MONTANA PUBLIC DEFENDER COMMISSION
Draft Minutes
Montana Association of Counties Office
Helena, Montana
March 2, 2007

Call to Order
The Montana Public Defender Commission meeting was called to order by Chairman Jim Taylor at 8:50 a.m.

Commissioners Present
Dan Donovan, Great Falls; Wendy Holton, Helena; Stephen Nardi, Kalispell; Jennifer Hensley, Butte; Mike Sherwood, Missoula; Caroline Fleming, Miles City; Betty Bichsel, Edgar; and James Park Taylor, Missoula

Commissioners Absent
Tara Veazey, Helena; and Ivan Small, Poplar

Approval of Minutes from the January 26, 2007 Meeting
Commissioner Nardi moved to approve the minutes as submitted. Commissioner Fleming seconded the motion. The motion carried.

Commission/Committee Changes
Both former Commissioner Doug Kaercher (exhibit 1A) and Administrative Director Harry Freebourn have asked that the new commission member to be appointed have qualifications similar to Mr. Kaercher's, especially in the area of government budgeting. In the meantime, Commissioner Sherwood agreed to sit on the Budget Committee on a temporary basis.

Mr. Freebourn noted that all active committees need a chair and the ability to form a quorum for public meetings (exhibit 1B). Commissioner Sherwood suggested adding contract attorneys as ex-officio committee members to help fill out some of the committees.

The following Committees have completed their work and were eliminated: Conflict Oversight, Conflict Research, Conflicts and Grievance Procedure, Districting, Indigency, and Rules.

Current committees and membership are as follows:
Budget: Commissioners Sherwood, Nardi, Hensley (chair) and Fleming
Collective Bargaining: Commissioners Holton, Small, and Hensley
Grants: Commissioners Veazey, Fleming, Bichsel and Taylor
Legislative: Commissioners Donovan, Hensley, Sherwood and Holton
Personnel: Commissioners Fleming and Nardi. This is a standing committee.
Contracts Process and Approvals: Commissioners Sherwood (chair) and Bichsel; ex-officio contract attorney to be named.
Caseload Standards: Commissioners Nardi (chair), Holton, Donovan; ex-officio staff attorney to be named. This will be a standing committee.
Information Technology: Commissioners Taylor (chair), Hensley and Bichsel

Report from Commissioner Sherwood
Commissioner Sherwood reported on the ABA mid-winter convention (exhibit 2). He made some valuable connections while in Miami and he volunteered to do a presentation on the Montana public defender system next year. Commissioner Sherwood described the Dade County mental health court, which is a diversion program, in contrast to the program in Missoula County that provides assistance in coping with the criminal justice system. Dr. Laura Wendlandt, the OPD mental health consultant, will be invited to join the conversation regarding drug courts.

Committee Meetings (Budget, IT, Caseload Standards, Contracts Process)
Minutes of the committee meetings have been posted with these minutes to the Office of the State Public Defender website at: http://www.publicdefender.mt.gov/.

Committee Reports

- *Information Technology (IT) Committee*
  Software Demonstration—Adobe Connect Pro
  Adobe Connect Pro can be used for web conferencing or as an asynchronous product for training use, including testing. Adobe staff provided a demonstration and answered questions about bandwidth requirements, licensing models and trial options.

  OPD IT Manager Teri Heiland gave an update on the Case Information Management Project (exhibit 3). A project team, including staff from various locations across the state, and in roles from regional deputy to support staff, will meet the week of March 5 to define the business requirements. The Department of Administration Information Technology Services Division (ITSD) will offer support throughout the process, from defining the business needs through procurement. The IT Committee discussed making a small grant available to develop open source software in collaboration with others.

- *Committee to Revise Caseload Standards (exhibit 4)*
  The Committee does not believe it is possible to set rigid numerical caseload objectives because each case is so different. Rather, responsibility for managing caseloads must be based on a "test of reasonableness" and is up to individual managers to determine. Chairman Taylor doesn't think that the "test of reasonableness" meets the statutory requirement for establishing a caseload standard and wants a weighted formula with numerical limits for active open caseloads.

Public Comment
No public comment was offered.

Committee Reports, continued

- *Contracts Process and Approvals*
  Commissioner Sherwood prepared a proposal for a revised hourly rate (exhibit 5) which provides incentives to contract attorneys that meet the OPD proficiency standards, employ support staff, or have computer research capabilities. A Contract/Conflict Attorney Survey (exhibit 6) will be used to gather additional data to be used in developing the rate structure.

Executive Session
After lunch, Chairman Taylor stated "The following portion of the meeting relates to matters of individual privacy. As Commission Chairman, I have determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed."

The meeting was closed for approximately 30 minutes before being reopened to the public.

Committee Reports, continued

- *Budget Committee*
  Mr. Freebourn noted that the caseload information (exhibit 7) shows a total of 21,613 cases at January 31, 2007 compared to 19,873 in late December.

  Mr. Freebourn discussed the FY 2006 Actual-FY 2007 Forecast-FY 2008-09 Budget Request (exhibit 8) at length. The current run rate shows an estimated shortfall of between $5 million and $6.4 million. The Governor's office has agreed to support an increase in the supplemental request to cover the shortfall, although the amount of the increase is unknown at this time. The initial appropriation for FY 2007 was inadequate because numbers from the Montana Supreme Court and the Montana Association of Counties were based on FY 2004 activity and these amounts were not inflated to FY 2007 dollars. Funding for the next biennium is currently in HB 804. The Governor's office is not supporting this bill.

Reports
Chief Public Defender Report

- *Public Defender System Update*
  Chief Hood reviewed the staffing report (exhibit 9). Some staff turnover is occurring, with vacancy savings in the Hamilton office. A position will be advertised in Butte due to a transfer, and Bozeman will recruit immediately for their attorney vacancy. Billings should be fully staffed by summer and will begin covering Big Horn county cases with FTE. Chief Hood noted that the number of contractors by region is somewhat misleading. For instance, the 32 contractors in Region 8 work almost exclusively in Bozeman and not in the other counties in the region.

- *Collective Bargaining Process*
  A draft contract is in circulation. The final issues to be resolved were professional working conditions, length of the probation period and application of seniority with respect to any possible reduction in force. Chief Hood negotiated an agreement for an organizational membership to the Montana Association of Criminal Defense Lawyers (MTACDL), so payment of individual membership dues for public defenders is not part of the contract. A pay study commission has been formed with the goal of having a recommendation regarding pay rates for the 2007-2009 negotiations. Issues that have been referred to the Labor/Management Committee (LMC) include workload and caseload issues, continuing legal education, conflicts of interest and hours of work. The LMC is facilitated by a federal mediator and operates on the consensus model.

- *Training Coordinator Update*
  The Training Program handout (exhibit 10) has been updated to include trainings scheduled through the end of the fiscal year. Over 90 people are registered for the Dependent and Neglect Conference beginning today. Chief Hood attended the Sentencing VisionNet training in February, and reported good participation at most sites. She said that this is an excellent way to provide short trainings on specific topics throughout the state.

  Training Coordinator Eric Olson and Mental Health Consultant Dr. Laura Wendlandt have developed a protocol for mental health evaluations to help contain costs while providing appropriate services.

- *Legislative Update*
  Of the five OPD-requested bills (exhibit 11), only the custodial questioning bill failed to pass out of committee. Representative Kottel will sponsor the requested amendments to SB 379, clarifying the public defender role in post-conviction proceedings. Commissioner Donovan still has concerns that the language in this bill is too restrictive. The supplemental appropriation bill, HB 3, still has not been heard and might impact cash flow at some point.

- *GANT Chart*
  Mr. Freebourn reviewed the GANT chart (exhibit 12). He noted that this was a very useful tool during the agency start-up, but almost all of those tasks are now closed. He suggested doing a GANT chart just for the Case Information Management Project tasks, and the Commission concurred.

- *Contract Officer Update*
  Contract attorney expenses are expected to stay relatively constant in counties that do not have FTE and for conflict cases, but they should continue to drop as the transition from contractors to FTE attorneys proceeds. Roughly 45% of cases are currently assigned to contract attorneys; the goal is 30% contractors and 70% FTE. Contract Manager Larry Murphy is trying to create a process to track how long cases remain open. Chairman Taylor would also like to see FTE vs. contractor case costs as soon as possible.

  Mr. Murphy asked if a policy is needed to address cases that go to federal appeal. Since there is no statutory mandate to represent clients at the federal level, a policy is not required. The appointment of a Montana public defender ends with conclusion of the appeal to the Montana Supreme Court.

Standards—General Discussion

The draft Standards (exhibit 13) include a table of contents and an index, as well as a new numbering system. The conflict language (section 6) and the caseload standard have yet to be incorporated.

Commissioner Sherwood made a motion to adopt the caseload standard drafted by the Caseload Standards Committee, with the exception of excluding the annual figures in section four. Commissioner Nardi amended the motion to reduce the numbers in section four by a third, as suggested targets for the number of active cases at any one time. Chairman Taylor moved to

adopt the caseload standard except for section four which is changed to read "The Commission shall from time to time adopt guidelines for existing open cases for all categories of cases." Commissioner Fleming seconded this motion. The motion carried with Commissioner Donovan opposed.

New intake forms have been developed for use by all contract and FTE public defenders (exhibit 14). The Commission suggested minor changes and directed Mr. Olson to distribute the forms and start using them as soon as possible. Additional changes can be made as needed based on user input.

Chairman Taylor would like to develop a competency assessment in lieu of the training requirement using Connect Pro or something similar. Commissioner Bichsel suggested that cultural competency compensation could be an issue, especially in some rural areas.

Appellate Defender Program update
Chief Hood reported for Appellate Defender Jim Wheelis. She said that the Appellate office has 100 appeals pending. The program is fully staffed at 4.75 attorneys. They filed 14 briefs and a death penalty writ in February.

Contract Attorney Benefits
Mr. Freebourn will try again to get a quote for Lexis that clearly identifies which databases are included so that it can be compared to the Westlaw quote. Many contract attorneys aren't aware of the current resources available through OPD (research attorneys, brief and motion banks). The OPD website could help get the message out regarding availability of these resources.

Chairman Taylor has determined that providing malpractice insurance to contract attorneys would make them employees. More information to follow.

Public Comment
No public comment was offered.

Old Business/New Business (*Action Items)

SB 379

Commissioner Donovan moved to adopt the following amendments to SB 379 (exhibit 15, last section):

In section 1 (1), delete "demonstrates by reference to specific facts and documents in the record and by citation to statutory, jurisprudential, or constitutional authority that:"

Change the citation in 1 (1) (a) to 46-21-201

Insert "or" after section 1 (1) (b)

Delete section 1 (3)

Chief Hood proposed retaining section 1 (3), but changing the word "means" to "includes." Commissioner Donovan amended his motion to accept that change. Commissioner Holton seconded and the motion carried.

The Commission agreed that if the amendments don't make it into the bill, they would request that the sponsor kill the bill rather than have it pass without the amendments.

Standards
Commissioner Nardi moved to amend the Standards to include Section F, Conflict Cases (exhibit 16). Chairman Taylor seconded. Motion carried.

Chairman Taylor moved to amend the Caseload Standard as the Committee drafted, with the substitution of the new language for section four. Commissioner Hensley seconded. Motion carried with Commissioner Nardi opposed.

Next Meeting
The next Commission meeting will be held May 11, 2007 in Lewistown. The Grants Committee will meet Thursday evening, May 10.

Adjourn
The meeting adjourned at 4:20 p.m.

Exhibits 1 – 16 have been posted with these minutes to the Office of the State Public Defender website at: http://www.publicdefender.mt.gov/. Exhibit 17, which was distributed at the meeting but not discussed, is also available on the website.