



Brian Schweitzer  
Governor

## OFFICE OF THE APPELLATE DEFENDER STATE OF MONTANA

Chief Appellate Defender  
Joslyn Hunt

February 17, 2011

To: Montana Public Defender Commission  
From: Joslyn Hunt, Chief Appellate Defender  
RE: Report to the Commission for the Period December 1 to February 17, 2011

### **UPDATES:**

Caseloads: As the attached Exhibit 1 shows, the appellate office took in 9 cases in December, 2010 and closed 6 cases. We took in 13 cases in January and closed 11 cases. We have taken in 10 cases so far in February and closed 6 cases. Please note that there have been 12 working days to date in February, so we have taken in almost one new appeal per day this month. The upward tick in our case base appears to be a continuing trend.

Staffing: We have one FTE attorney (Matt Wilcox) who is out of the office on active military duty for 11 weeks. He is due to return in late April. While we are down one attorney, we had some advance notice and were able to do some pre-planning. Everyone is pitching in and to date, we have kept up.

Legislative: I have spent time at the legislative hearings. HB 97 passed the House and is on its way to the Senate. It will likely be heard after February 28, 2011.

CLE Training: The appellate office provided an outline of case summaries with some practice pointers to Training Coordinator Eric Olson for the Feb. 11, 2011 CLE.

### **Some Case Highlights and Updates:**

*In Matter of L.K.-S*, 2011 MT 21.: Argued by contract attorney Robin Meguire. The Court rejected the State's assertion that the doctrine of implied findings supported a waiver of jury trial in involuntary commitment proceedings. Held: Procedures in Title 53, Chapter 21 must be strictly complied with. Involuntary commitment set aside for failure to strictly comply with § 53-21-119 (1) (in order for the right to a jury trial to be waived, the record must demonstrate that both attorney and friend concurred with the waiver, and together made a record of the reasons for this waiver independent of their waiver of respondent's right to be present during the hearing.) Here, record failed to establish friend's concurrence.

*State v. Stiffarm*, 2011 MT 9: Argued by contract attorney Colin Stephens. Held: Under the plain meaning of § 46-18-203(2), MCA, a district court lacks statutory authority to revoke a suspended sentence before a defendant begins serving that suspended sentence. The State may properly file a petition to revoke a suspended or deferred sentence only after the sentence has commenced and before it concludes, not before and not after the period of suspension or deferral.