Draft
PUBLIC DEFENDER COMMISSION
Minutes
Friday, July 29, 2005
Big Sky Room, Wingate Inn, Helena

Call to Order:

The first meeting of the Public Defender Commission was called to order at 9:05 A.M. by Steve Bender acting as facilitator from the Department of Administration. The meeting will be turned over to the Chair once elected.

Introduction of Members:
The members provided personal background, experiences, and their interests in being a member of this Commission.

Members Present:
Daniel Donovan, Great Falls, Caroline Fleming, Miles City, Jennifer Hensley, Butte, Wendy Holton, Helena, Doug Kaercher, Havre, Stephen Nardi, Kalispell, Theda Newbreast, Babb, James Park Taylor, Pablo, Mike Sherwood, Missoula, Tara Veazey, Helena.

Members Absent:
Betty Bishsel, Edgar

Other Interested Parties:
Senator Daniel McGee, Attorney General Mike McGrath; Sheri Heffelfinger, Legislative Services; Pat Gervais, Legislative Fiscal Division; Jim Oppedahl, Court Administrator; Jacqueline Lenmark, Ronald Waterman, ACLU; Don Judge, Teamsters Local 190; Brent Doig, OBPP; Chris Manos, Ann Gilkey, Betsy Brandborg, State Bar of Montana; Beth Brenneman, MT Advocacy Program; Aggie Wismer (Recorder), DOA.

How We Got Here – ACLU and Mike McGrath, Attorney General:

Attorney General Mike McGrath thanked the members for agreeing to serve on this Commission. It will be a lot of work and the work will be extremely important. Some of the decisions made early on will be the most important ones made. This is not a new issue as indigent defense has been discussed and how it is done in Montana for a long time. Attorney General indicated that there was a lawsuit and most are under the impression that it was settled. The lawsuit has yet to be settled and it was agreed to put the litigation on hold and through the generous cooperation of the clients agreed to trust the legislative process. Senator McGee had a similar bill in the prior session and because of budget related issues and economics felt that it was time to find a different way of providing for indigent clients. Thanks to Senator McGee and many others both in and out of the Legislature were able to do that. There is a very long history going back to the 1940's of how we got here and whether this process is going to work or not,

and it is up to this Commission. One other comment was that there are strong interests in advocacy and supporting groups that you have represented in the past. To be effective as public defender you have to hire someone that can do this work. Attorney General's opinion is that you need to hire someone with strong administrative skills, experience in Montana in the criminal justice system (would be a very serious mistake by doing the national search to bring someone in from the outside). The reason for saying that is by and large what the Chief Public Defender will do is manage a cadre of defense lawyers across the state and you have to be able to select attorneys that are competent (not all criminal defense attorneys are). Two points: 1) You will have to select people who can actually get the job done and represent their clients, who have the ability to talk with their peers in Montana, relates to their peers, and who would be good. 2) You need someone who would be a mentor (the Chief Public Defender in all likelihood would not be in the courtroom very long) to that young contract attorney from this or that county who only gets a couple of felonies a year, and who is going to need that adult supervision on a daily basis. The person that is hired has to be able to do that and has to be willing to spend the time and energy to do that kind of mentoring.

The bill has a provision for a business manager but that person is a business manager that will pay the bills, make sure MACO is happy, that will deal with the financial transition issues that the Chief shouldn't be doing. The Chief should only be doing the legal side, mentoring the attorneys, hiring the attorneys, and working with the Commission. This is unique and because of our geography is not a one size fits all system.

Ron Waterman, ACLU, indicated that the litigation started in February 2002. This was done because basically the State of Montana despite several studies, one in 1976 and another in 1984, pointed out those public defenders had failed to satisfy constitutional requirements. The discovery was completed and was then prepared to file and start the trial in May 2004. Attorney General came to us suggesting that if we were willing to put the lawsuit on hold that we could work collaboratively together with the legislative committee to craft a bill that would address the needs of the state. The Legislature did a remarkable job. A word of caution to this Commission as to what you have and who you are. You have a blueprint of a house that can be lived in by future generations of Montanans, which will extend public defender services to a broad array of individuals who have been largely unserved in this society. But it is only a blueprint, you are building the house and you are starting out by finding a Chief and adding others to construct this house. Glad that you are using the Governor's Office of Budget and Program Planning. One the issues debated long and hard has not yet been resolved which deals with how this system is funded. Funding is going to be essential and as Don Judge said that you have to make sure that all of the public defenders are at parody with not just money, but court services, with the ability to obtain education, the ability to properly supervise, and most importantly the ability to have control over their case loads so that they don't become overwhelmed, don't' burn out, and are not forced to make choices that public defenders have been forced to make in the state for generations and question which of those individuals that are in jail am I going to see today because I cannot see them all?? Those are the blueprints that are before you

and the opportunity that you have in the state. We are talking and have started dialogue with the Attorney General's Office about the lawsuit that may lead to a resolution. Hoping to conclude those discussions with an agreement between the parties and will continue to put the court not involved directly but in a supplementary manner. This group will need help to deal with the legislature, budget office, and others to ensure that the funding will be there for these services. Just to remind this group of the stories that were heard repeatedly from individuals, many of them Native Americans, who were left in jail for periods of time longer than the sentence would be. If they had been convicted of a crime without first seeing a public defender or having the opportunity to go to court, they were left with a choice that if they plead guilty they get out on time served because they were served by the criminal justice system. We are delivering justice at two different levels in the state and two types of justice being delivered: 1) for those who were wealthy enough to be able to afford and hire their own attorneys, can hire individuals skilled to take to court, plead their case and advocate on their behalf. 2) For those who couldn't afford it there was often times a paper presentation in the name of an attorney they never saw, never knew, and would see half the time when they walked into the courtroom to make significant decisions about their case, no follow-up, no investigations, urged to plead guilty whether or not they were guilty of the crime. That is our history and that is our opportunity we have to transform that history into something that we could then say in the future that we moved away from.

Mike Sherwood asked the question of how to resolve the issue of the nationwide search with the statutory requirement that we hire someone who is licensed to practice in the State of Montana and that is done by December?

Answer: There is a way to do a national search to ask that individual to come abroad to potentially to make that as a requirement that if they have not been admitted to the Bar that they apply for admission and become licensed within a short duration timeframe. There have been other requirements such as that in other instances where the interim director has been appointed to allow them the opportunity to satisfy the licensure. It is important that if people are going to come in nationally that they have an understanding of the state – there is no questions about it - its breadth, its diversity, and the different programs that are going to be administered. Please don't turn your back on the national opportunities, because the Public Defender community has seen this, this is a model that is being talked about in several other states legislatures to see whether or not if this will work and they will be watching.

Attorney General Mike McGrath does not agree and does not think that someone can be hired out of state. The provision in the statute is there for a reason and that you cannot skirt that. Personally Attorney General believes you need to hire someone who can hit the ground running, this is an initial startup program, perhaps in five years you can look out of state if there is a vacancy, but you don't need someone who is going to take two years to understand and the learn the State of Montana. You need someone up front who understands and has experience with the Montana court system, knows the unique situations in each judicial district and is able to contact you, have contact

with colleagues around the state to try to get questions answered, and that is the reason why it is in the statute.
Tara asked where it was in statute. It is located in Section 7 sub 2 "Chief Public Defender must be an attorney licensed to practice in the state."

Jennifer asked Senator McGee if there were discussions specifically in committee surrounding the issue of licensing in the State of Montana and if so if he could provide the intent of the committee and the intent.

Senate McGee indicated that this was debated long and hard. It is important to understand that this piece of legislation was crafted with everyone sitting here in this room as well as many other people, both sides of the aisles, both chambers. Senator McGee said that he has never worked on a piece of consensus legislation before but this is as close as it comes. One of the premier concepts was that, just as the Attorney General said, whoever is going to be in charge (Chief Public Defender) must be able to hit the ground running. To take someone from someplace else and bring them to Montana and stick them in the middle of the process, where they don't even know where the towns are, would be counter productive. That was the consensus of the legislation that went forward and all of the groups that were represented in the legislative process, including all the legislators, from a broad range all reaching an agreement. Not everyone got his or her way but a consensus was reached on the best direction to go and the best direction to go was with a licensed Montana attorney. Senator McGee's personal opinion is that, representative of the committee and the legislature as a whole; there are capable competent people in Montana right now who can do this job. The bill was debated many times on the floor, presented to committees on both floors, and it is very clear that the Legislature passed this bill with this thought in mind.

Jacqueline Lenmark – ACLU was the person retained by ACLU to help push the legislation through. As heard time and time again, this is a historic moment for Montana and a historic moment nationally in that Montana is stepping out right now where no other state has yet gone and has taken up the initiative to create this legislative to create a cohesive statewide public defender system that is going to work. To underscore the significance of this accomplishment has been noted throughout Montana, but in addition have received complimentary press notice in Chicago, Shreveport, Los Angeles and the National Law Journal. There are eyes hopeful, waiting and watching as to what we do with this legislation and cannot overstate the contributions made by the Legislative Council and Senator McGee.

Jacqueline handed out an information letter from the National Legal Aid and Defender Association (NLADA) offering technical assistance services that are available to assist the Commission in carrying out the Public Defender Act by providing national and research resources; information and consultation to assist in developing statewide standards and or rules, developing strategic plan, developing data collection and reporting protocols, creating a public defense delivery system; and on-site training conferences. NLADA's informational letter also included invitation to two conferences

American Council of Chief Defenders (ACCD) August 4-6 in Portland, and NLADA's "Defender Impact Leadership Conference" September 11-14 in Phoenix.
Attorney General Mike McGrath added that the Department of Justice would also be available for assistance in terms staff and research and indicated that DOJ has a conference room located in the old PERS building at no cost for future Commission meetings (contact is Pam Bucy).

Comments of Bill Sponsor – Senator Daniel McGee:

Senator McGee thanked the members for being here and for their willingness to serve on this Commission, which is going to be a huge undertaking, and will be under scrutiny not only at the state level but nationally to see how this is going to work.

Senator McGee talked about the group that put this all together during the 2003 Legislative session under SB 218. A bill was crafted that would deal with some levels of indigent defense, but wasn't the whole focus and it died in appropriations committee because of lack of funding (in 2003 the state was facing a deficit situation).
While at a Law and Justice Interim Committee, Attorney General Mike McGrath approached us with the whole issue of the lawsuit and the fact that, perhaps, not a guarantee, the suit might be on hold until the Legislature could take a look and see if there was a legislative solution. Began as a sub-committee of the interim committee looking at the issues of public defense for indigents. Looked at what is indigents and tried to define that, define a structure, define a system, define supervision standards, etc., and in moving through this at first the thoughts were only just felony public defense. Then somebody mentioned adding misdemeanors, and then district courts, justice courts, city courts, municipal courts and so it was decided that all of those should be included. Senator McGee wanted to again thank all of the people who were a part of this ACLU, Department of Justice, Department of Revenue, Budget Office, Montana Association of Counties, League of Cities and Towns, Legislative Services Division, and many, many others including those sitting in this room today was at those hearings throughout the legislative session. The bill was introduced before the session began and signed by the Governor after the session ended.

Senator McGee described the structure as an umbrella with the Commission being at the very top and overseeing it all beginning with the hiring of the Chief Public Defender. Under the Chief Public Defender is the Appellate Public Defender Office (under the direct supervision of the Chief but separated as much as possible from the work of the Chief), Training Officer, Administrator, Deputy Public Defenders (do not have to all be public employees, contracted people, they can be any mix you would like to have. There will be state public employees, county public employees on contract, and some private individuals. It was done this way because that's the way Montana is – one size does not fit all). Information was obtained from other states and looked at those models and tried to craft a model that would be the best for the state. Supervision is one of the key components of the bill and makes people accountable with quality control, evaluations, conflict resolutions that will be handled by the Chief Public Defenders Office and the appeals by the Appellate Division. Standards were another important

component as there are no uniform standards across the state. In the standards several items were identified such as education, training, caseload requirements, procedures, policies and practices.

Montana Public Defender Act – Sheri Heffelfinger

Sheri Heffelfinger, Research Analyst, Legislative Council provided a summation of each of the sections of Senate Bill 146, "Montana Public Defender Act" with emphasis on the key words or language contained within that section. Questions, comments, and concerns were presented by the Commission on several sections and sub-sections.

Section 1. Short title "Montana Public Defender Act".
Section 2. Definition section is important for the interpretation for the rest of the statutes and the definitions that need to stand out are "indigent" and "public defender".
Section 3. Articulates the purpose and vision.
Section 4. A statewide system dividing the state into not more that 11 public defender offices. This was an arbitrary number chosen as they didn't want too few or too many.

> Question: Why it was not done by judicial districts?
> Response: The concern was that 22 judicial districts was too many and there were areas where the public defender services were being given already across judicial district lines and did not want to interfere or overlap by mandating going with the districts.
> Question: It appears that a youth under the Montana Youth Court Act is eligible for court appointed counsel regardless of the parents' ability to pay. Is that correct?
> Answer: That is correct.
> Senator McGee interjected that there was a policy that he wanted to make sure the Commission understood. Going from felonies to misdemeanors, etc. it also became clear that there were several civil related issues that needed to be addressed that are currently in law – if there is a potential for a loss of liberty then it is named in the policy.

Section 5. There appeared to be some confusion as to why the Commission is administratively attached to the Department of Administration. Steve Bender explained that the Constitution states there shall only be 20 state agencies, but we need more than that so for Constitutional purposes we "attach them to another agency", theoretically they are part of DOA, and DOA is the foster family of state government that includes Banking, Lottery, and this Commission. This Commission was explicitly structured to this "attached to" arrangement but for some services such as payroll, human resources, accounting and information technology or other services we assist you. For all intents and purposes the Commission and the office stands as its own state agency. For budget purposes it will have its own separate hearing apart from DOA's hearing and will be the ninth largest general funded state agency.
Section 6, sub-sections 6 & 7. Senator McGee stressed the point that getting detailed data about anything in the law and justice world is very difficult, and wants the Commission to make sure there is meaningful reporting back to them and eventually to the Legislature in regards to caseloads, caseload management, and everything else

that go into the system. This is where information technology comes in and is quite expensive. Agencies have struggled with reporting requirements to the Legislature without the information technology being available to make those reports. Emphasized that in order to get adequate funding will need to justify that funding and to justify that funding will need to keep track of caseloads, etc.

Question: Has the Department or the committee started to look at software systems or standards for software systems?

Response: A needs assessment is being done and what was funded in the bill was funding for a needs assessment for the information technology systems. One of the key items to come back to the Legislature is what is needed and what it will cost to buy it. The part of the needs assessment has to do with what are the capabilities in the DOA and Judicial branch, and how are they going to be put together to fulfill the need or have to import system or software programs.

Section 7. Chief Public Defender <u>must</u> be an attorney licensed to practice law in the state. This position is <u>exempt</u> from the state classification and pay plan. The important distinction is that the Chief serves at the pleasure of the Commission unlike other civil service employees.

Section 9. Office of Appellate Defender being separate from the Chief Public Defender.

Question: Were there discussions and was there belief by the Legislature that the Appellate Defender was going to be able under this system to handle ineffective assistance of counsel claims made against lawyers that were working for the public defender commission?

Response: Yes they were discussed and it is up to this commission is address and figure out how to do that.

Question: What provisions are there in this bill for contracting for expert witness for the defense?

Response: In committee there were many discussions on witnesses and what they should be paid. The statute currently states that all witnesses are to be paid a certain amount. This was brought up before the committee and it was decided that it was not going to be an issue that the committee settled at this legislation. There are three types of expenses that were pooled but cannot get a handle on at this time – witness expenses, transcription fees, and psychiatric evaluations.

Section 10. Training Program/Coordinator. The training coordinator is a key position because it is so important it is an exempt position, not classified, and is appointed by the Chief Public Defender. Important duty for the coordinator which was not in the bill but should be is the duty of providing ethics advice or provide a system for ethics advice because the “bar” has not kept up where it should be – people do not know where to turn to get answers, guidance or written opinions. It was suggested to set up an in-house ethics program to avoid future problems where answers are available and uniform across the state.

Section 14 -Eligibility –Determination of Indigence, sub-section (e) must prohibit individual public defenders from performing eligibility screening pursuant to this section, and the question asked is “who does”?

Mike Sherwood talked about the appellate defender commission and the standards and the duty to adopt those standards. He mentioned a publication

called the “compendium” (sic) put together by the NLADA, combination of various interests that represent indigent defense or indigent people consisting of approx. 1,000 pages. Waded through all those pages and came up with standards that are now about 40 pages. As mandated by the statute they were sent to the Supreme Court and the Supreme Court has now said that statute is no longer in effect, the ruling is mute, and we are now going to leave it up to this “body” to adopt standards. The standards were sent to Steve being the proposal that was sent to the Supreme Court. Our job under the mandate of the statute is to provide minimum standards for public defense and criminal cases, we didn’t do that in light of SB#215, we contemplated all cases, all delivery systems, contract, in-house public defenders, case by case assignment, etc. As perceived now it is the job of this Commission to do what the Supreme Court was supposed to do when it adopts standards. Some of the standards conflict with the law, contains complimentary language, or needs additional language to this current act regarding conflict of interest language, qualifications of attorneys, training, competence, case loads, collecting case load data, adopting rules which were not proposed, restrictions on contracted services, assignment of counsel, right to counsel, who makes determination on indigents, how things are paid, nothing on information technology, complaints about public defender services and how those grievances are handled and if they conflict with current law.

Mike Sherwood’s proposal is to compare this act with the standards that were adopted and sent to the Supreme Court. Mike Sherwood will prepare an analysis and show the stricken language where it conflicts with the proposed statutory language and forward to Steve for his distribution.

Question: Is it the intent of the legislation that every person gets a public defender to start with and then if they don’t qualify the courts are notified. This is one of the biggest areas of “loose cracks”.
Response: The strategic plan, your allocation of resources, how you manage the system in a fair and consistent way across the state is very important. This would be a very important policy as the “Commission” to set, so it is not dependent on just one judge being talked into a certain way of doing, while in another jurisdiction that doesn’t happen.
Question: If there is a dispute between indigent defendant and eligibility technician and there is a hearing before the court, what is contemplated for the role, if any, of the assigned public defender to that indigent – suppose to remain neutral, advocate the office budget, advocate on behalf of the indigent?
Response: Sub-section (1)(c) states that a person who has counsel assigned, prior to a determination, is entitled to the full benefit of public defender services until the court’s order requiring the assignment is rescinded.
Question: Then does that public defender take a rule in the determination of the eligibility?
Answer: No!! The attorney of record would have to until the judgment goes away. That’s why the attorney doesn’t get to make the eligibility determination; otherwise he would be conflicting himself.

Senator McGee added that he wished this Commission had been there for the hearings and could have asked questions and addressed some of the concerns you now have. Senator McGee doesn't believe the concept of everyone getting a public defender assigned to them out of the chute was ever discussed or contemplated by the legislature. He is not saying that it should not be there or should be there and doesn't believe it was thought of in those terms.
Comment: Assuming you have a full-time eligibility technician in each regional office, you will probably be able to have a daily determination of eligibility, and that person will probably go to jail daily, it will most likely be a quick determination.
Comment: The legislation is broad enough in that sense to give you the Commission the discretion and authority to determine and then implement guidelines along any of the scenarios suggested. The conflict between the eligibility determination and the advocacy for that client if the determination goes against was so drafted in the legislation that it gives the latitude to address that call in the rulemaking.

Section 19. Psychiatric Evaluation - The cost of the examination and other associated expenses (includes medical, dental, and costs of medication). Senator McGee indicated that considerable time was spent on this issue because people will be sent to such places as Warm Springs and the costs of the evaluation are much less that the cost of staying until the evaluation is completed could run into thousands of dollars. Refer to Section 46, sub-section (4)(I to iii) new language on the examination requested.
Comment: The way it is written before a public defender client goes to a state hospital the Commission could have a budget to, for less money, hire a defense psychiatrist for the examination and then go for the suit.
Comment: Ultimately the funds for this program are going to come from a withholding from the county's entitlement share of state revenue. There was not a good way of calculating of what might be appropriate to pay for these examinations. There was a huge debate over what costs should be included and resolved in this manner. The statute states that the court can make it on their own motion, the statute states that prosecution can request, the statute states that the defendant can. It was a matter of accounting that the costs were allocated in this way in the legislation so that the prosecution and the court requests would be accounted for under Jim Oppedahl's office that public defender requests would be allocated under this Commission. This information will be aggregated and worked into the budget that will go forward in the appropriations process.

Section 69 – Salary and Transfer of County or City Employees. Questions posed by Don Judge.
Question: Limit salary increases to no more than 4%. There are two counties under contract and trying to figure out what their projected salary increase is under those contracts. If those salaries are beyond 4% how does this statute apply when conflicting with the current contract that has already been signed by

those counties in the application of those contracts covered under the law both by the State Collective Bargaining Act and the counties? Don Judge will provide information as to what those salary increases are if they exceed the 4% and will need to come up with a resolution between the ability to collectively bargain and what this statute says.
Question: Employees of county or city public defender offices who are employed by a county or city on June 30, 2006 may be transferred to state employment . . . . Don Judge indicated that he could not find anywhere in the law how that transfer was to take place. Is it the county making the assignment or is it the city? Then Sub-section 12 says that if it is contracted the commission is going to contract with county to carry out those services, sub-section 12 (4) says that contracting for public defender services must be done through competitive bidding. Would this put the counties in the position of having to go into a competitive bidding process with a consortium who may want to provide those services?
Answer: There was a great deal of discussion on the collective bargaining agreements and the state did not want to be bound by those agreements. The concept was that they would have to be renegotiated if more than 4%.
Question: If it is not a county transfer can employees individually elect to be transferred into the system?
Answer: Transferred employees become state employees and it is an individual choice and not by county choice. This is not something that is forced on those employees but there was consideration that they may want to stay in the situation they are now in and are entitled to the higher salaries. This left it up to the Commission to decide that if a person applies to become a state employee in the transfer, the Chief Public Defender accepts or denies that application in that hiring transfer.

Section 72. Legislative Audit. The Legislative Interim Committee will be monitoring the findings of the audit which is to be reported by April 30, 2006 with results available in June. The Legislative Interim Committee can consider legislation to adjust this Act in the bill and do some clean up work if needed in the statute.

The rest of the sections summarized conform to the statutes in the body of the bill.

In addition to Sheri's verbal outline a Bill Summary (4-page Overview) was make available to the Commission during the meeting.

Public Comments:

Beth Brenneman, Montana Advocacy Program. This program represents people with developmental disabilities and mental illness and the whole process not only is concerned with felony prosecution but because of voluntary commitment, as well as guardianship, and conservatorship are part of your charges. Those proceedings are

handled by public defenders who are also handling felony prosecutions tend to become less adversarial, less time spent on the issues because they are so different from criminal prosecution, less information about the issues and how to appropriately litigate. There is a lack of understanding about all the other programs that are available to people short of institutional, guardianship, and conservatorship. Hopes that her presence here will encourage this Commission to look to people for the Chief Public Defender position who will look at felony prosecution and all the other civil issues.

Chris Mangos, State Bar of Montana. The State Bar did not take a position on this bill or system for a lot of reasons.

- Those that are Bar members can appreciate the fact, while Senator McGee could get consensus, the Bar does not between attorneys and there were county attorneys who were not excited about this proposal.
- Did have people attend the hearings and tried to lend assistance as particular issues came up.

Now that the system is here, we have to congratulate the Commission for being here, even though frustrated, there are high expectations and that is going to have to be grounded in reality. There are people out there expecting a lot to happen, but not sure all can happen in the short term. Being a county attorney in a part-time practice in a rural county was apathetic over the fact that there was good criminal defense public defenders in their own mindset could have done a better job for their clients. Doesn't feel that this Commission has that perspective and need to keep them in mind as you move forward in asking for comments. You will sit here three or four years from now saying why didn't somebody come early on and talk to us about x, y, or z because now they want to complain. That is the challenge of the legislative process, and appreciate the fact, now gone through two legislative sessions, the legislature only gets those people who have interest to show up for the hearings. Now that this Commission is a public body, you will have the challenge of getting the notice out to get that public if you desire that comment when and where you want them to participate in your hearings. You will need to reach out to those entities that already have been covered, but may malign the judiciary, but they are going to make sure the system works, and that is how both county prosecutors and public defenders of criminal defense are operating. That is how the justice system meets the needs of Montanans.

The State Bar of Montana is to lead the legal profession and serve the public interest and has provided to the Commission the "Lawyers' Deskbook & Directory". This directory highlights the judicial districts, county attorneys, list of cities, towns, counties, rules of professional conduct, plus members, resources, and other rules & forms. The Bar also answers questions about ethics and all sorts of issues on a daily basis. The Bar's trade journal is "The Montana Lawyer". For more information on the State Bar of Montana it is available on their webpage at www.montanabar.org.

Jim Oppedahl, Court Administrator. The Court Administrator's Office has been involved in the system during the past 15 years and is very committed in helping make a smooth transition. In the past four years at the state court level have gone from a $10 million budget with 100 employees to a $40 million budget with 400 employees and quite a few

lessons were learned along the way. When you assume a system at the state level there are quite a few stories to tell. Jim indicated that he would be happy to come back at some point to give an overview of the state courts and talk about what we are doing in terms of the uniform case filing standards and work order assessments and studies that will be done next year for this report for district court judges staff. Most critical to get our act together in terms of knowing precisely where the workload is and how much is out there. As court administrator for the past two years have heard a lot about frustrations of data, numbers, dollars, and accountability. Indicated that they have lots of numbers and can pass on information to you in terms of the system. It is not at the grand level that some have wished because we inherited a system that went in 56 different directions and then was charged with the responsibility of affording it all out to the court that was a real challenge.

As far as information technology goes are in the process of installing a modern case management system, state standard oracle based. This fall the central depository will be brought up and takes a mere image of all those databases and all the court appointed jurisdictions. From the past legislature received funding ($1 million plus) to do the same thing in the district courts. If more information is needed it is available on their webpage at www.courts.mt.gov.

Elect Chair and Vice-Chair:

Steve Nardi made a **motion** to nominate Jim Taylor as Chair. Jim indicated that he would be interested in being Chair as during the first year he would be taking leave of absence from the tribes and will be teaching at the Law School in the Clinical Program and would have a little more time. Mike Sherwood seconded and the motion carried unanimously.

Jennifer Hensley made a **motion** to nominate Steve Nardi as Vice-Chair. Mike Sherwood seconded and the motion carried unanimously

Commission Operating Procedures:

The membership reviewed the proposed operating procedures. A website will be built by Steve Bender and other DOA staff. Theoretically every state agency is to have a web presence that would show the membership, meeting minutes, procedures, mission statement, etc.

Motion and Vote: Steve Nardi made a motion to adopt the proposed operating procedures with the meetings being conducted following Robert's Rules of Order, except that the Chair may vote. Jennifer Hensley seconded the motion. The motion carried unanimously.

Review of Draft Work Plan:

Steve Bender walked the members through Items 1 through 13 of the draft work plan (handout). The draft serves a number of purposes, one of which is to identify where the Department of Administration can help the Commission, and other is to charge the department employees with those tasks, show dependencies, identify critical tasks, i.e., priorities that need to be worked on.

The portion of the work plan that was discussed includes:

Appoint Commission
Provide Accounting Services – until the Commission gets an accounting staff up and running DOA will provide these accounting services
Process Payroll – the way the budget is structured, the department will provide administration for the HR services and a senior person is already attached to that on a half-time basis for the next year and will process payroll. That is perpetual as to the way the budget is set up and the commission and the office does not have to deal with those back office details.
Advertising Chief Position

- advertising time
- Reviewing of applications (how the Commission would like to do that is up to Commission. DOA will collect and turn over to whomever the Commission wants)
- Interviews done by the Commission, determine how long it will take to get a chief onboard and make the decision. Once the Chief is hired and in the office, will publicly notice that this office exists.

Other Staff Identified in the Budget (Steve will provide more specifics on the staff positions and budget).

Chief Public Defender Recruitment:

Chair Jim Taylor offered his thoughts on the Chief Public Defender and that someone should be on board as soon as possible and that there is a way that also incorporates a national element from a member of the NLADA (National Legal Aid & Defender Association) involved in NTDL. Jim is a member of the American Counsel of Chief Defenders which is plugged into the NLADA market, and once settled on a salary range and job description Jim can get that out in an hour. As Jim said a lot of people are watching what is being done in the state and the word is out and there will be people looking. Cannot possibly wait until February if it is someone who is not licensed in Montana. There is not much happening until a Chief is on board. Maybe it would be possible to hire someone now and then have them pass the bar. Jim's personal preference is to hire someone now with license in Montana wherever they are living, knowledge of Montana of its history, people, the issues we have here of the judiciary, what has happened with the Public Defender system is essential. Again, Jim would like to get moving as soon as possible.

Note: The Bar exams are only given twice a year – February and August which is set by Court Order and coincides with the administration of the multi-state bar exams. February results are available in mid-April.

A poll was taken of the members as to their views on whether a national search or an in-state search should be conducted for the Chief Public Defender. The consensus was that to advertise both outside and inside Montana

Discussion followed on what the members see as the role of the chief public defender. This person needs to be a good trial lawyer, administrator, personnel manager for the lawyers and staff, mentor, teacher, and someone who can talk and deal with the legislature.

Salary range is the market to maximum used for top attorney classification for the state, staff attorneys are typically paid in the $25.00 per hour range. There are very few attorneys that come close to this range. From state government perspective the salary range of $78, 00.00 to $93,700.00 should provide for some good applicants, however, from the private sector perspective probably provide for the bottom third. There is a big difference in state government attorney pay and successful private sector attorney pay.

Job announcement will be posted on the website under state jobs and advertised in major daily papers. Montana Lawyer does not publish an August issue.

Before the closing date will need to have rating criteria and interview questions.

Motion and Vote: Steve Nardi made a motion to accept the job description, advertise nationally with a closing date of September 15. 2005, add the language that the contemplated start date is November 1, 2005, early applications preferred, and leave the practice law as it was. Jennifer Hensley seconded the motion. The motion carried unanimously.

Butte Office Selection:

Statutorily the Department of Administration is responsible for the leasing all properties statewide and is prepared to do that with a property manager that is very good at negotiating leases.

Have begun touring the Butte properties which was done before the beginning of the fiscal year.

Extend the offer to make the selection from the short list, with DOA making the selection of the property that most fits your criteria with Commission final approval

Get the best that can be afforded

Motion and Vote: Doug Kaercher made a motion to allow the Department of Administration to select and negotiate the space. Steve Nardi seconded the motion. The motion carried unanimously.

Need to offer Jennifer a rational to defend or to explain the decision that will be made by DOA.

Mike Sherwood commented on the office being in Butte that is political back scratching and that it may negatively impact who we can hire. There are people who would go to work in Missoula, Kalispell, Billings, but would not take a job in Butte.

Meeting Schedule:

Two Public Defender Commission meetings have been scheduled for Friday, August 26th and Tuesday, October 4th. Location for these meetings will be announced when agendas are finalized.

Adjournment:

Meeting adjourned at 4:45 P.M.