in half I suspect you are going to have a seriously difficult time getting attorneys willing to take cases that are far from home.

Mariah Eastman