

MONTANA PUBLIC DEFENDER COMMISSION  
**CONTRACTS PROCESS COMMITTEE MEETING**

Goodkind Building  
139 North Last Chance Gulch, Helena, MT 59601

**August 8, 2012**

**MINUTES**

*Approved at the June 11, 2013 Contracts Process Committee Meeting*

**Call to Order**

Committee Chair Chuck Petaja called the meeting of the Contracts Process Committee to order at 1:10 p.m.

**Committee Members Present**

Ken Olson, Great Falls; Chuck Petaja, Helena

**Agency Team Members Present**

Wade Zolynski, Chief Appellate Defender; Bill Hooks, Chief Public Defender; Harry Freebourn, Administrative Director; Eric Olson, Training Coordinator; Kristina Neal, Conflict Coordinator

**Interested Parties**

Fritz Gillespie, Commission Chair; Niki Zupanic, Public Policy Director, American Civil Liberties Union of Montana

**Approval of Minutes of December 20, 2010 Meeting**

Commissioner Olson noted a typographical error on page two. He moved to approve the minutes as corrected. Commissioner Petaja seconded and the motion carried.

**Review and Approve Current Contractor Rates (\*Action Item)**

- A. Contract Attorneys
  - i. Standard Rate
  - ii. Capital Defense Rate
- B. Investigators
- C. Mental Health Providers

Administrative rule requires the Commission to review and approve compensation rates biannually. The committee will make a recommendation to the full Commission at the August 27 meeting regarding the current rate structure and a process to make future rate changes.

Commissioner Petaja reviewed the current rates for attorneys, investigators, and mental health providers. Chief Hooks noted that all mental health evaluations are subject to pre-approval, regardless of cost, to ensure that the attorney is requesting the correct type of examination for the case.

Mr. Freebourn recommended approving these rates for submission to the full Commission to comply with the administrative rule. Commissioner Olson was unhappy with approving a rate of \$75 per hour for licensed clinical social workers when the attorney rate is only \$60 per hour, but he reluctantly moved to approve the current rate schedule for attorneys, investigators and mental health providers. Commissioner Petaja seconded and the motion carried.

### **Process for Developing Future Rates**

Mr. Freebourn reviewed the history of the current rate structure, some of which were inherited (the standard attorney rate) and some of which were adopted shortly after the creation of the agency. The mental health protocol was highly controversial; it was meant to buy the right service at the right price by requiring OPD's mental health professional to review all service requests.

In the past the Commission developed a new rate for attorney services, but got bogged down in how to finance it and never adopted the new rate. Mr. Freebourn noted that if the original commission had implemented a \$2 per hour rate increase annually, the rate would be \$72 per hour by now. Those incremental increases would be just a small part of the annual budget, whereas the lump sum decision package has failed repeatedly. He recommends setting rates as a separate process from funding them, and the governor's budget office agrees with that tactic.

The Commission currently has rates in place for attorneys, investigators, and mental health providers, and provides a \$25 per month stipend to help offset office overhead (copies, etc.). They may also want to consider setting a rate for paralegal or administrative work.

Commissioner Gillespie asked how the existing rates were developed. Mr. Olson did an extensive survey on mental health service rates in late 2006, and brought the protocol and rate schedule to the commission in summer 2007. The standard attorney rate was already in place, and the original commission voted to pay twice that for capital cases.

The committee engaged in a wide ranging discussion of what information might be useful in developing new rates, including surveys of other states, private firms, federal defenders, other state agencies and their contractors. The Montana Association of Criminal Defense Lawyers membership could be a survey target. Any new rate adopted by the Commission must be based on established criteria and backed by empirical evidence. Weighting each criterion based on importance was recommended, as well as giving consideration to the quality of service the agency wishes to purchase. There is a feeling that we are getting what we pay for in some regions, and it is the bottom of the barrel. Mr. Freebourn again urged the committee to look at the rate setting process apart from the economic impact of increasing rates.

Commissioner Gillespie said that a region by region survey of what an attorney would charge as a retainer for each type of offense would be helpful in rate setting as well helping to determine the hardship qualifications in the eligibility determination process.

Mr. Freebourn will help gather information to develop rates. Chief Hooks recommends setting a paralegal rate, which could be hourly or with a variety of services at set rates, similar to the mental health protocol.

Finally, Chief Hooks alerted the committee that the contractors representing the two capital defendants are unhappy with the current rate of \$120 per hour. This might come up for discussion at the August 27 Commission meeting.

### **Public Comment**

There was no public comment.

### **Old Business/New Business**

#### **A. Recommendations to Full Commission (\*Action Item)**

- The current rate schedule was approved and will be forwarded to the full Commission.

### **Adjourn**

The meeting adjourned at 2:25 p.m.