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July 23, 2014

To: Montana Public Defender Commission

From: Wendy Johnson, Contract Manager

RE: Report to the Commission

State of the Contract Program.

There are 225 contract/conflict attorneys with a current MOU, 24 investigators with a current MOU, and 62 mental health providers with a current MOU. As was noted in my previous report, the current rate for contract attorneys increased to \$62 dollars per hour as of January 1, 2014. Closing forms that are sent to the Central Office are now being entered into our case management software on a daily basis.

Contract Manager Activity.

Lots has been happening since I became Contract Manager in January. At the last Commission meeting, I was able to describe some ideas I had for updating the Contract Program, and many of those ideas have been implemented. The following is a brief explanation of all that has taken place.

Memorandum of Understanding Updates

Prior to my arrival, all Memorandums of Understanding (MOU) ran according to the same term. The MOUs that were used at the time I started were on a cycle that began July 1, 2012 and expired June 30, 2014. This term was the same regardless of the date on which the contractor signed the contract. This led to some logistical concerns, including the fact that all of the renewals for all contractors (including attorneys, investigators, and mental health providers), needed to be completed at the same time Central Office is conducting its fiscal year end processes. I advised the Commission at the February, 2014 meeting that I would like to change the MOU cycle so as to make the MOU renewal process less burdensome by staggering the process out over the course of the year so that all of our contractors wouldn't be on the same cycle. After discussing the matter with various personnel in the agency, as well as consulting with the Department of Administration, I was able to draft an Amendment to the current MOU that would allow each of the contractors to extend their existing MOU for a matter of months. We chose to extend the Memorandums for a period of months that varied by region, with the idea that in the future we would be able to conduct proficiency determinations for the attorneys in a given region at approximately the same time as their MOU would expire/renew. Of the

225 contract attorneys with an existing MOU, only 19 who received the Amendment did not return it for various reasons.

Additionally, an updated Memorandum of Understanding was drafted and presented to the Contract Process Committee at their most recent meeting. After describing in detail for the Committee the various changes and the reasons for those changes, the final document was approved by said Committee. Among the most notable changes were: the term of the MOU, which will now run for a period of two years from the date on which it is approved; the way in which the MOU may be terminated; the addition of a provision that requires all contractors to maintain an active email address; and the addition of a provision that requires all contractors to notify OPD of any disciplinary actions they may have pending against them. Since the Committee's approval, we have begun using this form for all newly approved Contract Attorneys, as well as for those contractors whose extensions will expire throughout the year.

Process Updates

During the Contract Process Committee meeting in July, the Committee was presented with updated drafts of the Attorney Education and Experience Questionnaire (Education and Experience) and the How-To Become an OPD Contract Attorney document that are currently available on the OPD website. After researching the contract programs for many other states, updates to the Education and Experience were made to ensure that OPD is obtaining more relevant information regarding the qualifications of those attorneys who want to be added to the contract attorney panel prior to them being approved. The How-To Become an OPD Contract Attorney form was updated to give more detail to prospective candidates about what the actual process entails. Both of these documents and their changes were explained in detail to the Committee and were approved for use.

In addition to the documents now providing more relevant information, review of the materials submitted by those wishing to be included in the various contract panels now features a multi-faceted approach. All references are routinely checked, and input is also sought from Regional Deputy Public Defenders, the Conflict Coordinator, and the Chief Appellate Defender prior to an MOU being offered to an applicant. This information, in conjunction with the applicant's qualifications, location, and areas in which they are willing to practice, are all considered before approving an applicant.

Case Management Software Update

As was discussed at the February, 2014 Commission meeting, the contract program had not historically implemented or utilized OPD's case management software system. Since that meeting, and with the help of Marsha Parr, our Software Administrator, and Lynn MacMillan, my very able assistant, we are now able to say that most information relating to our contract attorneys, contract mental health providers, contract investigators, and many of the experts utilized by both contractors and our full time staff, is now available in our case management system. The MOUs, Education and Experience, and proficiency determinations are now available to all Regional Deputy Public Defenders, the Chief Appellate Defender, and the Conflict Coordinator, through the case management system.

Marsha Parr and Kyle Belcher, our IT Manager, also worked closely with me and Kristina Neal, Conflict Coordinator, to provide us with several reports that will allow us to monitor our contract attorneys, investigators, mental health providers, and other experts more closely.

Training for Contract Attorneys

Training Coordinator Peter Ohman has been working hard to include the contract attorneys in the various trainings that he has organized over the past several months. The response from the contract attorney pool has been very positive. Many of our contractors were able to attend the Red Book DN training that was held in Bozeman in July, and several more were able to attend one of the monthly one-hour trainings that we do via video conferencing. We will also have several of our newer contract attorneys attend the annual Boot Camp training that is held at Lubrecht. All of the feedback that has been received indicates that more of these opportunities would be greatly appreciated and it is our goal to continue to make them available to contractors.

Limiting the Number of Contract Attorneys by Region

We are continuing to have an influx of interest from contract attorneys in certain regions. In particular, Region 2 (Missoula) has new applicants on an almost weekly basis. Just this week, I received the materials for two individuals interested in being added to the contract attorney panel in Missoula. This is proving to be a difficult issue for a number of reasons, including the fact that adequate supervision and evaluation of all of the existing contract attorneys is logistically problematic. As such, at the Contract Process Committee meeting, the committee engaged in a discussion about possibly limiting the number of contract attorneys in certain regions in accordance with Montana Code Annotated Section 47-1-216(9) which provides as follows, “(9) The commission shall limit the number of contract attorneys so that all contracted attorneys may be meaningfully evaluated.” At this time, it would be beneficial to have the Commission adopt a policy that would allow OPD to limit the pool of attorneys in a specific region if, after evaluating the current pool, the Contract Manager, Conflict Coordinator, and Regional Deputy Public Defender determine that increasing the pool would not be beneficial. A waiting list may be appropriate in those Regions where we determine that we must close or limit the pool.

Other Updates

- A Request for Proposal for a new billing system is under way, and the system once accepted and implemented will allow contractors to submit their bills online. It is expected that this RFP will be put out for bids in the very near future, and is anticipated to be beneficial on a number of fronts, including the fact that there will be less of an opportunity for human error.
- Kristina Neal and I have had the opportunity to meet with several of our contract attorneys throughout the state. We recently traveled to Billings for an afternoon and made ourselves available to answer questions and obtain feedback from those who are providing valuable services to this agency. We have a trip to Kalispell planned for the

beginning of August and are eager to see what contractors in a different area of the state have to say.

- The proficiency determination process was discussed at the Contract Process Committee meeting, and many good ideas were suggested by members of the Commission. The form that has previously been used needs to be revamped. With a change of form, and with the assistance of my assistant, the Conflict Coordinator, and the Regional Deputy Public Defenders, the information that we will use to evaluate the proficiency of our attorneys will be more qualitative and give us a better understanding of what and how our contractors are doing. This process will be implemented in the very near future as well, with proficiency determinations being conducted on a region by region basis in accordance with the new MOU cycle.