

MONTANA PUBLIC DEFENDER COMMISSION
STRATEGIC PLANNING COMMITTEE MEETING

Goodkind Building
139 North Last Chance Gulch
Helena, MT 59601

February 10, 2012

MINUTES

Approved at the March 12, 2012 Meeting

Call to Order

Committee Chair Ken Olson called the meeting of the Strategic Planning Committee to order at 10:05 a.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

Fritz Gillespie, Commission Chair; Larry Murphy, Contract Manager; Niki Zupanic, ACLU Montana

Approval of Minutes from January 18, 2012 Meeting

The minutes were approved as drafted.

Review the Strategic Plan (updated to reflect current operations)

The changes requested by the committee have been made and an update was distributed. Commissioner Olson asked about the timeline for completing the committee's work. Mr. Freebourn said that there is no deadline for completing the plan, but the Commission's Budget and Legislative committees will need any proposals that will impact their work soon. The Commission plans to submit proposed legislation to the Law and Justice Interim Committee at their April meeting, and the initial submission to the Governor's budget office is due in May.

Outstanding Issues

"Split" Judicial District

Commissioner Petaja asked about the status of Judge Tucker's issue (two different regions serve his district). Chairman Gillespie said that Judge Tucker isn't really satisfied, but there are no changes planned to the regional configuration. Possible solutions were discussed, including recruiting more contractors and opening a Virginia City office. However, the strategic plan already allows the agency to open additional offices as needed, so no change to the plan would

be required. It's possible that new offices in other areas may also be needed in response to the population increase due to the oil boom, especially in Eastern Montana.

Mr. Murphy suggested flat fee contracts as another possible solution. In this scenario, the agency would no longer recruit individual contractors, but would continue to do training and supervision. Paying a flat monthly fee for a certain number of cases would eliminate any incentive to extend cases. He acknowledged that flat fee contracts were one of the issues in the original ACLU lawsuit, but suggested that soft caps would be a way to prevent abuse. Commissioner Petaja was very interested in this model for DN cases. Mr. Murphy discussed the Washington state model, where they use flat fee contracts for both DN and criminal cases. A contractor carrying a full caseload is guaranteed a monthly fee and is limited in taking other cases.

Chairman Gillespie noted that Montana statute (47-1-216-4) currently prohibits flat fee contracts for all types of cases. Legislative action would be required to implement this solution.

Ms. Zupanic said that from the ACLU perspective implementing a flat fee for DN and other civil cases would not raise the same issues as doing it for criminal cases. The legislative intent regarding flat fee prohibitions is unclear since the responsibility for DN cases was added to the legislation very late in the process.

DN Services

Mr. Murphy has been researching whether public defender offices in other states are handling DN cases. Most of those that responded are representing both parents and children. In Montana, DN cases are both an operating and a financial drain on the system, and the increase in the number of cases may create a budget shortfall for FY 12.

Since it is unlikely that OPD could pass the DN services to another entity, the question is how to create and fund a new strategy for providing services. Creating a separate program with its own funding would keep DN work from impacting the rest of the system, and would help focus attention on those services and the budgetary issues involved. Eventually DN and other civil work will start to demand larger amounts of training dollars and accounting time. Mr. Freebourn suggested that if a new program is created it should encompass all civil practice.

Mr. Murphy discussed the proposed legislation regarding guardian ad litem (GAL), which will be presented at the afternoon meeting of the full Commission. The agency does not want to pay for an attorney for the GAL, but the problem of judges making those appointments seems to be expanding throughout the state

Commissioner Olson asked that the staff gather information regarding creating a separate program for civil practice, to be incorporated into the strategic plan and forwarded to the Budget Committee for consideration. Mr. Freebourn will address the budget impact and will prepare an implementation outline.

Separate Program for Conflict Coordinator

The Commission and the Legislature wanted to separate the conflict function from other public defender operations, but the current practice of operating out of the same program creates a conflict itself. In addition, the Chief Public Defender is unable to budget with no control over the conflict expenditures, and the conflict coordinator has no incentive to control costs.

Mr. Freebourn recommends creating a separate program for conflict operations.

There is a decision package in the draft Executive Planning Process that will be presented this afternoon to increase the conflict coordinator position to full time.

Caseload Limits

Commissioner Petaja reported that caseload limits are the attorneys' top priority in the collective bargaining sessions, and there is a committee working on setting caps. The Case Weighting System (CWS) is being continuously refined, but case caps are somewhat different. The case caps committee intends to develop a maximum number of cases per attorney using ABA standards, and a plan to alleviate any overload. The final plan will be presented to the Commission for approval. Commissioner Petaja said that the strategic plan should address caps and caseloads.

Major Crime Unit (MCU)

The current CWS seems to under-represent the work of the MCU attorneys. They handle complex cases involving heavy travel and a higher than average percentage of trials, in addition to mentoring less experienced attorneys in the local jurisdiction. Commissioner Gillespie said that this is an advantage of time-keeping, which is an objective tool to demonstrate the need for a greater weight for these cases. A proposal to modify the CWS for MCU attorneys will be presented at the next Labor Management Committee meeting. However, the strategic question is whether the MCU is providing an effective service and is worth maintaining? Mr. Murphy said there is a limited pool of contract attorneys with the ability to handle these complex cases, more than half of which are conflict cases. The MCU provides better cost control and a very high level of representation. In addition, they are developing a database of experts that will benefit the agency as a whole.

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)

The next meeting will again be scheduled in conjunction with the next full Commission meeting, or with other committee meetings.

Adjourn

The meeting adjourned at 11:55 a.m.