

MONTANA PUBLIC DEFENDER COMMISSION  
**STANDARDS COMMITTEE MEETING**

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

**August 8, 2012**

**MINUTES**

*(Approved at the June 11, 2013 Meeting)*

**Committee Members Present**

Fritz Gillespie, Helena; Ken Olson, Great Falls

**Agency Team Members Present**

Wade Zolynski, Chief Appellate Defender; Bill Hooks, Chief Public Defender

**Interested Parties**

Harry Freebourn, Administrative Director; Eric Olson, Training Coordinator; Kristina Neal, Conflict Coordinator; Larry Murphy, Contract Manager; Niki Zupanic, Public Policy Director, American Civil Liberties Union of Montana

**Call to Order**

Chairman Fritz Gillespie called the meeting of the Standards Committee to order at 2:35 p.m.

**Approval of Minutes of August 18, 2010 Meeting**

Commissioner Olson moved to approve the minutes as drafted. Chairman Gillespie seconded and the motion carried.

**Proposed Standards Revisions:**

A. Review IV. 2. F., Delivery of Services (previously deferred)

This revision was originally developed in response to an AU recommendation. Since then the statute was changed and the changes are now incorporated into the standard to comply with statute. The committee agreed to forward this item to the Commission.

B. Proposed Revision to III. 4 (Conflicts of Interest)

C. Proposed Revision to III. 5 (Conflict Cases)

Conflict Coordinator Kristina Neal said that the changes to incorporate her new role are minor and not controversial.

Chairman Gillespie asked if Ms. Neal is getting status reports as required in the MOU. She is not, and said that many contractors would not be willing to provide them, although they do call and talk to her about large or difficult cases. Chairman Gillespie said that we should be ensuring compliance with all of the provisions of the MOU. Status reports will help in the evaluation process, and also in assessing workload issues.

Commissioner Olson moved to approve standards revisions III. 4 and 5 to present to the Commission. Chairman Gillespie seconded and the motion carried.

D. Proposed Revisions to Training and CLE Requirements

Training Coordinator Eric Olson said that there has been long-standing concern about both the initial and the ongoing qualification and training standards, especially in ensuring that contractors are fulfilling OPD's requirements. The proposal is to remove the quantified standards while still ensuring that attorneys are qualified in each area of practice and are providing effective assistance of counsel.

Chairman Gillespie recommended that the revised CLE/Training standards be forwarded to the full Commission.

E. New Standards for Representation of Children and GAL/CASAs

Mr. Olson received a mini-grant to work on both new standards. The DN workgroup, representing a wide variety of stakeholders, is currently reviewing the draft standards.

Standard 22 relates to the representation of children and recognizes that the attorney has the responsibility to treat the child as a client and to advocate for their expressed wishes. If the client can't articulate wishes due to their age, there are ways to determine their wishes. This standard incorporates the national ABA standards in representation of children. It does require Indian Child Welfare Act (ICWA) training, which has never been offered by OPD because Mr. Olson has not been able to find a cost effective way to do it in Montana. Interested people can usually find a training session. OPD did however conduct a one-day Redbook training for attorneys interested in becoming a certified child welfare expert.

Proposed Standard 23 may not be under our jurisdiction for long, depending on what happens with the GAL issue legislatively. It delineates the responsibility of the attorney to protect the interests of the CASA/GAL, who represent the best interests of the child. The proposed standard represents the minimum structure required.

Commission Olson suggested that the numerical training requirement be eliminated to conform to the earlier decision regarding training standards requiring the attorney to demonstrate proficiency rather than document the number of training hours. Mr. Olson will rework that section, while retaining recognition of the importance of knowledge of the CASA program.

Mr. Murphy believes there will be a large training issue involved in advancing the idea that an attorney should advocate for the child's wishes and not their best interests.

Mr. Olson will work with Chief Hooks and Mr. Murphy to create a mechanism for proficiency determination that the Commission can endorse. Chairman Gillespie said that the primary responsibility for supervising contractors is with the regional deputies. He recognizes that they don't have time to do it, but it is a systemic problem, not a training issue or the contract manager's job. Removing the numerical training requirement will put more pressure on the chiefs to require and assess proficiency.

### **Appellate Standards**

Chief Appellate Defender Wade Zolynski is working on the appellate standards but is not ready to present them. He hopes to have them for the December Commission meeting.

### **Public Comment**

Niki Zupanic, Public Policy Director, American Civil Liberties Union of Montana, said that they have no objection to removing the hour requirements from the training standards, because proficiency is the critical element for each area of practice. However, she said that the process used to determine proficiency and conduct evaluations still needs work.

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

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

- Items A, B, C and D will be forwarded to the Commission for approval at the August 27 meeting.

### **Adjourn**

The meeting adjourned at 4:15 p.m.