

Appellate Liaison Report to the Commission
August 27, 2012

The Appellate Liaison solicits comments from members of the OAD (attorneys and support staff), and compiles them into this Report to the Commission. The comments may not reflect the viewpoint of all in the OAD.

Recognition of Lisa Korchinski's Service

Thank you to Lisa Korchinski for volunteering to serve as our liaison for the past two years. She has devoted countless hours to this task, and we appreciate her efforts on our behalf.

Appellate Caseload Standards

The Chief Public Defender's Report generally discusses suggested caseload standards that may be considered by the PDC for both the trial division and the appellate division. The OAD should be tasked with suggesting appellate caseload standards and any change to the appellate case weighting system so that the agency remains in compliance with the separation required by policy, statute, and case law.

Setting Future Contractor Pay Rates and FTE Salaries

The PDC is considering how to determine the appropriate rates for Contract Attorneys. Factors for setting future rates include consideration of federal rates, as well as rates charged by private professionals, and other Montana State agencies. The PDC is additionally considering setting contractor rates on "relevant information and sound criteria," and treating the financing of a rate increase as a separate issue.

If this is the process for setting contractor pay rates, the same factors should be applied to setting FTE pay rates. If federal rates are going to be used to determine contractor rates, they should also be used to determine FTE rates (attorneys, investigators, and support staff). The reality is that the agency lags way behind other State agencies in FTE salaries, and even further behind federal salaries. If contractor rates are going to be determined apart from a financing plan, then FTE salaries should be treated the same.

The PDC should be aware that existing contractor rates are already very attractive compared to FTE salaries, even when FTE benefits are included in the comparison. Increasing contractor rates will make private practice even more attractive compared to continuing as an FTE. Therefore, FTE pay rates must also be increased to market rates based on the same factors.