

# OFFICE OF THE STATE PUBLIC DEFENDER



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TO: Montana Public Defender Commission

FROM: Larry Murphy, Contract Manager

RE: Report to Commission

### 1. Conflict Coordinator

Kristina Neal has settled into reviewing and approving both conflict claims and pre-approvals. Chairman Gillespie has determined that during any absences by Kristina, I will act as her back-up approving claims and/or pre-approvals.

### 2. Standards Compliance

Since the October Commission meeting I traveled to Billings and Red Lodge and completed 11 more Standards Compliance interviews. Since October 2010, 121 interviews out of 209 contract attorneys have been completed. A spreadsheet containing the dates, locations and number of interviews is available upon request.

### 3. Contract Attorney Availability

OPD currently has 209 contract/conflict attorneys with a signed MOU. One is an attorney who donates her time and does not bill our office for her work, and one is an FTE attorney that took cases with her when she left (there is an MOU pending for another former FTE who took cases on separation). That number also includes several attorneys who are no longer available to work: two recently retired; six are no longer taking cases; another moved out of state. There are eight attorneys who have not had any cases assigned to them as of this date.

An additional ten attorneys have been sent an MOU for review and consideration based on their summary of education and experience but have not yet returned the signed document. Two more attorneys who are interested in contracting with OPD have been referred to Eric Olson for further review and discussion of training opportunities

### 4. Proficiency Determinations

As of today my office has received a total of 122 completed checklists, a significant increase since the October meeting. In some instances, I have received a checklist but have not completed the standards compliance interview.

## **5. Mental Health Consultant**

Following an RFP process, we have entered into a contract with Dr. Michael Scolatti to provide services as the Mental Health Consultant. The agreement provides that Dr. Scolatti will conduct all fitness to proceed evaluations within a 200 mile radius of Missoula. Dr. Scolatti will also provide consultations for all contract/conflict and FTE attorneys requesting pre-approval for mental health services, and he will review and approve/deny mental health MOUs that are presented.

## **6. CLE Affidavit Requirements**

The office has received CLE affidavits from well over half of the contractors in compliance with the revised Proficiency Determination Standard adopted at the August 29, 2011 meeting. The Commission may wish to consider further revision of the Standards in regards to the continuing education requirements under Qualifications and Duties of Counsel (VI. A. b.)

## **7. Client Complaints**

Since my last report we have received six new client complaints related to contract/conflict attorneys. Four were resolved by the regional offices. Two conflict complaints are in progress.

## **8. Representation of Children in DN Cases**

Proposed statutory changes to 41-3-425 and 47-1-104 (4) (b) (i) are included with the draft legislation being presented at this meeting. The intent is to help regulate some of the contractor costs in DN cases, which can be extensive and continuing due to the length of DN cases. The larger issue is developing Standards for representation of children in DN cases. Eric Olson and I are part of a work group focused on creating Standards.

Eric, Greg Hood, and I are scheduled to meet with CASA attorneys on January 25 to discuss proposals that CASA will present to the District Courts in Missoula. I will advise the Commission of the outcome of this meeting.

## **9. FTE-to-Contract Attorney 6-Month Rule**

Statute 2-2-201 states, in part, that there is a 6-month waiting period before a former employee can contract with the agency. This matter has become an issue recently as more and more FTE attorneys are leaving the agency to set up private practice expecting to be supplemented with OPD contract work while establishing themselves in the private sector. Chief Stenerson and I are working on this issue.