

# MONTANA PUBLIC DEFENDER COMMISSION

State Capitol, Room 102

Helena, MT

April 13, 2012

## Minutes

*Approved at the May 15, 2012 Meeting*

### Commissioners Present

Margaret Novak, Chester; Charles Petaja, Helena; Richard (Fritz) Gillespie, Helena; Ann Sherwood, Pablo; Alfred Avignone, Bozeman; Kenneth Olson, Great Falls; Majel Russell, Billings

### Commissioners Absent

Christopher Daem, Billings; William Snell, Billings

### Staff Members Present

William Hooks, Chief Public Defender; Joslyn Hunt, Chief Appellate Defender; Larry Murphy, Contracts Manager; Harry Freebourn, Administrative Director; Peter Ohman, Regional Deputy Public Defender (RDPD), Bozeman; Dave Stenerson, RDPD, Missoula; Sherry Staedler, RDPD, Butte; Jon Moog, RDPD, Helena; Matt McKittrick, RDPD, Great Falls

### Liaisons

Nick Aemisegger, liaison for union attorneys, and Lisa Korchinski, liaison for non-management appellate defender staff and attorneys, were in attendance. (Ms. Korchinski attended by phone.) Laura Masica, liaison for union support staff and investigators, has resigned from the agency.

### Interested Persons

Timm Twardoski, Executive Director, American Federation of State, County and Municipal Employees (AFSCME); Niki Zupanic, Public Policy Director, American Civil Liberties Union of Montana (ACLU); Greg DeWitt, Legislative Fiscal Division

#### 1. Call to Order

The Montana Public Defender Commission meeting was called to order by Chairman Fritz Gillespie at 8:40 a.m.

Chairman Gillespie announced that Chief Appellate Defender Joslyn Hunt has resigned to take a position with another state agency, effective May 4. Chairman Gillespie has decided that he will apply for the position in the hope that he can make a further contribution to the agency. He has started arrangements with State Human Resources to do a search similar to but abbreviated from the one used to select the Chief Public Defender. He will now step away from the process and turn it over to the Personnel Committee.

#### 2. Approval of Minutes of February 10-11, 2012 meeting (\*Action Item)

Commissioner Novak moved to approve the minutes as drafted. Commissioner Petaja seconded and the motion carried.

### **3. Commission Liaisons**

Appellate liaison Lisa Korchinski had nothing to report.

Attorney liaison Nick Aemisegger reported on the roundtable meeting that Timm Twardoski recently organized. Representatives from every region, including attorneys, staff and investigators, met with Chief Public Defender Bill Hooks, other management staff, and Commissioner Petaja. Those in attendance were pleased with the dialog and conversation and came away with the sense that they are moving into the next chapter. Commissioner Petaja agreed wholeheartedly that it was the most productive meeting he has been involved in over the last two years working with the Labor Management Committee and collective bargaining. Mr. Aemisegger thanked Chief Hooks and Commissioner Petaja for taking the time to meet with them.

### **4. Chief Appellate Defender Report**

Chief Hunt said that the caseload continues to grow; they are taking in about 25 cases a month compared to 10 or 15 per month previously. Chief Hunt noted that transcript costs for one of the new cases will be approximately \$7,000. Chairman Gillespie asked about the average cost of a transcript. They generally run about \$2,000, but they can be as high as \$20,000. The agency has no control over the cost of the transcripts because the per page cost is set in statute and OPD pays for all copies, although serving the county attorney is no longer required.

Chairman Gillespie thanked Chief Hunt for her service. Chief Hunt said that she has loved her job and every minute of it. She is only leaving because she needs more work/life balance right now. She is proud to be a part OPD, and she thanked the Commission, the Central Office staff, and especially the appellate defender attorneys and staff for their hard work on behalf of the agency.

### **5. Conflict Coordinator Report**

Conflict Coordinator Kristina Neal was not in attendance. Administrative Director Harry Freebourn discussed the continuing growth of conflict cases, referring to the graphs included with Ms. Neal's written report.

Regions 2 (Missoula) and 4 (Helena) experienced a spike in DN cases in March. Chief Hooks will address case growth in the larger sense during his report, including the reasons for the DN increases as well as collateral effects on offices. The agency is experiencing unexpected growth during FY 12. The past two fiscal years had no growth in new cases, but the agency is now projecting around 2600 more new cases than last fiscal year. In addition to DN increases, Regional Deputy Public Defender Dave Stenerson stated that the Region 2 (Missoula) office is experiencing additional workload due to the new municipal court judge, who is not as lenient as the previous judge. Fewer people are pleading guilty and paying fines because the new judge is sending people to jail.

### **6. Chief Public Defender Report**

Chief Hooks reviewed highlights of his written report. An important task and a regrettable one is having to replace Jon Moog as regional deputy in Helena. An internal vacancy announcement has been posted and interviews will be conducted next week. Chief Hooks wished Mr. Moog the very best.

The "six-month rule" has been an issue for some time. Title 2 seems to preclude former employees from contracting with their former agency. Under one interpretation, this would prohibit a departing attorney from taking OPD cases. This raises several issues. When the departing attorney has multiple open cases, it is in the client's interest to have continuity of representation. However,

there is also additional cost involved in paying that attorney as a contractor. If the six-month rule does not apply to OPD, there is a potential problem in that the attorney may have an expectation of being appointed new OPD cases as soon as they open their private practice.

The Department of Administration (DOA) issued an opinion stating that the six-month rule does not inhibit OPD's ability to allow a departing attorney to take open cases that they are working, thus giving the agency the ability to address the departing attorney problem in the best interests of both clients and the agency. Chief Hooks proposed a solution allowing the departing attorney to take certain cases with them, especially those near resolution or that would result in postponing a trial, after reviewing open cases with the RDPD. Cases would be reassigned to another attorney if it would not impair the client's interest. However, Chief Hooks believes that some attorneys are motivated to leave OPD because they think they will have an existing OPD caseload in their new private practice. He suggests that OPD impose its own six-month rule before assigning new contract cases to former FTE attorneys. The third aspect of Chief Hooks' proposal is that a departing attorney should not be paid the contractor rate of \$60 per hour for the cases that they do take with them; he proposes paying their current hourly rate as OPD employees.

Extensive discussion ensued. There were concerns about paying a different rate than other contractors are paid, and that implementing such a policy would impact the agency's discretion to assign cases as defined in the Memorandum of Understanding. Some suggested that a "hardship" rule should apply in certain regions, such as Eastern Montana, where there is a dearth of contractors. Other suggestions included applying the policy only in certain regions, or delineating exceptions to the policy. It was noted that the attorney general's office applies the six month rule, and Mr. Freebourn advocated for maximizing fixed costs by getting new FTE in place as soon as possible when an attorney leaves. Caps on costs by case type similar to the federal system were mentioned. There was general consensus that no one is getting rich on \$60 per hour.

Chairman Gillespie is of the opinion that the six-month rule *does* apply to OPD. He said that the opinion offered by DOA said that an attorney taking cases the attorney *is already working on* doesn't violate the statute. However it is not clear that it doesn't apply to assigning new cases when the attorney walks out the door. He has concerns about the appearance of impropriety and that there could be possible accusations suggesting a conspiratorial agreement before an attorney left that new cases would be assigned upon resignation.

Chairman Gillespie invited staff and public comment on Chief Hooks' proposal. Mr. Aemisegger said that there have been accusations of inequities, and if there isn't a formal policy there will be claims that people aren't being treated fairly. Mr. Stenerson said that there is incentive to leave in certain regions including his, and he favors a rigid rule. If the regional deputies have too much discretion, the rule will be applied in some regions and not in others. Mr. Murphy favors a policy with no ambiguity and any exceptions clearly identified. He also favors paying former FTE the current contractor rate of \$60 per hour. Ms. Zupanic said that keeping the best interest of the client in mind is the main objective, and flexibility seems to be important in that regard. She feels strongly that the pay rates should not be different.

Chairman Gillespie asked that a proposed policy regarding the six-month rule be drafted and circulated for action at the next meeting.

Chief Hooks continued with his report. Review of client complaints and grievances is another area of focus. There is a policy in place to review complaints against FTE attorneys, determine validity, and

monitor resolution. He is working with Ms. Neal and Mr. Murphy to refine the process for handling complaints against contract attorneys so that repetitive complaints against the same person can be identified. The goal is to have a central repository of information regarding complaints.

Other items of note:

- Accrued benefits payouts to departing employees are anticipated to be about \$150,000 this year, much higher than in previous years.
- So far caseloads in Eastern Montana (most notably in Region 10, Glendive) have not increased in number despite the oil boom; many of those people have high paying jobs and don't qualify for services. That may change as more people looking for work arrive, versus those who have jobs when they land.
- An increased need for interpreters in Eastern Montana is expected. OPD pays for client/attorney services, and the court pays for hearings.
- There is an issue of verification of indigency statewide, especially in the east, where people are don't have steady addresses and are staying in "mancamps." It is a transient and very mobile workforce.

*A. Legislative Update*

Mr. Freebourn presented the timelines for the Law and Justice Interim Committee (LJIC) and Legislative Finance Committee (LFC) meetings. OPD will be on the agenda for the LJIC June meeting to present an update on assessments and collections, draft legislation and a response to the ACLU report. The budget for the 2015 biennium is due to the Governor's office May 3.

*B. Current Financial and Operating Status*

Mr. Freebourn presented the standard quarterly report. The Governor's budget office has authorized 10 modified FTE to relieve stress throughout the system (at least half of the attorneys are at or over the 150 unit case weight trigger). These are temporary employees and they will not be part of the base funding, but there will be a decision package to make them permanent in the next biennium.

The current financial picture is expected to result in a \$500,000 deficit, primarily due to the increase in DN cases, reflected in the contract attorney expenditures. As Chief Hooks noted, the double digit employee turnover has resulted in anticipated leave balance payouts of \$150,000. Mr. Freebourn proposes to cover the shortfall by transferring funds from FY 13 to FY 12, as the agency has a biennial budget.

The new case figures (page 5) are current as of December 31 and show a 6% increase in new cases from the prior fiscal year. The third quarter certifications will be complete next week, and Mr. Freebourn is now projecting a 9% increase in new cases over last fiscal year, almost double any previous increase in the agency's history. The net case report on page 6 shows that the agency is working on about 2,000 more active cases per day compared to last year.

Chairman Gillespie asked Regional Deputy Public Defender Matt McKittrick to discuss the situation in his office where the case weighting report shows that his attorneys are over 200 units. Mr. McKittrick said that they have had a steady increase in felony cases as well as the spike in DNs. He discusses caseloads with those attorneys hitting the limit each month. He is lucky to have many good experienced felony attorneys and they are soldiering on. Commission Gillespie said that eventually high caseloads approach the point of client harm, and the ACLU report highlighted pressure on clients to make plea agreements. He is concerned about how high the caseloads are,

and how to relieve them. Mr. McKittrick said that they are requiring income verification for all misdemeanor applicants, not just the 10% that policy requires. They get little compliance with the requirement to complete the application process in 10 days, resulting in a record number of rescissions, none of which have been challenged so far. People who know what kind of consequences they are facing are compliant with the determination process.

*C. Increase in DN Cases – Update*

The increase in DNs originally seen in Region 3 is being seen in other regions as well, notably regions 2, 4, 6 and 9. The resulting increase in contract attorney costs is severely impacting the budget and the current projection is that there will be a half a million dollar shortfall. The Legislative Finance Committee was advised of this at its March meeting.

A new issue in Cascade County is related to municipal court appointments. During the last legislative session, SB 187 amended 46-8-101 to relieve OPD of the duty to provide representation if a judge waived incarceration as a sentencing option. The Great Falls municipal court is waiving jail time, with the result that people are pleading guilty without realizing that they now have a record that won't go away. Mr. McKittrick's office attempted to represent one of those cases in municipal court, and when the judge refused they appealed to district court, where they prevailed. Since that decision, the municipal court judge is appointing the office in every case.

Commissioner Petaja said that one of the chief complaints that limited court judges have in Lewis and Clark County is that public defenders are at the initial appearance, before the accused has applied for a public defender or qualified for services. Chief Hooks has accepted invitations to become a member of the Commission on Courts of Limited Jurisdiction and to address the judges. He has accepted both.

Ensuring representation at the initial appearance is not a new issue. As a result of an order by Judge Sandefur, there is a public defender in the jail and the courtroom at all initial appearances to explain the process and argue for bail in his district. If the client asks for a public defender, they are given the paperwork to apply. However there is still resistance in some courts and Chairman Gillespie suggested taking action before the Supreme Court to get a decision that can be applied universally. There was general consensus that it is critical to provide assistance of counsel at the front end of proceedings as required in the Standards. The 24/7 on-call attorney service recommended by American University would assist in this process although it has been viewed as cost-prohibitive.

*D. Performance and Financial Audit Update*

The performance audit field work is complete, but the results have not yet been released to the public. The financial auditors have been working in Butte and will continue with field work soon.

*E. Contract Manager Report*

Mr. Murphy explained a process that he has implemented for referring new contract attorneys to the Training Coordinator to evaluate the contractor's qualifications and recommend training or mentoring if appropriate prior to receiving case assignments.

Mr. Murphy encouraged the Commission to revisit the CLE requirements in the Standards. From the inception of the agency contractors have resisted OPD's requirement to take CLE credits in every area in which they practice, which exceeds the State Bar's annual CLE requirements. Predecessors to this Commission chose not to enforce the Standard, but Mr. Murphy advocated for revising the Standard to encourage compliance. He suggested that the Standards Committee draft proposed

revisions. He also suggested that they work on the Standards Compliance/Proficiency Determination process to include the on-line Standards verification system that the Commission endorsed. Chairman Gillespie will put this on the next agenda.

Commissioner Avignone asked what percentage of contractor cases are conflict cases versus overflow. Mr. Murphy will provide the information at the next meeting. He does know that it varies by office. Some offices assign virtually no cases except conflict cases to contractors, while others have their contractors in their rotation for assignments. Others assign non-conflict cases only in outlying areas, while in rural areas the lack of FTE requires routine assignment to contractors. Very few offices seem to be using contractors to relieve system stress.

Mr. Murphy's final issue related to contractor caseloads. Now that Ms. Neal is handling the conflict billing, he is not seeing the whole picture for an individual contractor's OPD caseload. The contract assistant is, however, seeing all of the billing, and noted that one contractor submitted combined billing for \$14,000 in one month. They will try to find a way to monitor the billing to ensure that contractors are not carrying excessive caseloads.

*F. Training Report*

Chief Hooks presented Training Coordinator Eric Olson's report. The on-line Standards verification appears to be fairly successful and the Dynamic Defender group is working on the next group of questions. Additional and timelier training is in demand, and the trial notebooks will help provide another resource for young attorneys. Cultural communication training is under development. Commissioner Novak suggested expanding this training to include the Latino population.

**7. Public Comment**

Mr. Stenerson advocated on behalf of the decision package (DP) for social workers, saying that public defender offices across the nation are moving toward this model. The cost savings to the county and state and the reduced stress on jails are the selling points to legislatures. In addition, getting people out of jails sooner and referring them to treatment instead of just defending them benefits communities. He asked the Commission to place a very high priority on this DP.

**8. Committee Reports**

*A. Collective Bargaining Update*

Commissioner Petaja reiterated the success of the recent roundtable discussion spearheaded by Mr. Twardoski. They covered a lot of ground in how to go forward and he felt an overall sense of togetherness he hadn't experienced before. Mr. Twardoski agreed that it was a success.

Contract negotiations for both bargaining units are scheduled for April 27. The only real issue is pay. The Labor Management Committees will be combined to create more transparency.

Mr. Twardoski said that there is consensus that the employee evaluations are not meaningful, and he would like to see the evaluations be suspended until the Personnel Committee can do some work on the process. Commissioner Petaja said the current method was derived from the federal system of public defender evaluations, and consists of a three-step process including self-evaluation, peer evaluation, and finally the supervisor evaluation. He was dismayed and surprised to learn that the process was not being followed routinely, with some offices omitting steps one and/or two. Mr. Twardoski said that there should be no surprises during the annual evaluation; rather it should be an ongoing process, especially if there are problem areas. Mr. Freebourn noted that performance

evaluations are a key internal control. The state requires that a written evaluation be conducted annually.

Job descriptions are in the process of being revised, which can then be integrated into the evaluation process. There was agreement that meaningful evaluations benefit everyone, and the process needs to be improved to include conversations with employees, and not just a checklist left in the mailbox. However, the supervisors need help in learning how to do a better job conducting evaluations.

*B. Strategic Planning Committee*

Commissioner Olson chairs the Strategic Planning Committee, which met in December, January, February and March. The strategic plan describes the organization and identifies goals and objectives. The Committee's task was to review the existing strategic plan in terms of how the organization has progressed since the original plan was created prior to agency inception. The Committee modified the plan to reflect current operations, and the goals and objectives were expanded to include pay and resource parity with the prosecution.

The Committee also considered the regional configuration and decided no changes were warranted. They looked at the proliferation of conflict cases and recommend creating a separate program (Program 3) to further reduce the appearance of conflicts and to clarify the budget and resource needs of that part of the organization.

Another area of concern is the increase of civil cases, especially DN cases, and their resource drain on the system. Accepting the fact that OPD must serve this sector, the Committee thinks it is important to isolate civil cases (DN, DI and DG) in a fourth program to show the costs and efforts expended on them. Isolating the needs of each program (public defender, appellate, conflict and civil) will allow the agency to present information to the legislature and others by the type of work, and will demonstrate the lack of adequate funding. The additional programs will also illustrate the fact that OPD is involved in a lot more than criminal defense. Approximately 16% of the budget goes to civil matters, protecting children and families, and the agency was never funded for most of this work.

The Committee also discussed the Major Crime Unit, the work of the caseload limits committee, specialty courts, and the social worker program, but has no further recommendations at this time.

The draft strategic plan will need to be approved by the full Commission. Mr. Freebourn recommended leaving it open as long as possible to incorporate any additional changes, but noted that the goals and objectives need to be finalized by the end of August. He also said that legislative approval is not required to create the two new programs; it is an executive branch function.

*C. Legislative Committee—Proposed Legislation for 2013*

This item was deferred until the next meeting.

*D. Budget Committee—Executive Planning Process (EPP) for 2015 Biennium*

The Budget Committee met twice to review the EPP. Individual members of the Committee ranked the decision packages (DPs) in their own priority order, and a worksheet with their priorities was distributed to Commission members as a beginning point for discussion. Mr. Freebourn noted that all FTE and dollar amounts in the DPs are high level estimates and subject to change. The DPs represent new items that are not part of the base budget.

Mr. Freebourn reviewed the budget items worksheet in detail. Most of the DPs are for more employees, additional pay for employees, and a higher contract attorney rate. If all DPs were to be approved it would result in 61 new employees and an additional \$11 million. The Governor's Office of Budget and Program Planning (OBPP) will want to know which items the Commission thinks are most important via a priority ranking.

Chairman Gillespie reviewed his rankings; since the agency is stretched so thin, he ranked additional FTE higher than the pay ladders this time. He asked the other commissioners for their thoughts and went around the table. There was a general feeling that although the pay increases are important, expanded staffing is even more critical. There was some support for including 24/7 on-call attorneys in the staffing increase.

Chairman Gillespie noted that the Commission prioritized pay ladders for programs 1 and 2 and an increase in the contract attorney rate equally in preparation for the last session. At that time, the budget director made it clear that increasing pay for FTE and/or contractors would lead other agencies to expect an increase as well, so they would not support it.

Mr. Freebourn said that in the past the Commission has presented only their top priorities to the Governor, in the hope that those items identified as most critical would be supported and eventually funded. That approach did not work as anticipated, and so the first decision for the Commission to make is whether or not to forward all of the DPs to the Governor this time. They will be subject to review by both the current and the incoming governors. The agency has kept the issues of lack of parity in pay and the double digit turnover rate in the fore, so there is hope for some support.

**Commissioner Novak moved that the Commission submit all 27 DPs to the OBPP. Commissioner Sherwood seconded.** During the ensuing discussion, the Commission agreed that although pay and staffing are of critical importance that does not preclude submitting all of the DPs. The question of whether submitting all of the DPs would dilute the importance of the pay and staffing issues arose, but that is where the prioritization comes in. **The motion carried unanimously.**

## 9. Public Comment

Mr. McKittrick said that increasing salary goes hand in hand with employee satisfaction and performance. Increased staffing might require an increase in space needs in his office, and 24/7 attorney coverage would be a huge logistical undertaking.

Chief Hunt agreed that increased pay is more important than an increase in staff. Turnover is very expensive.

Assistant Appellate Defender Koan Mercer said that it isn't about getting a raise. He has never had a funded pay ladder, so there has been no progression after six years. He would like to know that the Commission at least asked, even if the request is not funded.

Assistant Appellate Defender Eileen Larkin said now that the job market is improving, the agency will not attract or retain employees without prioritizing the pay ladder.

Mr. Aemisegger said he has not talked to attorneys about whether increased staffing or pay ladders are more important. Pay is a huge issue for all employees, not just attorneys, and part of the issue is that there is no hope of more money. Even more staffing won't fix that problem, so people will still

look for jobs that pay more. It is easier to bear the extra burden with more pay, especially when people leave and attorneys are expected to take on more cases.

Ms. Zupanic absolutely supports submitting as comprehensive a budget wish list as possible. Legislators are sometimes shocked at the huge gap between what the counties previously paid for public defense and what was originally funded when OPD was created. It reflects historic underfunding of the agency from the start. Ms. Zupanic declined to weigh in on whether staffing or pay is more important, but she would prioritize attorney staffing over other additional staff. Although all employees contribute to excellent client services, she supports increasing the attorney workforce and decreasing their caseloads.

Chairman Gillespie echoed Mr. Aemisegger's view of the importance and dedication of investigators and support staff. They are every bit as important as attorneys and more of them could relieve some pressure on attorneys.

Regional Deputy Public Defender Jon Moog offered parting thoughts at his last Commission meeting. He has asked for pay ladders to be funded every time he has addressed the Commission. Now he is leaving for better money and less stress, but it wasn't an easy decision. He thanked Mr. Freebourn and his staff, as well as the appellate office and all of the Region 4 staff in Helena. He also thanked the Commission for volunteering their time. He will stay involved because OPD is a great agency.

Regional Deputy Public Defender Peter Ohman commented on salary increases for managers. He said managers have also been in a pay freeze, and as you can see the agency is losing some fine managers today.

*D. Budget Committee—Executive Planning Process (EPP) for 2015 Biennium (continued)*

**PRIORITY 1**

Chairman Gillespie proposed combining DPs 5, 6, 15 and 16 (pay ladders and contract attorney rates for Programs 1 and 2) as priority 1. DP 22 will be eliminated because it calls for a pay ladder based on different criteria. Commissioner Russell would prefer to prioritize FTEs higher than contractors. One of the goals of the agency is to develop expertise which requires attorney retention. **Commissioner Russell moved to prioritize DPs 5 and 6 as priority number 1. Commissioner Avignone seconded. The motion carried.** Commissioner Novak asked to reconsider the motion to include salary increases for managers. **Commissioner Russell amended her motion to include DP 26; Commissioner Avignone seconded and the motion carried.**

**PRIORITY 2**

Commissioner Russell stated that staffing increases should be the next priority, before increasing the contractor rate. Mr. Murphy was asked for his input, and said that the contract attorneys are an integral part of the system. He believes they deserve a rate increase. In addition, more contractors will be required if the increase in the number of conflict cases continues. Chief Hooks noted that there is an absence of able contractors in some regions, and a rate increase might encourage the more experienced attorneys to resume work for OPD. Commissioner Russell is not averse to increasing the contractor rate, but is committed to prioritizing FTE needs first. Commissioner Sherwood said that if pay is the top priority, DPs 15 and 16, increasing the contractor rate should be next. **Commissioner Petaja moved to prioritize DPs 15 and 16 as priority number 2. Commissioner Sherwood seconded. The motion carried with one abstention.**

#### PRIORITY 3 AND 4

The DPs related to additional staffing were discussed next. DPs 1, 2, 3, 4, 11 and 12 are for adding staffing to address increased caseloads in Programs 1 and 2 and to increase investigator support. Chief Hooks was asked about the need for a deputy chief (DP 10); he said he doesn't need a deputy to assist him, but if a civil program is implemented someone will need to manage it. They can be called a deputy chief or given some other title. The social worker program (DP 14) would provide clients with improved services that attorneys don't have time to provide in terms of placement and post-dispositional follow-up. The current probation social workers have evolved into extensions of the prosecution and have a more public-safety focused approach than in the past. OPD-employed social workers could make sure that the fallback position isn't jail; they can also have positive impacts on recidivism.

**Commissioner Petaja moved to prioritize DPs 1, 2, 3, 4, 11, and 12 as priority number 3, and DPs 10 and 14 as priority number 4. Commissioner Russell seconded and the motion carried. Commissioner Petaja amended his motion to include DP 20 option 2 (additional conflict staff) in priority 3. Commissioner Olson seconded and the motion carried.** Commissioner Russell advocated for the 24x7 on-call attorneys (DP 19). **Commissioner Russell moved to amend priority 4 to include DP 19. Commissioner Novak seconded and the motion carried.**

#### PRIORITY 5

**Commissioner Novak moved to prioritize DPs 17 and 18 reducing or eliminating manager caseloads as priority number 5. Commissioner Petaja seconded and the motion carried.**

#### PRIORITY 6

More staffing-related DPs were considered. DPs 8 and 13 are for a records manager and an additional accounts receivable technician. Chairman Gillespie explained the complexity of the accounts receivable system, which changed in the last session to require clerks of court to collect the funds, although OPD is still required to account for fee assessments and collections. Mr. Freebourn said that right now it is overwhelming because it is still a new process, and perhaps it will get better over time despite the continuing increase in the number of assessments. Commissioners Novak and Gillespie reiterated their statements in previous meetings that it is not worth the effort to collect from indigent clients, especially from inmates who pay pennies per month. In addition, OPD is last in line to collect after all other fees and restitution assessed are paid. **Commissioner Novak moves to prioritize DPs 8 and 13 as priority number 6. Commissioner Petaja seconded and the motion carried.**

#### PRIORITY 7

Mr. Olson has undertaken the trial notebook project, and is working on expanding the brief bank. DP 21 includes an FTE to maintain the trial books. **Commissioner Petaja moves to prioritize DP 21 as priority number 7. Commissioner Novak seconded and the motion carried.**

#### PRIORITY 8

Mr. Murphy advocated for DP 24, claims software. DP 9, computer equipment is also one time money. DPs 9 and 24 were prioritized as priority number 8 by acclamation.

#### PRIORITY 9

Chairman Gillespie said that some legislators bought into the AU suggestion that the Commission needed their own staff because OPD staff couldn't be trusted to give reliable information. The AU suggested a secretary to the Commission, but Chairman Gillespie doesn't feel that one is needed,

and he is offended by the presumption that staff cannot be relied upon. He suggests instead a field auditor to make sure that lawyers and managers are doing what they should, and a fiscal person to ensure that staff is doing what they should. DP 23 is for three FTE: one fiscal, one legal, and one support staff. **Commissioner Petaja moved that DP 23 be prioritized as priority number 9. Commissioner Novak seconded and the motion carried.**

PRIORITY 10

**Commissioner Sherwood moved to prioritize DPs 25 and 27 (oil and gas development and specialty courts) as priority number 10. Commissioner Olson seconded and the motion carried.**

PRIORITY 11

DP 7, the death penalty fund, was prioritized as priority number 11 by acclamation.

#### **10. Old Business/New Business (\*Action Items)**

##### **A. Recruitment Plan for Chief Appellate Defender**

Peggy MacEwen from State HR will assist with the new search, developing a vacancy announcement and a recruitment plan (screening, application deadline, etc.). Commissioner Sherwood will join Commissioner Petaja on the Personnel Committee to work with Ms. MacEwen. The Commission as a whole will interview and hire the new chief appellate defender. Chairman Gillespie thanked Ms. Zupanic for the ACLU's help in distributing the previous vacancy announcement, and she offered to distribute the new announcement through her network again.

The Commission agreed that the process to fill the Chief Public Defender position was a good one, but could be abbreviated for the current opening. They also agreed to appoint an interim chief to serve during the recruitment process. Assistant Appellate Defender Eileen Larkin asked the Commission to give people an opportunity to apply for the interim position, rather than appointing someone at this meeting.

Commissioner Russell moved that the Personnel Committee be authorized to appoint an interim through whatever process they determine until a permanent replacement is made. Commissioner Avignone seconded the motion. Mr. Freebourn clarified that the Commission cannot take a vote by email, but must make decisions in a public meeting, which can be held by conference call.

Commissioner Petaja would like to solicit applications for the interim position, hold a public meeting of the Personnel committee, and then ask for a telephone vote from the entire Commission. Following further discussion, Commissioner Russell rescinded her motion.

##### **Commissioner Novak made the following motion:**

- The Personnel Committee will meet to accept applications from current employees of the appellate office for the interim chief appellate defender position;
- The Committee will make a recommendation for the interim appointment to the full Commission;
- The full Commission will vote on the interim chief appointment in an open meeting;
- The appointment will be made by April 20; and
- Details of the selection process may also be discussed at the meeting of the full Commission.

**Commissioner Avignone seconded the motion. The motion carried with Chairman Gillespie abstaining and all others in favor.** The full Commission meeting to make the appointment will be held by conference call beginning at 1:30 p.m. on April 20.

*B. Set Priorities for DPs and Legislation (\*Action Item)*

EPP Priorities were set under item 8. D. Legislative priorities were deferred until the next meeting.

*C. Response to ACLU Report (\*Action Item)*

Chairman Gillespie is nearly finished with the draft response. Pieces have been given to staff for review and vetting in terms of day to day operations. He will send the draft for the full Commission to review and will plan to approve the final version at the next meeting. Mr. Aemisegger asked to be included in the review process so that he is not forced to comment on the report for the first time in a public meeting.

*D. Eligibility Determination and Cost Recovery (Progress Notes)*

This item was deferred.

*E. Specialty Courts (Progress Notes)*

This item was deferred.

*F. Set future Commission meeting dates*

The next meeting will be April 20. The Commission may meet again in early June.

**11. Adjourn**

The meeting adjourned at 5:30 p.m.