

MONTANA PUBLIC DEFENDER COMMISSION
PERSONNEL COMMITTEE MEETING

Central Office
44 W. Park, Butte, MT 59701

August 18, 2010

MINUTES

Approved at the December 20, 2010 Meeting

Call to Order

Acting Chairman Terry Jessee called the meeting of the Personnel Committee to order at 8:30 a.m.

Committee Members Present

Terry Jessee, Billings and Chuck Petaja, Helena. Fritz Gillespie, Helena was also in attendance.

Committee Members Absent

Caroline Fleming, Miles City

Interested Parties

Randi Hood, Chief Public Defender; Joslyn Hunt, Chief Appellate Defender; Jon Moog and Garry Bunke, Regional Deputy Public Defenders; Barb Kain, Human Resource Officer; Harry Freebourn, Administrative Director; Niki Zupanic, American Civil Liberties Union of Montana

Approval of Minutes

Commissioner Petaja moved to approve the minutes of the July 24, 2009 meeting as submitted. Commissioner Jessee seconded and the motion carried.

American University (AU) Recommendations

#5 *Reduce/eliminate minimum caseloads for managing attorneys*
OPD Policy 114 has been implemented, setting the caseloads for managers. The committee discussed whether the yearly maximums were appropriate for various regions, and what the caseload for the Chief Public Defender should be. It is the responsibility of the Public Defender Commission to set the chief's caseload, but the committee did not favor having the Commission review the types of cases she should take. They did however discourage her from taking on difficult cases that would impact the time available for management activities. Commissioner Petaja moved that the chief public defender's caseload be set at a maximum of 300 hours per year, with the recommendation that she act only as second chair, leaving 90% of her time available for management. Commissioner Jessee seconded and the motion carried. Commissioner Gillespie noted that "management" is both administration and leadership, and leadership is accomplished by mentoring and being in the courtroom. He asked if mentoring is included in the 300 hours? The committee agreed that mentoring is a management function, and the motion was amended to state that the chief will limit her trial time and preparation to 300 hours per year, and mentorship hours are not part of that number. The motion carried.

Administrative Director Harry Freebourn said that there are budget implications related to reducing management caseloads since it will increase the need for additional FTE. He will have a rough projection for the August 30 Commission meeting.

- #8 *Training Officer should regularly survey staff and contract attorneys to determine training needs*
- #9 *Each training program should have systematic feedback and evaluations from attendees*
- #10 *Trial notebooks for each category of cases; orientation program; initial skills program; brief bank; video recordings of trainings; and newsletter.*

Regional Deputy Public Defender Garry Bunke led the OPD team addressing items 8-10. The training function was given high marks by AU. Item numbers 8 and 9 have always been done and will continue to be done. The team recommended that the Training Office submit the surveys and feedback from training sessions to a separate group for review to improve objectivity.

The team reported that significant progress is being made under item 10. Trial notebooks are still in progress, and the orientation program is being developed. Boot camp, the brief bank, a video training library and regular newsletters are in place. The team had suggestions in addition to those offered by AU, including more opportunities for FTE and CA to attend out of state conferences (funding assistance in return for making a presentation at the annual meeting to share information), and the need for the Training Officer to have an assistant.

Commissioner Petaja asked how the agency ensures that contract attorneys are in compliance with the CLE requirements in the Standards? Mr. Bunke said that the new Memorandum of Understanding requires contractors to certify they are in compliance; it is on honor system, as is every attorney's annual reporting requirement to the State Bar.

Mr. Freebourn said that there is no budget impact for items 8 and 9. Production of trial notebooks is estimated at \$15,000 and can be absorbed in the current budget. A budget item for the brief bank for the Appellate program is estimated at 2 FTE and was not approved by the Commission. The agency will maintain the current brief bank and the Appellate brief bank using law school interns.

The committee agreed to take the team's recommendations on these items to the full Commission.

- #11 *An evaluation procedure for lawyers needs to be developed which is timely, is based primarily on objective data, and promotes the lawyer's professional development over the next year.*
Regional Deputy Public Defender Jon Moog led the team addressing this recommendation. He reported that the 2009 evaluation form has been refined and will be used for the next round of evaluations beginning in the fall. The updated form will be piloted on new hires.

Commissioner Petaja asked about the status of contract attorney evaluations. Mr. Moog said that this falls under the purview of the Contracts Committee, and the process is underway. In addition, standards compliance auditing is being implemented.

- #14 *Emergency attorney on call 24/7*
The OPD team agreed with the Commission that this should be deferred until a later time.

- #15 *Develop a plan to deal with case overloads*
- #16 *When caseloads are at a maximum level, OPD refuses cases*
Policy 117, Caseload Management, has been implemented. In addition, the Case Weighting System has been refined by the Labor Management Committee. The committee approved the new Case Weighting System by acclamation.

#19 *Chief should communicate with staff regularly regarding policies, procedures, evaluations, compensation, etc.*

Training Officer Eric Olson directed this team. They recommended:

- a) A policy section in the newsletter
- b) An agency communications/media relations officer
- c) Making contacts within each community
- d) Support staff training and follow-up (implemented this year)

The committee discussed the advantages of a communications officer at length. Funding the position would be difficult, and in terms of time and skills, no current employees could assume that duty. Sharing a resource with another agency, using a student, or combining the position with a Commission secretary were suggested. The committee noted that there is a need to inform the public about the importance of the public defender system, and the progress that has been made since the AU evaluation.

Commissioner Jessee said that staff communication seems to be handled. The intranet is used for intra-office communication, and successes are distributed by email. Commissioner Jessee suggested publishing a "success digest" on a regular basis to offer encouragement to line staff.

Public Comment

No public comment was offered at this time.

#20 *Explain why different resource distributions among regions*

Mr. Freebourn's team offered three budget allocation options for the committee's consideration: (1) The agency's regions and departments request budgets and the Chief and her staff allocate the appropriation to meet needs as best as possible and these allocations and the basis for them are placed in writing to the Commission. (2) The regions and departments report funding needs directly to the Commission and ask them allocate the funds. (3) Consider a hybrid where the Chief and her staff develop budgets with the regions and departments and they both meet with the Commission to discuss the agreed upon allocations.

Chief Hood elaborated on option 1, which is the current practice. The target budgets are just guidelines used to track expenditures. The committee agreed that options 2 and 3 are too cumbersome.

Commissioner Petaja moved that the committee adopt option 1 with the proviso that the Chief's report to the Commission on the proposed allocation includes any major objection from the regions, departments, or the appellate program. Commissioner Jessee seconded. The motion carried.

#21 *Remove fear of retaliation for noting agency problems*

The agency team recommendation is to inform all FTE of federal and state policies against retaliation, as well as union/state grievance policies. Commissioner Petaja said that he thought this was a union issue; most employees know their rights, and unions jump on retaliation as something not tolerated. He has never heard a specific complaint about retaliation. Human Resource officer Barb Kain confirmed that there has never been a grievance filed for retaliation.

Commissioner Petaja moved that the Chief Public defender provide a written communication to all

employees of their rights under state and federal law. Commissioner Jessee seconded. The motion carried. Commissioner Jessee said that he does not want to hear about this issue again.

#24 Commission to challenge staff to promote new options

The agency has adopted policy 180, Incentive Awards, to encourage and reward employee initiatives that will benefit the agency.

Chief Hood noted that more idea sharing and communication is occurring as the system matures. Commissioner Petaja and Mr. Bunke expressed interest in reworking the indigency questionnaire form.

#25 Commission should select a secretary that reports to them

The agency team defers this item to the Commission. The committee deferred it to the full Commission at the August 30 meeting. Mr. Freebourn noted that the proposed budget will be reviewed at that meeting, and there is a budget item included for this position.

#26 Commission should insist on definite lines of authority

Ms. Kain has supplied a job description to every employee once again, and will require that they sign an acknowledgement. An organizational chart showing the chain of command is on the website. Commissioner Jessee asked who is in charge when Chief Hood is unavailable? Chief Hood replied that for planned absences she designates someone, and in case of emergency Mr. Olson is designated as second in command. The committee agreed that this item has been handled.

#27 Commission to impose limitations on private practice lawyers in system

The team recommends adoption of an outside employment policy based on case law to address this item. Commissioner Petaja asked if there is a state policy regarding taking public defender clients into private practice? Chief Hood said there is a six month limit, but sometimes former employees are allowed to take cases with them for continuity of representation.

#28 Commission require a strategic plan for all regions

Regional deputies will be required to provide quarterly reports to Chief Hood, and a summary will be presented to the Commission at the next meeting.

Old Business/New Business (*Action Items)

There was none.

Public Comment

No public comment was offered.

The meeting adjourned at 11:10 a.m.