

# OFFICE OF THE STATE PUBLIC DEFENDER



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TO: Montana Public Defender Commission

FROM: William F. Hooks, Chief Public Defender

RE: Report to the Commission

### Staff Updates

Jon Moog, Regional Deputy Public Defender for Region 4, recently submitted a letter of resignation. Jon is leaving OPD to join the Office of Disciplinary Counsel as deputy counsel. Although the regional deputy position is exempt, and may be filled at the chief's discretion, I decided to notify all OPD attorneys of the upcoming vacancy, and to invite any person interested in being considered to submit a letter of interest by April 6. I met with the attorneys and staff of Region 4 to discuss transition issues.

John Putikka in Region 1 is experiencing difficulties in assigning cases in Libby. A contract attorney who handled a number of cases was stricken with an emergency medical condition. Mr. Putikka was forced to re-assign a number of cases, including 29 City Court cases, and is scrambling to come up with resources to handles the cases which the contractor is unable to handle.

An attorney in Region 2 will be retiring in May. David Stenerson has begun exploring options for addressing case load assignments. He also is experiencing difficulties with a lack of support staff in Missoula, and is exploring options to address these issues.

### Workload Issues

Section 2-2-201, Montana Code Annotated, states that a former employee of a governmental entity may not, within six months following the termination of employment, contract with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment. This statute has been seen as an impediment to permitting staff attorneys to take cases when they leave employment with OPD. This in turn causes problems for OPD. The client's interests are furthered by continuity in representation, particularly with cases which are well on the way to resolution. The need to re-assign cases to other staff attorneys necessarily causes delays, and adds to the workload handled by an already-overburdened staff. On the other hand, an attorney who leaves OPD should not be able to fund the start-up of a private practice with contract or conflict attorney claims submitted to OPD.

OPD received a legal opinion from counsel with the Department of Administration on the scope and extent of Section 2-2-201, MCA. Counsel concluded that the statute does not apply to OPD. I have concluded that sound policy reasons exist to permit a staff attorney to take a limited number of cases when he or she leaves OPD. The number and type of cases should be limited, and will be defined in consultation with the clients and the Regional Deputy Public Defender. I propose that the attorney who leaves OPD should not be permitted reimbursement at the \$60 per hour contract attorney rate. Instead, the attorney should be paid on an hourly rate, commensurate with his or her salary at the time of termination of employment with OPD.

Further, I propose that OPD impose a six-month rule of its own, to the effect that an attorney who leaves OPD should not be assigned any new cases for this period of time after the attorney leaves OPD.

### Resource Stressors

OPD is experiencing a significant increase in the number of dependent-neglect (DN) case filings. Region 3 had 566 DN cases in FY 2011, and we estimate an additional 200 cases will be filed this year. Four other regions will see an estimated rise in DN filings of between 90 and 165 cases over the preceding year. DN cases often require a significant expenditure of resources. State statutes mandate that counsel be appointed to represent various parties in DN cases. Typically, a staff attorney will be assigned to represent a biological parent. A contract attorney will be assigned to represent the other biological parent, and other contract counsel will be assigned to represent the child or children. Some courts order OPD to assign counsel to represent the child's guardian ad litem. As a result, we estimate that expenditures will increase between \$200,000 and \$500,000. This information was provided to the Legislative Finance Committee, and Harry Freebourn and I appeared before the Committee on March 8 and discussed the problem. The DN cases are not the sole factor. We are seeing increases in other courts as well. Region 4 will experience a substantial increase in case filings, with an increase of slightly more than 600 new cases filed in Municipal Court. Similarly in Region 9, increased case filings in Billings Municipal Court and in Hardin City Court will drive up the case filings for FY 2012 substantially over the preceding year. Regions 2 and 6 will see significant increases in FY 2012 case filings. Current estimates, subject to third quarter verification, indicate that the total number of new cases filed in FY 2012 may exceed 30,000, an increase of 9 % over FY 2011.

### Specialty Courts

Larry Murphy has developed a summary of the various specialty courts, and has identified the nature of the courts as diversionary or post-conviction. However, while we have identified the nature of the various courts, in order to assess whether OPD should be involved in assigning counsel in those courts, other data has proven more difficult to obtain and quantify. It appears that a number of courts have developed their own processes and procedures, and we thus are struggling to understand and define the scope of representation assigned counsel may provide. I propose to continue to collect information about the various courts, and submit a recommendation as to whether OPD should continue to assign counsel in those courts, at the next Commission meeting.

### Performance Evaluations

I met with the AFSCME executive boards, and one of the recommendations made by board members was that we adopt a more consistent and transparent performance evaluation process. Following that meeting, I was provided with information concerning the evaluation process developed by the Colorado public defender agency. I intend to appoint a committee to review our current evaluation procedures, and determine how to improve the process.