

MONTANA PUBLIC DEFENDER COMMISSION

State Capitol, Room 152
Helena, MT

February 26, 2016

MINUTES

(Approved at the May 17, 2016 meeting)

Commissioners Present

Richard E. "Fritz" Gillespie, (Chair), Helena; Margaret Novak, Chester; Ann Sherwood, Pablo; Brian Gallik, Bozeman; Terry Jessee, Billings; Bonnie Olson, Marion; Mike Metzger, Billings; Mark Parker, Billings

Commissioners Absent

Larry Mansch, Missoula; Maylinn Smith, Missoula; Roy Brown, Billings

Staff Members Present

Bill Hooks, Chief Public Defender; Kristina Neal, Conflict Coordinator; Harry Freebourn, Administrative Director; Eileen Larkin, Assistant Appellate Defender; Wendy Johnson, Contract Manager; Peter Ohman, Training Coordinator; Carleen Green, Accountant; Cathy Doyle, Administrative Assistant

Interested Parties

Amy Sassano, Deputy Budget Director, Office of Budget and Program Planning; Malissa Williams, Office of Budget and Program Planning; Greg DeWitt, Legislative Fiscal Division; Caitlin Borgmann, Executive Director, ACLU Montana; Jim Taylor, Legal Director, ACLU Montana; Colby Smith, Intern, ACLU Montana

1. Call to Order

Chairman Fritz Gillespie called the meeting of the Public Defender Commission to order at 9:00 a.m. He opened the meeting with a remembrance of Dave Stenerson, who passed away earlier in the week. Several people spoke, and a moment of silence was observed.

2. Introductions

Chairman Gillespie introduced Mark Parker, the newest member of the Commission. Commissioner Parker is a lawyer in Billings. He has practiced for over 30 years in both criminal defense and civil litigation and is the Immediate Past President of the State Bar. Commissioner Parker replaces Ken Olson as a member nominated by the Supreme Court.

3. Approve Minutes of December 11-12, 2015 and January 19, 2016 Meetings (*Action Item)

Commissioner Jessee moved to approve the minutes of the December 11-12, 2015 meeting and the January 19, 2016 meeting as drafted. Commissioner Olson seconded and the motion carried.

4. **Budget Issues**

A. *Audit*

Administrative Director Harry Freebourn stated that the Legislative Audit Division's routine financial audit for FY 15 and FY 16 will begin soon. The result will be an opinion on how the agency recorded its financial information; it will be presented to the Legislative Audit Committee in the fall.

B. *2017 Biennium Fiscal Update*

Mr. Freebourn expects to be able to forecast expenditures for the entire biennium within the next month. He will know, within a range, if there will be a shortfall or a surplus. If a shortfall is anticipated, the Commission and the agency have several options to address it. They could ask the Office of Budget and Program Planning (OBPP) to approve a supplemental request for appropriations in HB 3; the deadline for filing supplemental requests is October 15. Another option is to stop the inflow of cases to realign resources with expenditures. During the 2015 session, a plan was developed to limit expenditures by refusing misdemeanor cases, but it was not executed when the supplemental appropriation was approved. Other extraordinary measures undertaken in the past included eliminating training for the remainder of the biennium and asking some employees to work only half-time to mitigate the expected shortfall.

Chief Hooks never wants to go through a supplemental situation again. He explained the processes currently in place to control costs—the pre-approval process for all expenditures over \$200, and the routine monitoring of regional budgets. Although he and his managers make every effort to stay within budget, there is only so much they can do with the challenges of ever-increasing caseloads and high employee turnover.

There was discussion regarding the need to be proactive in educating the task force, the Commission and the public on how the budget relates to the mission. There seems to be a general perception is that it costs too much to fulfill the agency's constitutional obligation. When offices bump up against their budgets, they either continue to spend, or the effectiveness of representation is watered down. Once the data showing the agency is doing what it can with the available resources has been established, it becomes a problem for the entire criminal justice system to ensure effective assistance of counsel is provided.

C. *Preparation of 2019 Biennium Budget*

Mr. Freebourn provided a document explaining the Executive Planning Process for the 2019 Biennium. The budget request is usually in two parts—a base budget and change packages, including justification for the new expenditures. However OPD's funding for the current biennium was "one time only," meaning there is no base budget as a starting point. The agency must justify every expenditure, including offices, FTE and contractor costs. Staff are developing a zero based budget and will identify new resource needs to bring to the Commission for discussion and approval.

Goals and objectives are also part of the budget submission. They are being worked on through the strategic planning process.

5. **Legislative Issues**

A. *Potential Legislation for 2017 Session*

Legislative proposals are to be submitted to OBPP by April 15. A large list of proposals was submitted to the Task Force; some of them are meant primarily to initiate conversation regarding the issues OPD is facing. Others may advance as potential legislation.

Requests for reorganization are due April 1. A new organizational structure may require changes to Title 47. Chairman Gillespie invited other ideas regarding proposed legislation, in addition to the 17 proposals to the Task Force. The Commission discussed several of the proposals in depth, including eligibility issues, resource allocation and various pilot projects.

B. *Task Force "To Do" List*

The Task Force made numerous information requests at their February 1 meeting. Staff and Commissioners will prepare responses for the next Task Force meeting on May 16.

6. **Public Comment**

Jim Taylor, ACLU Montana Legal Director, supports the idea of pilot projects; he would like staff to identify one in each region. He encouraged everyone to read the Council of State Governments Justice Center [report](#) presented to the Montana Commission on Sentencing, showing that crime is falling but caseloads are increasing. Mr. Taylor believes that OPD's high employee turnover rate is due to caseloads, not pay, and he urged the agency to provide that data to legislators. He also advocated for a communications strategy to help stakeholders understand the data already provided by finding new ways to express the message.

7. **NAPD Update**

Kevin Kajer, Chief Administrator for the Minnesota Board of Public Defense, joined the meeting by phone. Mr. Kajer has been the chief administrator for 11 years, and he briefly explained his role in the Minnesota organizational structure, which operates under a co-equal model. He handles all non-legal aspects of the agency—human resources, finance, policy, contracts, leases, etc. His staff consists of a finance/human resources person, a training director, an IT director and four IT staff. Mr. Kajer handles legislative matters, communications, and grant writing. It has been a very successful model for Minnesota's statewide system.

Mr. Kajer answered detailed questions on how their funding works and how legal services are provided, and offered to answer any further questions the Commission might have in the future. Chairman Gillespie thanked him for his time, and offered to reciprocate in any way possible.

8. **Discuss Agency Reorganization**

A. *New Program (*Action Item)*

Mr. Freebourn discussed the advantages of creating a new program, Program 4, to hold the executive director position and central services functions. He would recommend moving the Commission into this program, too. A separate program is better able to

track costs, but if a program is out of money, permission is required to transfer funds from another program.

Statutorily, central services are currently in Program 1. This could give the impression that the chief public defender has authority over the executive director and central services. Moving human resources, IT, financials, and other non-legal functions to a new program would eliminate the perceived bias, and leave the chief public defender to run trial services.

There was also discussion of creating a separate civil program, or creating subprograms within each of the three existing programs to capture those costs, especially the ever-increasing dependent neglect case costs.

*B. Approve Concept of Executive Director (*Action Item)*

Chief Hooks and Ms. Neal presented two models for discussion. One is a “top down” model used by several states. Chief Hooks said there are ethical obligations that require the director to be an attorney in that model. The other model has a chief administrator and an attorney sharing co-equal leadership roles (the Minnesota model).

Commissioner Jessee asked about the ethical considerations. The Rules of Professional Conduct state that supervisors are responsible for their subordinates, and if the supervisor is not a lawyer, they are not bound by the Rules. There is a risk that a non-lawyer might interfere with a lawyer’s professional judgement in representing clients. The challenge is balancing the two principles of providing effective assistance of counsel within budgetary restraints.

The Commission had an extensive discussion regarding the two models. To clarify, in the Montana version of a co-equal model each program manager (executive director, chief public defender, chief appellate defender, conflict coordinator) would report directly to the Commission.

Commissioner Olson said that the agency needs someone with good management and budget experience. She asked that the court administrator job announcement be distributed, which is a non-attorney position answering to the Supreme Court.

Chairman Gillespie invited staff to comment on the discussion. Chief Hooks said this is a welcome opportunity for everyone to have a voice in the process. Changes in the central office will have a ripple effect throughout the agency, and he asked the Commission to be deliberative in making these decisions. Ms. Neal said that moving central services into its own program is important, and that either model for the new position will work. Other staff said that there is some anxiety with having a new person coming in, but that they will all do their best to live with the choices the Commission makes.

Chairman Gillespie sensed that the Commission was not ready to take action. He suggested that it would be wise to reflect and consolidate thoughts, and meet again in mid-March. The deadline for reorganizing (creating new programs) is April 1.

Staff will flesh out the two models to show the organizational structure and what the duties of each position would be in each model. Chairman Gillespie also has a draft job description which can be customized for each model (i.e., must be an attorney for the top-down model).

9. Discuss Strategic Plan Enhancements

The current draft of the strategic plan (draft 4) is a good start, but it doesn't have performance measurements. Commissioner Olson would like to have those started before submitting the plan to the Task Force for their May 16 meeting. The draft plan will continue to be a work in progress.

Chief Hooks has a format for performance measurements. It will include detailed implementation of the strategic plan. Commissioner Olson wants to make sure that it is simple and understandable, as well as having details making it valuable for internal use. Chairman Gillespie will work with staff while Commissioner Olson is unavailable for the month of March.

10. Public Comment

Mr. Taylor advised the Commission to be proactive and present good proposals to the Task Force in May. He supports moving central services to a new program, and having one person supervise all programs.

11. Old Business/New Business

Commissioner Novak asked why employee turnover has increased again. Attorney turnover went from 27% down to 9% when the new pay plan was implemented, but now it is back up to 19%. Exit interviews show that most of the reasons relate to workload. Support staff is also relatively high despite the wage increase to 2014 markets. Chairman Gillespie noted that exit interviews are anecdotal; employees may not really tell the agency what motivates them to leave.

A. Staff and/or Committee Task Assignments

Chairman Gillespie will work with staff on the strategic plan and on organizational models.

B. Set Next Meeting Date(s)

The next meeting will be scheduled for mid-March.

12. Adjourn

The meeting adjourned at 4:55 p.m.