

MONTANA PUBLIC DEFENDER COMMISSION

Minutes

January 26, 2007

Montana Association of Counties Office ▪ Helena, Montana
(Approved at the March 2, 2007 Commission Meeting)

Call to Order

The Montana Public Defender Commission meeting was called to order by Chairman Jim Taylor at 8:45 a.m.

Commissioners Present

Dan Donovan, Great Falls; Wendy Holton, Helena; Stephen Nardi, Kalispell; Jennifer Hensley, Butte; Doug Kaercher, Havre; Mike Sherwood, Missoula; Caroline Fleming, Miles City; Tara Veazey, Helena; and James Park Taylor, Missoula

Commissioners Absent

Betty Bichsel, Edgar; and Ivan Small, Poplar

Other Interested Parties

Lance Jasper, Missoula

Approval of Minutes from the December 6, 2006 Meeting

Commissioner Hensley moved to approve the minutes as submitted. Commissioner Fleming seconded the motion. The motion carried.

Reports

Chief Public Defender Randi Hood submitted a written report (exhibit 1) because she was in a homicide trial and was unable to attend the meeting. Oral reports were presented by Administrative Director Harry Freebourn, except as noted.

Chief Public Defender Report

- *Public Defender System Update*

Mr. Freebourn discussed the staffing report (exhibit 2). He explained that the three Information Technology FTE that are in addition to the strategic plan represent field staff. The state Information Services Technology Division was unable to provide the needed statewide IT support and OPD had to hire staff to provide services in the field. The .25 FTE HR person is a temporary position used as needed around the state. Glendive is still short .5 FTE, and filling that position is a high priority.

Mr. Freebourn presented the Case Count graphs (exhibit 3), which show a total of 19,873 cases as of December 20, 2006. The Commission asked about the high cost per case in Glendive and Miles City. Mr. Freebourn replied that the fixed costs involved in establishing these offices inflate the per case cost. It may not seem cost-effective, but providing the same level of service statewide simply costs more in rural areas than in urban areas of the state.

- *Training Coordinator Update*

The Training Program handout (exhibit 4) has been updated to include trainings scheduled through the end of the fiscal year. OPD IT staff will begin assisting with Vision Net presentations, and all of those presentations will eventually be available on video. Chairman Taylor thanked Training Coordinator Eric Olson for doing a “bang up job.”

- *Legislative Update*

Mr. Freebourn gave an update on the status of the five OPD bills (exhibit 5). Commissioner Donovan was the main proponent at the hearing for HB 172, the custodial questioning bill. He reported that Representative Campbell made an outstanding introduction and rebuttal and that Ed Sheehy also made an excellent presentation. Law enforcement, county attorneys and the Attorney General’s office are opposed to the bill primarily due to cost issues. The bill was written to include all crimes, but will probably be amended to be limited to felonies.

The bill relating to public defender representation in post-conviction proceedings, LC 2085, is sponsored by Senator Laslovich. There are some problems with the language and it may need to be amended when it is introduced. This item will be moved to the action agenda.

The OPD budget hearing is currently scheduled for January 31, 2007 beginning at 3:00 p.m. in room 317 of the Capitol. Chairman Taylor, Chief Hood and other staff members have been working on the presentation to the appropriations subcommittee. Mr. Freebourn encouraged Commission members to attend if possible.

- *Collective Bargaining Process (Paula Stoll)*

Paula Stoll said that there are now two forums for working on labor issues—a Labor/Management Committee (LMC), and the collective bargaining process. The LMC will consist of managers and employees working together on issues of concern that are not part of the collective bargaining process, such as timekeeping.

Several issues still remain in the collective bargaining arena, including pay ranges, professional working conditions, length of the probation period and application of seniority with respect to any possible reduction in force.

Ms. Stoll gave a summary of HB 13, the state employee pay bill, which includes a one-time appropriation to bring all employees up to at least 80% of market by October 2007. This may come into play for OPD when the attorney pay range is established.

Commission Report – 47-I-105 (9) MCA

The Report to the Governor, Supreme Court and Legislature was submitted in December. At that time, the case counts and costs data were not yet available. The Addendum to the Report (exhibit 6) contains that data. Commissioner Sherwood commented that the numbers for the Missoula region seem vastly overstated. However, the case counts include every case that was assumed on July 1 and all of those that have been opened since then—not just cases that are currently open. In addition, three counties are included

in Region 2, including Ravalli County (Hamilton). Detailed analysis of these initial figures will begin when Chief Hood is available.

- *GANT Chart*

Mr. Freebourn reviewed the GANT chart (exhibit 7). He noted that item 20, hiring staff, was originally meant to show the planned staff ramp up. Since the agency may never be fully staffed, it is no longer meaningful and it will be closed. Item 32 will be complete as of January 31 when Polson moves and all offices will be in their permanent locations. The new conflict language will be ready for the standards by March 1, and item 55 will also be complete.

- *Case Management System Update*

Mr. Freebourn recapped implementation of JustWare as the temporary case management system, which consumed a huge amount of resources. He didn't realize the degree to which ITSD and state procurement were driving the RFP process for the permanent case management system, and thinks that it is no longer possible to go through the process and have the funds obligated before fiscal year end. In addition, it now appears that the \$480,000 allocated for the case management system is probably extremely inadequate.

Chairman Taylor recognized that everyone is working as hard as they can, and thinks that the Commission was given insufficient time to launch the system as a whole, detracting from the ability to do "big-picture" planning. He suggested using some of the case management funds to make JustWare as functional as possible for the next biennium, including additional licenses, training and support. The remaining funds would be used to hire a consultant to work on the RFP process, and funding for the permanent system would then be requested for the 2010-2011 biennium. This plan would also allow OPD IT staff to focus on supporting the regional offices in their daily operations.

Mr. Freebourn emphasized that state procurement and ITSD are as integral to this process as Ms. Stoll is to collective bargaining. He will discuss the proposed plan for obligating the case management funds with the governor's office and the ITSD and procurement folks.

Public Comment

Lance Jasper, a contract attorney working primarily in Sanders and Mineral counties, addressed the Commission. Some of his concerns as a contractor include an inadequate hourly rate, travel time, the cost of operating a private practice, and the lack of reimbursement of costs. Mr. Jasper said that he and other contract attorneys feel disenfranchised and want the billing practices to be revamped.

Commission members thanked Mr. Jasper for his comments and invited him and other contract attorneys to participate in the process on multiple levels. The Commission has had numerous conversations regarding billing practices (minutes from previous meetings are posted on the OPD website) and they would welcome the presence of contract attorneys at Commission meetings to facilitate communication. The Commission would also appreciate contractor support during the legislative budget hearing process, and asked for feedback on the Standards for Counsel which will be effective March 1, 2007.

Reports, Continued

- *Contract Officer Update (Larry Murphy)*

Mr. Murphy reported that there were several complaints regarding late payments to contract attorneys this month, but upon review it was determined that invoices are being paid within 30 days of receipt in the regional office, as required.

Mr. Murphy appreciated hearing from Mr. Jasper and offered to share Mr. Jasper's contact information with his contract attorney list.

The Billing Practices Committee (Commissioner Sherwood, Mr. Murphy and Kerry Newcomer) have begun drafting an outline of proposed changes. There was considerable discussion among Commission members regarding how costs might be addressed. The Committee will have a proposal for the Commission's consideration at the next meeting.

Mr. Murphy described a situation where a client's family requested that a specific contract attorney represent their family member in a homicide case. The Commission said that this was a mistake from a policy perspective, and that cases that can be handled by FTE should not be contracted out.

- *Chief Appellate Defender Report (Jim Wheelis)*

Chief Wheelis reported that his office has approximately 106 pending cases, and they have filed 61 briefs so far. Roughly one-third of their cases are conflicts, either because of multiple parties or because he or his staff were involved with the case in their previous positions with the Attorney General's office.

Court reporters are making an effort to increase their rates, and Chief Wheelis will monitor their progress and the potential fiscal impact to OPD.

Chief Wheelis will work with Mr. Olson on development of the brief bank, which will include both district court and appellate cases. The brief bank will be available to all public defenders (FTE and contract attorneys).

- *Financial Results/Budget Update (Budget Committee and Harry Freebourn)*

Mr. Freebourn reviewed the Financial Statements through December 31 (exhibit 8). Commissioner Kaercher, chair of the Budget Committee, reminded the Commission that the budget was drafted in May and at that time there was really no way to know what to expect. Both Commissioners Sherwood and Hensley commented that they are no longer getting calls regarding people being in jail for extended periods without seeing an attorney, and it's possible that the number of cases could be growing because the system is working so well. Chairman Taylor asked to see population figures for each region on the financial statements, as well as percentages to assist in analyzing the data.

Mr. Freebourn presented the FY 2006 Actual-FY 2007 Forecast-FY 2008-09 Budget Request (exhibit 9). The Commission asked what the anticipated supplemental would be, and whether the FY 08-09 request was adequate given the FY 07 run rate. Mr. Freebourn said that the supplemental request would be increased to reflect the LFD's run rate estimate. The budget request should be adequate when the one-time costs are removed from the run rate, unless caseloads continue to increase.

Commissioner Kaercher discussed the major issues identified in the box on page one of the LFD Budget Report (exhibit 10). Those issues have been addressed and OPD will be prepared to respond at the budget hearing next week.

Standards—General Discussion

The Standards will be ready for final approval at the next Commission meeting. The remaining areas are the caseload and conflict management standards. A table of contents and an index will also be incorporated.

Update from the Contracts Process and Approvals Committee

As discussed earlier, the Committee will have a proposal for Commission review at the next meeting. Commissioner Veazey asked if contract attorneys could be added to the state's malpractice insurance. Mr. Freebourn said that the Department of Labor and the Department of Administration both say that contract attorneys will not be indemnified by the state. Contract attorneys are not required to carry malpractice insurance, but Commissioner Holton recommended referring contractors to the National Association of Criminal Defense Attorneys for good coverage and good rates.

Policies Discussion

The office is working on a caseload data collection policy to be in compliance with statute. It will be presented to the Commission for review, and will include privacy language at the request of Chairman Taylor.

Update from the Committee to Revise Caseload Standards

Commissioner Nardi has been struggling to develop a meaningful, quantifiable standard. Commissioner Sherwood offered to look for information at the national ABA meeting in Miami next week. The hope is to have a proposal for the next meeting.

Public Comment

No additional public comment was offered.

Old Business/New Business (*Action Items)

Commissioners Hensley and Veazey shared information regarding proposed legislation that would reduce student loan obligations for attorneys going into public service. They will keep the Commission updated on developments.

Commissioner Donovan expressed concern regarding the "extraordinary circumstances" language in LC 2085, the post conviction bill. He made a motion to amend the language regarding extraordinary circumstances, or to rescind the Commission's endorsement of LC 2085. Commissioner Sherwood seconded. Commissioner Hensley offered a substitute motion that Commissioner Donovan act as liaison with the bill sponsor, Senator Laslovich, to find suitable language or to kill the bill. Commissioner Fleming seconded. The substitute motion carried.

Mr. Freebourn received the Lexis proposal and will email it to the Commission.

Chairman Taylor moved to allocate a portion of the \$480,000 in this biennium's budget for case management to buy additional JustWare licenses and to provide staff training. Some of the remaining funds will be used to study whether JustWare will work as the permanent case

management solution, or if an RFP process will be undertaken. Commissioner Sherwood seconded. Motion carried. An IT Committee was formed consisting of Chairman Taylor and Commissioner Hensley.

Commissioner Sherwood is attending the ABA mid-winter convention in Miami and expects to return with information on real time caseload assessments and case management systems. He hopes to do a presentation on Montana's new system next year. He asked the Commission if he should attend a presentation on mental health courts that would entail changing his plane ticket to arrive a day earlier. The Commission encouraged him to attend the presentation.

The next Commission meeting will be held March 2, 2007 at the Montana Association of Counties office in Helena.

Adjourn

The meeting adjourned at approximately 3:00 p.m.

Exhibits 1 – 10 have been posted with these minutes to the Office of the State Public Defender website at: <http://www.publicdefender.mt.gov/>. Exhibit 11, which was distributed at the meeting but not discussed, is also available on the website.