

MONTANA PUBLIC DEFENDER COMMISSION  
**STRATEGIC PLANNING COMMITTEE MEETING**

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

**August 8, 2012**

**MINUTES**

*(Approved at the July 18, 2014 Committee Meeting)*

**Call to Order**

Committee Chair Ken Olson called the meeting of the Strategic Planning Committee to order at 10:10 a.m.

**Committee Members Present**

Ken Olson, Great Falls; Chuck Petaja, Helena; Bill Snell, Billings (via phone)

**Agency Team Members Present**

Wade Zolynski, Chief Appellate Defender; Bill Hooks, Chief Public Defender; Harry Freebourn, Administrative Director

**Interested Parties**

Fritz Gillespie, Commission Chair; Courtney Nolan, Assistant Public Defender (via phone); Niki Zupanic, Public Policy Director, American Civil Liberties Union of Montana

**Approval of Minutes from March 12, 2012 Meeting**

Commissioner Petaja moved to approve the minutes as drafted. Commissioner Snell seconded and the motion carried.

**Review Current Draft of the Strategic Plan**

Administrative Director Harry Freebourn reviewed the changes that the committee requested to the strategic plan. He recommends leaving the strategic plan open as long as possible, until right before the session. However, the goals and objectives are part of the budget submission and will need to be finalized at the August 27 Commission meeting.

Chairman Petaja suggested that any proposed language from the case cap committee be incorporated as a new objective under Goal 5.

Chief Hooks said that ultimately the case caps group wants to develop a more accurate weight to assign to cases, and then have a plan in place for action to be taken when the caps are exceeded. There are still questions to resolve—is it a statewide or region by region approach? What is the action? Are certain types of cases rejected first? How is that practical when the FTE attorneys are multi-taskers?

Chief Hooks sees constitutional vs. statutory responsibilities differently (criminal vs. DN cases). Separating the civil cases and giving them a specific budget would prevent the increase in the number of DN's from impacting the criminal cases. He is still developing the blueprint on how to achieve the committee's goal of creating Program 4 and said that we may need different plans for different regions.

Although OPD now has Vision Net sites in Glendive, Miles City, and Billings, it has been difficult to get attorneys to embrace the technology. Commissioner Petaja said that once people get used to it they will never go back. It can be used for small hearings and client interviews. He resisted at first and loves it now. Commissioner Gillespie suggested that if we refuse to pay travel time to contractors the culture would change quickly.

#### **Revise Goals and Objectives (\*Action Item)**

Mr. Freebourn explained that goals and objectives are aspirational, rather than policy and procedure. This committee needs to make recommendations for the full commission to adopt in August, but objectives and action items can be expanded upon at any time.

Commissioner Gillespie asked that the agency's sixth purpose, added under SB 187 during the last session, be included as Goal 6: "to ensure that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the clients' financial ability to pay."

Commissioner Petaja moved to add the sixth purpose as Goal 6, to add pay parity with the prosecution as Goal 7, and uniformity and consistency in administration of the statewide public defender system and the case management program as Goal 8. Commissioner Olson seconded and the motion carried.

Commissioner Petaja moved to forward the goals and objectives for Programs 1 and 2 to the full commission for approval. Commissioner Olson seconded and the motion carried.

#### **Report from the Case Cap Committee**

Courtney Nolan reported that the case caps committee evaluated the current values in the Case Weighting System (CWS) based on data from accurate time reporters provided by the Central Office. They made some adjustments, and also decided to use actual hour values instead of units in the CWS so that it would be easier to understand. She noted that their calculations align closely with Commissioner Gillespie's analysis of productive time.

The next step is to try to determine how much excess caseload there is and how much it will cost to handle the excess. The additional resources for more FTE or contractors can then be requested from the legislature. Lacking additional resources, the last resort might be to go to the judiciary and start refusing cases, although that would be very controversial.

The committee encouraged Chief Hooks to continue collecting data, especially the cost involved in handling excess caseload. Mr. Freebourn said that information will also support the decision package for additional attorneys. Commissioner Gillespie would like to provide information to legislators as early in the session as possible. Ms. Nolan and Chief Hooks will have a work product on the new CWS to present for the August 27 Commission meeting.

Commissioners Petaja and Olson thanked Ms. Nolan and the case caps committee for their work.

#### **Legislative Performance Audit Recommendation 9**

The results of the performance audit were made public in June. Of the nine recommendations, four were related to contracts and four to the indigency determination (IQ) process. The final, overarching recommendation was assigned to the Strategic Planning Committee. Lead auditor Megan Coy and team members Laura Sankey and Will Soller were present to discuss Recommendation 9 and answer questions from the committee.

Ms. Coy directed the committee to the discussion beginning on page 23 of the audit leading to the final recommendation. She said that what it comes down to is that in terms of administration,

specifically in terms of the two areas they focused on, contract administration and the IQ process, the office needs to take charge and set some agency-wide expectations. It was clear from their field audits that each region acts independently, and not just in terms of legal strategy. She urged the Commission to determine goals and expectations, then take steps to collect information on what the regions are really doing and how to proceed from there.

The committee discussed the auditors' IQ findings in some detail. Commissioner Gillespie said that a statutory amendment is needed to allow the regional deputy to be involved in the IQ process and provide guidance to the indigency determination specialist. Ms. Coy said that if the agency's standards are important and the Commission wants them to be enforced, they need to ensure compliance. If they are not important, change them.

Mr. Soller said that the message is the same in regard to the contracting process—lack of consistency. Mr. Freebourn said that having a half-time contract manager might contribute to the problem. Commissioner Petaja asked about the finding that 34% of contractors had not submitted CLE affidavits. Ms. Sankey replied that they didn't get information from the State Bar; that number just represents the number missing in Central Office files, which shows that we are not ensuring that contractors are complying with our requirements. If we set expectations, we need to verify that they are being met.

Commissioner Gillespie asked about the competitive process. Table 2 on page 8 of the audit lists the statutory requirements that make the process competitive. The audit findings come from the fact that we are not meeting all of those statutory requirements.

Ms. Coy said that generally a follow-up is conducted one year after the audit is issued to ask for an update on the status of the recommendations. They will do a small amount of field work to verify progress, and then develop a memo to the audit committee.

### **American University Recommendation 29**

Mr. Freebourn asked for direction on how to develop a process for complying with the AU recommendation to assess what statutory provisions have been satisfied and where the agency has fallen short. Commissioner Olson suggested that staff go through statutes and report on where we are lacking. Chief Hooks said that we are in the process of going through the statutory requirements in response to the performance audit and creating checklists. Commissioner Petaja moved that Chief Hooks continue with the checklist process. Commissioner Olson seconded and the motion carried.

### **Public Comment**

There was no public comment.

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

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

- The goals and objectives were adopted and will be forwarded to the full Commission.
- A checklist process will be implemented for AU recommendation 29.
- The committee will hold the strategic plan open for now. Mr. Freebourn will report for the legislature as per the draft strategic plan by separating civil costs.

### **Adjourn**

The meeting adjourned at 12:15 p.m.