

OFFICE OF THE STATE PUBLIC DEFENDER



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August 27, 2012

TO: Montana Public Defender Commission

FROM: Eric Olson, Training Coordinator

RE: Training Report

Standards Verification completed: The initial survey is still posted on-line and is available for attorneys who have not previously verified.

The next round of computer based verification questions will be posted on or before September 1, 2012 for verification through October, 2012.

An initial report of verification compliance will be provided to the chief public defender and regional deputy public defenders at the annual conference in October.

Leadership VI: The next phase of the OPD leadership training program is under development. The date for the next workshop has been tentatively identified as December 5-6, 2012.

Dynamic Defender Development Group: The Dynamic Defender Development Group will meet by phone in late September. The Group is comprised of the following attorneys: Chief Public Defender Bill Hooks, Chief Appellate Defender Wade Zolynski, Training Coordinator Eric Olson, Regional Deputy Peter Ohman and Attorney Anne DeWolf (Bozeman), Regional Deputy Dan Minnis (Havre), Regional Deputy Doug Day (Lewistown), Attorney Katie Green (Missoula), Regional Deputy Matt McKittrick (Great Falls), and Attorney Nick Aemisegger (Kalispell). At the meeting the Group will continue to develop ideas for systemic improvement, including: (1) updating the legal resources within the OPD Brief Bank; (2) reviewing and posting standards verification instruments; (3) developing a method for implementing a consistent, uniform and enforceable discovery procedure statewide; and (4) studying and discussing other innovative and dynamic ways to improve public defender services.

IQ training: Marsha Parr continues to train specialists in all offices in a consistent method of indigency determination. An updated list of designated IQ specialists is attached to this memo.

OPD Practice Manuals: Having requested and received direct input from the chief public defender, OPD regional deputies and others, including OPD trial attorneys, the Training Department has completed standardized criminal defense practice manuals for use by OPD attorneys practicing in district court and in courts-of-limited-jurisdiction. They will be presented at this meeting. Following review by the Commission the “OPD Criminal Practice Manual” and the “OPD Manual for Practice in Courts of Limited Jurisdiction” will be published and distributed to all OPD offices. Additionally, the manuals will be placed on CD for direct distribution to staff attorneys, contract attorneys, and investigators as part of their resource packets for the 2012 annual conference.

A manual for DN practitioners is currently under development, courtesy of funding provided by the Court Improvement Project. Attorney Nick Aemisegger is the principal author in consultation with the Montana DN Work Group.

A manual for youth court attorneys is also currently under development. The DJ manual is being produced by the OPD training department with the assistance of UM Law School interns.

Also under development is an OPD Evidence Handbook.

Proposed final drafts of the DN, DJ, and Evidence manuals should be available for review by the Commission at its next regularly scheduled meeting.

OPD is also pursuing independent funding which will provide for the development of a manual for civil commitment practice. The targeted completion date for this DI Manual is December 31, 2012.

Standards of Practice for Children’s Advocates in DN Cases: The OPD Training Office has completed the first draft of (a) Standards for Attorneys Appointed to Represent Children in DN Cases and (b) Standards for Attorneys Appointed to Represent Court Appointed Special Advocates/Guardians-ad-litem. Both drafts were reviewed by the Montana DN Work Group at its August 3, 2012 meeting in Missoula. Those drafts were also presented to this Commission’s Standards Committee at its August 8 meeting in Helena. However, final submission of the proposed standards has been complicated by a recent decision of the Montana Supreme Court. See: *In the Matter of K.H. and K.M.*, 2012 MT 175 (8/14/2012.)

It is anticipated that standards for attorneys appointed to represent CASAs and GALs representatives will be ready for review by the Commission at the next regularly scheduled meeting. A copy of the DN Work Group agenda for the August 3 meeting is attached.

Cultural communication: With the continuing assistance of facilitators from the National Coalition Building Institute (NCBI) in Missoula, OPD attorneys and investigators attended cultural communication workshops in Helena (June 1) and Polson (June 8). NCBI has been collaborating with OPD since 2007. The title of this year’s program is: “Cultural Conceptions of Guilt and Innocence.” The final workshop session – for attorneys/investigators in eastern Montana as well as others who were unable to attend one of the two earlier sessions – will be conducted on October 9, 2012 at the Billings Depot conference center, immediately preceding the annual conference. A copy of the agenda is attached.

Youth Court Defender Meeting Several staff attorneys regularly assigned to appear on behalf of youth in delinquency (youth court) matters traveled to Seattle on July 20-21 to attend a juvenile defender leadership summit hosted by the National Juvenile Defender Center's Western Region Executive Board. As a follow up to that summit, OPD's juvenile defenders will resume the practice of conducting regularly scheduled youth law teleconferences beginning in mid-September, 2012. OPD attorneys Peter Ohman and Brian Yowell have assumed responsibility for developing a system-wide juvenile listserv and for regularly identifying and tracking juvenile issues which command OPD attention and action.

Support Staff Annual Conference: OPD support staff personnel from around the state met on the campus of the Montana College of Technology in Helena on June 26-27, 2012 for the 2012 Annual OPD Support Staff Training Conference. The training agenda is attached.

Capital Case Litigation Training Conference II: OPD currently represents two defendants charged with capital murder. In order to ensure that the members of those defense teams remain current with the A.B.A. standards for capital practice, and in order to provide continuing education to a pool of attorneys identified by OPD as primary candidates for assignment to capital cases in the future, the OPD and the University of Montana Law School recently completed Phase II of the federally funded Capital Case Litigation Initiative. (July 30-August 1 at the UM Law School.) A copy of the training agenda is attached.

Summer DUI Workshop: Assisted by Wendy Holton the OPD just completed a two-day training at the Best Western Yellowstone Inn in Livingston entitled "Defending DUI Cases in Montana." A copy of the training agenda is attached.

OPD Investigator Annual Training Conference: The 2012 OPD Investigator Annual Training conference is set for August 29-30, 2012 at Fairmont Hot Springs. A copy of the training agenda is attached.

7th Annual OPD Statewide Training Conference (Attorneys): The 2012 annual conference will be held October 10-11 at the Billings Depot conference center. Although the agenda is still awaiting final approval, training will be provided in a variety of criminal and civil topics relevant to indigent legal practice. Featured programs will include "The Law of the Plea" and "Applying the Colorado Method of Jury Selection in Non-capital Cases." The Commission is invited to attend all or part of the conference. Registration will open in early September.

Boot Camp: Due to the unusually high recent turnover in staff attorney positions, the OPD will likely conduct its next trial skills ("boot camp") training program during early November, 2012. All staff attorneys hired by OPD since the date of the last Boot Camp (February, 2012) will attend.

Utilizing facilities provided by the University of Montana Law School and the Missoula County District Court, staff attorneys will receive an opportunity to engage in intensive and individualized courtroom trial instruction. The program will focus on cross examination and voir dire in partner family member assault cases. The instructor panel for the program is under development.

CLE and Training Standards. Pursuant to discussions at the recent Standards committee meeting, it is proposed that the standard requiring 20 hours of continuing legal education (CLE) each year provided or approved by OPD be modified to require only that attorneys performing work for OPD comply with the State Bar's annual CLE requirements, which may include training offered by OPD. The committee also endorsed deleting specific quantifiable training requirements for OPD staff and contract attorneys prior to accepting assignments in particular areas of practice, instead requiring that they demonstrate proficiency in each area. OPD attorneys will continue to be subject to a regular evaluation procedure and must either demonstrate on-going proficiency within the area(s) in which they practice or receive specific training from the Training Department. In some circumstances, on the job training will be considered as a viable alternative to attendance at formal training events. The Commission will be asked to approve these changes at this meeting.

Indigence Determination Specialists

Region 1 Anna Garza
Region 2 Jennifer Greenwood
Region 3 Chris Kitch
Region 4 Tricia DesJarlais
Region 5 Ann Allen
Region 6 Jamie Moore
Region 7 Gail Hikel
Region 8 Christine Thomas
Region 9 Loretta Hergett
Region 10 Ronda Hansen
Region 11 Linda Conard
Appellate Defender Angela Stagg

Indigence Determination Coordinator/Trainer Christine Thomas (Bozeman)

DN Work Group Meeting
August 3, 2012 (11 AM – 3 PM) *
Doubletree Inn, Missoula

Agenda

The agenda will focus on the following items of critical importance to the continuing development of a uniform and consistent practice in DN cases across Montana.

Item 1: Review of Proposed Standards (Eric Olson)

Note: These standards will be presented to the Montana Public Defender Standards Committee on August 8 and to the Montana public Defender Commission at its upcoming meeting in Butte on August 27th.

(a) Attorneys appointed to represent children in DN matters (Expressed Wishes Standards)

(b) Attorneys appointed to represent CASA/GAL's (Best Interests Standards)

(c) Discussion of Best Practice Models for CASA/GAL's

Item 2: Montana DN Consistent Practice Manual (Nick Aemisegger)

We will review and revise the proposed manual with an eye toward completing, publishing, and distributing the manual by the end of August.

Item 3: Montana Statewide DN Basic Training Program (Sherri Rafter)

We will discuss and develop an agenda and a timeline for implementing a uniform training program (DN Boot Camp) for all parties who appear in court at DN matters in Montana.

Pretest: We will also discuss and develop a "pre-event" and "post-event" survey instrument which will be used as a metric for progress in DN training.

Note: For budgetary reasons we are aiming to conduct the initial session of this training program (DN 101) on either September 11-12, 2012 or September 25-26, 2012..

Item 4: Discovery issues (Judge Ortleby)

As time permits, we will continue our prior discussion of discovery issues and will identify and discuss additional issues relevant to the development of consistent, uniform DN practice.

* Pizza will be delivered at Noon and we will work through the lunch hour.

Participants

In attendance:

Hon. David Ortley
Sherri Rafter (Court Administrator's Office)
Sara Corbally (DPHHS)
Lucy Hansen (AGO)
Ellen Bush
Larry Lafountain (OPD)
Kelli Sather (OPD)
Eric Olson (OPD)
Nick Aemisegger (editor: DN Uniform Practice Manual)
Meri Althausser (children's attorney)

By phone:

Larry Murphy (OPD)
Brett Linnweber (Park County Attorney)
Schylar Canfield (Foster children's advocate)

Toll free call in number:

Murphy: 444-7959
Linnweber: 1-888-224-5893
Canfield: 1-888-224-5893

Conference password: 5326

Please join the conference at 11:00 AM.

DEPENDENCY AND NEGLECT 101
(Proposed Training Agenda)

Day 1

- 8:00: Registration and networking
- 8:30-9:00 **Pretest**
- 9:00-10:00 **Indian Child Welfare Act**
- 10:00-10:15 Break
- 10:15-11:15 **How a child enters the system**
CFS: Sarah Corbally
Kevin or Mark?
- 11:15-12:15 **The judges' job** (including ethics)
Judge Ray Dayton
Judge David Ortley
- 12:15-1:15 Lunch and networking
- 1:15-2:15 **Substance Abuse, Mental Illness and DN practice**
Speaker: Mike Larson (?)
- 2:15-2:30 Break
- 2:30-4:00 **Foster care from the child's perspective ?**
Proposed Speaker: Schylar Canfield
- 4:00-5:00 **Recap and Q&A**

Day 2

- 8:00-8:30: Registration and networking
- 8:30-10:00: **Best interests of the child (including ethics)**
- Attorney GAL
- CASA Director:
- Attorney for the CASA
- 10:00-10:15 Break
- 10:15-11:45 **Representing Children in DN Matters (including ethics)**
- Eric Olson / Meri Althausser
- 11:45-12:00 Break
- 12:00-1:00 Lunch
- 1:00-2:30 **Representing Parents in DN Matters (including ethics)**
- Kelly Sather / Nick Aemisegger
- 2:30-2:45 Break
- 2:45-4:15 **Representing the State/Agency**
- AG: Lucy Hansen
- 4:15-5:00 **Recap, Q&A and post test**

Advocacy, Communication & Elimination of Bias
Session #4: Cultural Conceptions of Guilt and Innocence
June 1 and 8, 2012 and October 9, 2012

First Session (11:45 – 12:30 PM)

The Ethical Relevance of Cultural Communications

Presenter: Noel Larrivee

The following materials will be discussed throughout the program:

State v. Valdez-Mendoza, 2011 MT 214 (2011)

Lafler v. Cooper, No. 10-209, 566 U.S. ____ (2012)

Missouri v. Frye, No. 10-444, 566 U.S. ____ (2012)

Padilla v. Kentucky, 130 S. Ct. 1473, 176 L. Ed. 2d 284 (2010)

Batson v. Kentucky, 476 U.S. 79 (1986)

M.R.P.C. Rule 1.1 (Competence),

MRPC Rule 1.2 (Scope of Representation and Allocation of Authority Between Attorney and Client)

MRPC Rule 1.4 (Communication)

MRPC Rule 1.14 (Client with Diminished Capacity)

Second Session (12:30 – 12:45 PM)

N.C.B.I. and its Relationship to Indigent Defense

Presenter: Amie Thurber

Third Session (12:45 – 1:45 PM)

The Critical Importance of Understanding Frame of Reference and the Cycle of Oppression

Presenter: Amie Thurber

Critical to being able to work across cultural lines is identifying our own cultural lenses and understanding the lenses of others. We will explore the lenses through which we see and understand our clients and examine the ways that frame of reference impacts our advocacy on their behalf. Additionally, we will explore a theoretical framework in which to understand systemic inequalities and examine the way public defenders may serve to interrupt or perpetuate those inequities.

Fourth Session (1:45 – 2:45 PM)

Panel Discussion: Cultural Conceptions of Guilt

Panelists: Patty LaPlant & Schylar Canfield (Helena) / Patty LaPlant, Tim Hoppe & Comfort Bolen (Pablo)

The panelists will reflect on their own cultural experiences with the justice system.

Fifth Session (2:45 – 3:45 PM)

Cultural Communications Skill Building Exercise

Presenters: Amie Thurber and Noel Larrivee

Working from participant-identified communication challenges, we will practice communication skills to overcome gaps and / or resistance from clients in order to advocate more effectively for our clients.

2012 OPD SUPPORT STAFF TRAINING CONFERENCE
Tuesday-Wednesday, June 26-27
College of Technology, Helena, Montana

Participants will travel to the conference site on Tuesday morning, June 26.

The conference agenda will begin at Noon on Tuesday, June 26. (Lunch provided.)

Participants will stay at the Red Lion Colonial Inn in Helena on Tuesday night, June 26.

The conference will adjourn on Wednesday afternoon, June 27 (lunch provided), and participants will travel back to their home offices.

TUESDAY AGENDA

11:00-Noon: Registration and Lunch

Noon – 12:30 PM: Welcome (Brian Yowell / Fritz Gillespie/ Harry Freebourn)

12:30 – 1:30 PM: General Session #1

- Central Services (20 Minutes) (Sheila Newman)
- Timesaving Tips for Microsoft Office Users (30 minutes) (Cathy Doyle)
- The OPD Orientation program (10 minutes) (Barb Kain)

1:30 – 1:45 PM: BREAK

1:45 – 3:15 PM: JustWare Training (Group 1) (Marsha Parr)

Concurrent Session (Group 2)

- Criminal Law and Procedure (45 minutes) (Ed Sheehy / Eric Olson)
- Criminal Law Office Ethics (30 minutes) (Mary Brown / Dave Stenerson)

3:15 – 3:30 PM: BREAK

3:30 – 5:00 PM: Group 2: JustWare (Marsha Parr)

Group 1: Concurrent Session (see above)

WEDNESDAY AGENDA

8:45 AM -10:15 AM:

Session A: Supervisors: Fundamentals of Efficient Workplace Supervision (Julie Benson-Rosston)

Session B: Non-supervisors: Concurrent Session (Eric Olson)

- Introduction to the Montana Crime Lab (45 minutes) (Emily Wemlinger)
- Montana Driver Licensing: Issues, Policies and Procedures (45 minutes) (Vickie Zincke)

10:15 AM – 10:30 PM: BREAK

10:30 AM - 11:30 AM: General Session #2 (Jenny Greenwood / Laura Wendlandt)

- Obstacles to Effective Communication (60 minutes)
 - Communicating with Mentally challenged/developmentally disabled individuals
 - Exploring Cultural Issues

11:30 AM– 12:30 PM: General Session #3

- Maintaining Positive Client Relations (20 minutes)
- Investigation Protocols (20 minutes) (Mori Woods)
- Understanding the Major Crimes Unit (20 minutes) (Jennifer Streano)

12:30 PM – 1:00 PM: Awards, lunch and adjourn

Montana Capital Defender Training Conference

July 30-August 1, 2012
University of Montana Law School

Monday, July 30, 2012	
9:00 a.m. - 10:30 a.m.	Segment "A:" Professionally Responsible Capital Defense <i>(Katie Ross)</i>
10:30 a.m. - 10:45 a.m.	Break
10:45 a.m. - 12:15 p.m.	Segment "B:" Impact of Cultural Issues on Capital Defense <i>(Patty LaPlant)</i>
12:15 p.m. - 1:15 p.m.	Lunch
1:15 p.m. - 2:45 pm	Segment "C:" Introduction to the Colorado Method of Capital Voir Dire <i>(David Lane)</i>
2:45 pm - 3:00 pm	Break
3:00 pm - 5:00 pm	Colorado Voir Dire: Stripping Jurors <i>(Lane and Participants)</i>
Tuesday, July 31, 2012	
9:00 a.m. - 10:00 a.m.	Using the Colorado Method in Montana Capital Voir Dire <i>(David Lane & Greg Jackson)</i>
10:00 a.m. - 10:15 a.m.	Break
10:15 a.m. - 11:15 a.m.	Colorado Voir Dire in Montana I <i>(Participant Exercises)</i>
11:15 a.m. - 11:30 a.m.	Break
11:30 a.m. - 12:30 p.m.	Colorado Voir Dire in Montana II <i>(Participant Exercises)</i>
12:30 p.m. - 1:30 p.m.	Lunch
1:30 p.m. - 2:00 pm	Colorado Voir Dire in Montana (Conclusion) <i>(Jackson & Participants)</i>
2:00 pm - 4:00 pm	Segment "D:" Managing Capital Defense / Teamwork <i>(Katie Ross)</i>
4:00 pm - 5:00 pm	Segment "E:" Capital Sentencing Law in Montana <i>(Chad Wright)</i>
Wednesday, August 1, 2012	
9:00 a.m. - 12:00 p.m.	Segment "F:" Forensic Assessment, Neuroscience and Capital Mitigation <i>(Dr. Christa Smelko, Psy.D. / Dr. Bowman Smelko, Psy. D.)</i>

SEGMENT “A”:
Professionally Responsible Capital Defense
(Katie Ross)

The following topics will be addressed in a discussion led by Katie Ross:

- How to tell if your new homicide case is a potential death penalty case.
- Why proper designation as a capital case is important.
- Who is qualified to handle a death penalty case and what steps need to be taken to ensure that qualified counsel is appointed?
- How the 2003 ABA guidelines for high-quality capital defense apply at every stage of litigation, from arrest to clemency, to all team members.
- When must a mitigation investigator be appointed?
- How to identify and obtain additional immediate staffing needs.
- Getting funding for the special needs of the potential capital case.

SEGMENT “B”:
Culture and Capital Mitigation
(Patty LaPlant)

This segment explores the pervasive impact of cultural issues in capital cases. Cultural issues not only impact the investigation of your client’s mitigation case, they all impact its presentation. This session explores with social worker Patty Laplant how cultural issues surround your case and how to most effectively deal with them in the presentation of it to the jury.

SEGMENT “C”:
The Colorado Method of Jury Selection
(David Lane and Greg Jackson)

The Colorado Method of capital voir dire is a structured approach to capital jury selection that is being used successfully in state and federal jurisdictions across the United States. Colorado Method capital voir dire follows several simple principles:

- jurors are selected based on their life and death views only;
- pro-death jurors (jurors who will vote for a death sentence) are removed utilizing cause challenges, and attempts are made to retain potential life-giving jurors;
- pro-death jurors are questioned about their ability to respect the decisions of the other jurors, and potential life-giving jurors are questioned about their ability to bring a life result out of the jury room; and
- peremptory challenges are prioritized based on the prospective jurors’ views on punishment.

Notwithstanding that jurors In Montana are not directly involved in imposing a death sentence, the Colorado Method and its concepts are nonetheless relevant to Montana capital jury selection. This program will introduce Montana capital defenders to the Colorado Method generally, engage them in actual voir dire exercises with mock jurors, and then help them

develop and hone techniques more specifically focused on the Montana capital jury selection process.

Instructional materials will follow the training model currently utilized by the University of Colorado, NACDL and the Southern Center for Human Rights. Additional materials specific to Montana – including documents from prior Montana capital cases – will be provided to all participants at the outset of the training program.

SEGMENT “D”:
Managing Capital Defense: Organization, Teamwork and Communication
(Katie Ross)

This interactive session will explore the problems that confront many capital defense teams, the impediments to building a well functioning teams and provide some solutions to the most common team building problems. Also included will be a discussion regarding how to collect, index, organize, and archive the voluminous materials, documents and records that surround a capital case.

SEGMENT “E”
Capital Sentencing Law in Montana
(Chad Wright)

Montana’s capital sentencing structure is unique. We will review the history of capital sentencing in Montana and will examine how parameters set by the U.S. Supreme Court and federal circuit courts affect Montana capital cases.

SEGMENT “F”:
Forensic Assessment, Neuroscience, and Capital Mitigation
(Christa Smelko & Bowman Smelko)

Part 1: Neuropsychology: Crafting the Questions (1 hour)

This session will explore the interface between legal strategy and the experts’ expertise: the boundaries of knowledge and professionalism; the approach to getting the right expert and getting the most from your expert; the overlap/interface between your experts and understanding the concept of divide and conquer. Discussion will also consultation issues such as

- Core knowledge;
- Limits of knowledge;
- Anticipating cross- examination and “fronting”;
- Anticipating rebuttal;
- Order of expert presentations;
- Basis of opinions; and
- Background information (how much and available when) and withholding information

Part 2: Forensic Assessment in Capital Cases (2 hours)

Uncovering mental disorders requires painstaking investigation and interviewing. In this two part presentation, participants will learn where to look for the evidence of mental disorders and how to develop the interviewing skills to unearth the information.

The first hour will include a discussion of how to recognize/identify/interview for the symptoms of major depression, bipolar disorder, and schizophrenia.

The second hour will include a discussion of how to recognize/identify/interview for symptoms of PTSD and complex PTSD, and will also include a general discussion of strategies for working with witnesses who have trauma histories.

FACULTY BIOGRAPHIES AND CONTACT INFORMATION

Katie Ross:

Kathryn “Katie” Ross has spent most of her thirty years of practice representing clients in death penalty cases. She is currently the director of the Washington Death Penalty Assistance Center a legal resource center in Seattle which exists primarily to support attorneys defending capital cases in Washington. Although the Center does not represent individual clients Ms. Ross coordinates the delivery of a substantial volume of information on the practicalities of capital defense, briefing on legal issues, mitigation investigation, expert consultants and witnesses, and assists capital defense lawyers with the myriad of legal, ethical, and strategic challenges that may arise in the course of defending a capital case. Ms. Ross regularly coordinates death penalty training events in the state of Washington and throughout the Pacific Northwest.

David Lane:

David Lane began his career as a public defender in New York City in 1980, representing indigent criminal defendants charged with crimes primarily in Brooklyn. Mr. Lane became a public defender supervisor in 1984 in charge of over 30 attorneys. Mr. Lane has been in private practice since 1987. Mr. Lane’s criminal practice includes both state and federal trials and appellate work in all kinds of criminal cases, including white collar crimes, complex financial crimes as well as drug cases and homicides. In addition, his practice includes capital litigation both at the trial and appellate level as well as post conviction in federal and several state courts. Mr. Lane has been certified by numerous federal courts as learned counsel for federal death penalty cases. Mr. Lane has also been retained by several foreign governments to represent their nationals in serious American criminal cases.

Greg Jackson:

Greg Jackson has been one of Montana’s leading criminal defense trial attorneys for more than 25 years. Over the course of his career he has handled a wide range of criminal and civil cases, many of which involved high-profile defendants. Mr. Jackson has represented capital defendants at the trial and post-conviction levels and is qualified to serve as lead counsel in

both federal and state capital cases. Currently serving as lead counsel in *State v. Waters*, he has been representing capital defendant Ronald Allen Smith since 1994.

Chad Wright:

Chad Wright is an attorney in Helena, Montana. Formerly Montana's Chief Appellate Defender he has extensive capital post conviction litigation experience and is currently a member of the capital defense team in *State v. Waters*.

Patty Laplant, M.S.W.:

Patty Laplant is a social worker and an enrolled member of the Blackfeet tribe. She has spent more than twenty-five years working in Indian country as a social services program manager, evaluator, negotiator, and developer. During that time she has developed and facilitated cultural trauma intervention training for individuals, providers and schools in Indian Country, Montana and across the nation.

Christa Smelko, Psy. D.:

Dr. Smelko works extensively in clinical and forensic practices, including program consultation and education, and has served as an expert witness in multiple judicial districts in Colorado on related topics.

Dr. Smelko has expertise in Personality Disorders, Trauma, Assessment and treatment of adults, young children and adolescents, along with a focus on Attachment and Family Law as well as Forensic, Medical, Diagnostics, and Neuropsychological Evaluations.

Bowman Smelko, Psy. D.:

Dr. Smelko is a licensed psychologist who focuses his practice on issues related to Forensic and clinical matters. He has served as the Director and Clinical Director in highly specialized programs and has been the CEO of two well established forensic practices. He has been deemed an expert witness in the general areas of parenting, child and adolescent, sexual offending, sexual abuse, neuropsychology, clinical psychology, and forensics. Dr. Smelko works for multiple referring sources throughout the country and has testified in areas such as death penalty clemency, sanity, competency, involuntary commitment, sexually violent predator, sexual offending, placement options, child adolescent risk, transfer issues, custody, dependency and Neglect, voluntariness of disclosure/Miranda rights, and child sexual abuse. Dr. Smelko has provided testimony to Federal and State courts and to legislative bodies and has provided information to the Trier of fact on multiple other issues through written report in which testimony was not required.

Dr. Smelko is a highly regarded member of the psychological and forensic community. He is hired regularly by both prosecutors and defense attorneys alike, with rare opposition due to his objective nature. Dr. Smelko has educated a vast audience in the areas of forensics and clinical matters including attorneys, college students, clinicians, and consumers on the local, state wide and national stages. As a result of his knowledge and expertise Dr. Smelko has been appointed

to serve on the Local Advisory Committee on Mental Health, assisted in the development of risk measurement, is on the Montana Sex Offender Task force, developed and implemented highly specialized forensic facilities, and has been consulted with by professionals in multiple states with regards to mental health and correctional settings.



Defending DUI Cases in Montana

August 9-10, 2012
Best Western Yellowstone Inn
Livingston, Montana

Thursday, August 9, 2012

10:00 pm - 10:15 pm	Welcome
10:15 am - 12:15 pm	Voir Dire in D.U.I. Cases <i>(Wendy Holton)</i>
12:15 pm - 1:30 pm	Lunch (provided)
1:30 pm - 2:30 pm	Client Relations in a DUI Case <i>(Bryan Tipp)</i>
2:30 pm - 2:45 pm	Break
2:45 pm - 3:45 pm	Opening Statement and Closing Argument <i>(Rich Buley)</i>
3:45 pm - 4:00 pm	Break
4:00 pm - 5:00 pm	Q & A: Challenging the Blood Evidence <i>(Panel)</i>

Friday, August 10, 2012

8:00 am - 9:00 am	Understanding and Attacking the Intoxilyzer 8000 <i>(Paul Miranda)</i>
9:00 am - 1:00 pm	Cross Examination in D.U.I Cases <i>(Mike Hawkins and Tony Palacios)</i>

About the Instructors

WENDY HOLTON received her J.D. from the University of Montana School of Law in 1984. Subsequently she was awarded a Prettyman Fellowship at Georgetown University where she obtained an L.L.M. in Criminal Law/Trial Advocacy. A former President of the Montana Association of Criminal Defense Lawyers and, by appointment of the Montana Supreme Court, a member of the Montana Jury Instruction Commission, and the Montana Evidence Commission, Ms. Holton served on the Montana Public Defender Commission from 2005-2008, the Conference Executive Committee of the Ninth Circuit Judicial Conference from 2006-2009, and the Ninth Circuit Advisory Rules Committee from 2004-2007. One of Montana's most outstanding DUI defenders, she is a member a member of both the National College for DUI Defense and the National Association of Criminal Defense Lawyers. Her practice is limited to criminal defense in state and federal court at both the trial and appellate level with an emphasis on defending persons charged with driving under the influence of alcohol.

MIKE HAWKINS is one of the nation's foremost DUI defense attorneys. A much-demanded lecturer on DUI law and procedure he developed a method of cross-examination of police officers in DUI cases which has been described as "as much science as it is art." His presentation on "Bad Science, Bad Tests, Good Cross" was selected for the Best Speakers of 2009 DVD by the National Association of Criminal Defense Lawyers. The DVD is marketed nationally to DUI Defense Attorneys who want to improve their skills in cross-examination. Mr. Hawkins is:

- Board Certified in DUI Defense by the National College for DUI Defense (NCDD)
- A former Vice-Chairman of the NACDL DUI Committee
- A member of the Board of Regents of the NCDD

Mr. Hawkins has helped train DUI defense lawyers in Georgia, California, Florida, Massachusetts, Mississippi, Montana, New York, Nevada, South Carolina and Texas. He spent nine years as the Chairperson for the ICLE *Handling Administrative Drivers License Suspensions and Revocations Seminar* which trains Georgia lawyers in techniques to save their clients' drivers license.

Assisting Mr. Hawkins with his comprehensive presentation on "Cross Examination in a DUI Case" will be Anthony Palacios.

ANTHONY PALACIOS is a former SFST State Coordinator for the State of Georgia and a former SFST/DRE Staff Instructor for the Georgia Police Academy at the Georgia Public Safety Training Center (GPSTC). Mr. Palacios is a former International Association Chiefs of Police Drug Recognition Expert (DRE) Practitioner, DRE Instructor, and DRE Train the Trainer, as well as a National Highway Traffic Safety Administration Standardized Field Sobriety Testing (SFST) Practitioner, SFST Instructor, and SFST Train the Trainer. While in law enforcement, Mr. Palacios trained over 3,000 Georgia, South Carolina, Tennessee, and Federal law enforcement officers and prosecutors in the detection of drivers under the influence of alcohol and/or drugs.

Since forming IDS Consulting in 2008, he has consulted in over 650 DUI/SFST & DRE related cases in the states of Alabama, Arkansas, California, Florida, Georgia, Indiana, Kansas, Louisiana, Maine, Massachusetts, Maryland, Mississippi, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Vermont, Washington, DC, West Virginia, and Wisconsin. Additionally, Mr. Palacios has testified as an expert witness in 11 different states in his area of expertise.

RICHARD R. (“RICH”) BULEY is a noted authority in the area of Montana DUI law. A Founding and Lifetime Member of the Montana Association of Criminal Defense Lawyers, (MTACDL) and the Montana Institute for Criminal Justice, Mr. Buley is also a member of the National Association of Criminal Defense Lawyers (NACDL). He is certified on the Intoxilyzer 5000 and the Intoxilyzer 8000 breath testing devices and has attended the National College of DUI Defense at Harvard University. He has litigated and appealed the constitutionality of numerous Montana State Statutes and is a frequent lecturer on the topic of DUI Defense.

BRYAN TIPP’s criminal defense practice includes the defense of all types of State and Federal offenses, with the additional emphasis of the defense of DUI cases. He is a Founding and Lifetime Member of the Montana Association of Criminal Defense Lawyers, (MTACDL), the Washington Association of Criminal Defense Lawyers, and the Montana Institute for Criminal Justice. He is also a member of the National Association of Criminal Defense Lawyers (NACDL). Certified pursuant to the National Highway Transportation Safety Administration (NHTSA) protocol for SFSTs, Mr. Tipp has also completed the Intoxilyzer 8000 Operator’s Course. In addition to having attended the National College of DUI Defense at Harvard University, Mr. Tipp has organized, administered and spoken at seminars on DUI Defense.

PAUL MIRANDA has a Ph.D in Chemistry. He is qualified as an expert witness in the courts of Montana and has testified for both the defense and the prosecution in DUI cases. Dr. Miranda has particular experience with the technology used by the Intoxilyzer 8000 and has lectured and testified extensively regarding chemistry-based variables associated with that technology.

2012 OPD INVESTIGATOR TRAINING CONFERENCE
August 29-30, 2012
Fairmont Hot Springs, Montana

Participants will travel to the conference site on Wednesday morning, August 29.

The conference agenda will begin at 12:15 PM on Wednesday, August 29. (Lunch on your own)

Participants will stay at the Fairmont Hot Springs hotel on Wednesday night, August 29.

The conference will adjourn at 2:30 PM on Thursday afternoon, August 30 (lunch provided), and participants will travel back to their home offices.

WEDNESDAY August 29

- 12:15 – 12:45 PM: Welcome (Mori Woods)
- 12:45 – 2:00PM: Session 1: Social Media Investigation (Kevin McLain)
- 2:00 – 2:15 PM: BREAK
- 2:15 – 3:30 PM: Session 2: Investigating Mitigation in Non-capital Cases (Richard T. Wood)

THURSDAY August 30

- 9:00-10:30 AM: Session 3: Eyewitness Misidentification (Kevin McLain)
- 10:30 – 10:45 AM: BREAK
- 10:45 - Noon: Session 4: Investigating “Shaken Baby” Cases (Brendan McQuillan / Jen Streano)
- Noon – 1:00 PM: LUNCH (provided)
- 1:00 – 2:30 PM: Session 5: Attorney-Investigator Teamwork (Richard T. Wood / Bill Hooks)
- 2:30 PM: Adjourn

Participants

OPD investigators/one attorney from each office in regions 1,2,3,4,5,8,9 (For Session 6 – Teamwork)

Instructors

Bill Hooks, Mori Woods, Jen Streano, Kevin McLain, Richard T. Wood, Brendan McQuillan

Office of the State Public Defender

FY 12

TRAINING PROGRAMS

July 1, 2011-June 30, 2012

<u>Date of Training</u>	<u>Description of Training</u>	<u>Internal Personnel</u>		<u>External Personnel</u>		<u>Totals</u>
		<u>Attorney</u>	<u>Non-Attorney</u>	<u>Attorney</u>	<u>Non-Attorney</u>	
August 15-19, 2011	University of Montana Capital Training Initiative (Defense - Part I)	17		4		21
August 29-31, 2011	Investigator Training Conference (Butte)		19			19
September 2011	PACE University Public Defender Fellowship Program (UNLV Boyd School of Law plus week long placements in Miami and the Bronx)	2				2
October 12, 2011	NACC Child Welfare Specialist "Red Book" Training	7		11	26	44
October 12-13, 2011	OPD Statewide Training Conference (Whitefish)	104	3	28		135
	- Ethics Issues in Conflict Cases					
	- Montana Supreme Court/US Supreme Court Case Law Update					
	- Protecting the Record					
	- Immigration Law for Defenders II					
	- DUI Practice Tips - DRE Evidence					
	- Forensic Use of Neuropsychological Evaluations					
	- Restitution Hearing Workshop					
	- DOC Placement and Programming Policies					
	- Issues in Courts of Limited Jurisdiction					
	- Substance Abuse, Mental Illness, and the LAP					
	- Understanding Psychological Tests					
	- Science and Law of Eyewitness Evidence					
	- Lessons and Practice Tips Gained from the Jury Insights Project					
October 20-22, 2011	National Juvenile Defender Leadership Summit (Seattle)	2				2
November 4, 2011	Grizzly CLE	2		43	1	46
	- Tips and Techniques for Writing Effective Briefs					
	- Understanding Montana's Marijuana Laws					
	- Ethical Considerations in Representing Children					
	- Jury Perspectives of the Trial Process					
	- Substance Abuse, Mental Illness, and the LAP					

Office of the State Public Defender

FY 12

TRAINING PROGRAMS

July 1, 2011-June 30, 2012

<u>Date of Training</u>	<u>Description of Training</u>	<u>Internal Personnel</u>		<u>External Personnel</u>		<u>Totals</u>
		<u>Attorney</u>	<u>Non-Attorney</u>	<u>Attorney</u>	<u>Non-Attorney</u>	
	- Lawyers and Public Statements: Professional Responsibility Concerns					
November 2011	National Forensic Training Program (Austin, TX)	2				2
November 2011	NACDL Defending Drug Cases Seminar (Las Vegas)	1				1
December 2011	OPD Leadership V	23	6			29
February 21-24, 2012	OPD Boot Camp (Trial Skills Workshop)	22		1		23
March 1, 2012	DJ Defender Meeting	13	1			14
March 14-16, 2012	MTACDL Annual Conference (Chico Hot Springs)	7				7
May 4-5, 2012	Defending Immigrants Partnership (Denver)	2				2
June 1 and 8, 2012	Cultural Communications Workshop	45	8			53
June 26-27, 2012	OPD Support Staff Training Conference	1	65			66
Ongoing Training						
Ongoing	New Employee Orientation					
Ongoing	Semi-annual Standards Verification (Dec. 31 , 2011 and June 30, 2012)					
Ongoing	Video/Computer Based					
	- Federal Consequences of State Criminal Convictions					
	- Child Sex Offenders					
	- OPD Brief Bank Update Training					
	- Immigration					
	- DUI Practice Update					
	- Civil Practice Quarterly Reviews					
	Totals	250	102	87	27	466

Office of the State Public Defender

FY 13 PLANNED
TRAINING PROGRAMS
 July 1, 2012-June 30, 2013

<u>Date of Training</u>	<u>Description of Training</u>	<u>Internal Personnel</u>		<u>External Personnel</u>		<u>Totals</u>
		<u>Attorney</u>	<u>Non-Attorney</u>	<u>Attorney</u>	<u>Non-Attorney</u>	
July 20-21	Western Region NJDC Juvenile Summit (Seattle)		3			3
July 30-August 1, 2012	University of Montana Capital Training Initiative (Defense - Part 2)	14		5		19
August 9-10, 2012	Defending DUI Cases in Montana (Livingston)	52	3	19		74
August 29-30, 2012	OPD Investigator Conference (Fairmont)					0
September 2012	DN Boot Camp (TBD)					0
October 9, 2012	Cultural Conceptions of Guilt and Innocence (Billings)					0
October 10-12, 2012	OPD Annual Meeting and Training Conference (Billings)					0
October 27, 2012	OPD Grizzly CLE (Missoula)					0
December 5-7, 2012	Leadership VI (TBD)					0
February 19-22, 2013	OPD Boot Camp (Trial Skills Workshop)					0
April 25-26, 2013	OPD Support Staff Training Conference					0
June 21, 2013	2013 Legislative Update					0
Totals		69	3	24	0	96