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To: Montana Public Defender Commission
From: Larry Murphy, Contract Manager
RE: Update on Proficiency Determination of Contract Attorneys

In response to Commissioner Taylor's request for information regarding his concerns about contract attorneys outlined in his email dated August 12, 2010, I have prepared the following:

1. Standard IV (5) requires that each attorney providing contract services to OPD undergo an annual proficiency determination. The proficiency determination is to be conducted by a combination of the Chief, the Training Coordinator, the Regional Deputy Public Defender (RDPD) from the region and the Contract Manager. The determination should include an in-court observation of the contract attorney as well as input from clients, the RDPD, judicial personnel and faculty from training. Additionally, the Standard requires that a meeting occur between the contract attorney and OPD.

The Standard requires that an "experience survey" be submitted by each contract attorney and that the survey be updated annually. Finally, the Standard requires that OPD certify the contract attorney's proficiency within all applicable areas of law.

I have been in regular contact with the Chief, Eric Olson and each of the RDPDs, and can assure the Commission that each attorney with which OPD has or is contracting has been observed in court by at least one of us. Either the Chief, Eric, an RDPD or I have received input from a variety of sources, including Commissioners, clients, peers, judicial personnel and others, commenting on the proficiency of the attorneys; and where the input is negative, either I or the RDPD involved have met with the attorney to discuss the same in an attempt to resolve the issue. These meetings are either in person or telephonic. The results of said meetings vary from a positive resolution to OPD ceasing to assign cases to the attorney.

I require that our Summary of Attorney's Education and Experience be completed by every prospective contract attorney. I review each and determine if OPD will send the prospect an MOU. The Summaries are kept on file in the Central Office. I have not had these Summaries updated annually, but as of the date of this Commission meeting, each current contract attorney is being asked to update their respective Summary. These will be kept on file in the Central Office. To date OPD has not memorialized each contract attorney's proficiency determination.

2. Policy 136, Standards Compliance, requires that Eric Olson or his designee call or visit not less than 10 public defenders per month to discuss and review three of the attorney's recently closed cases.

As I have previously advised this Commission, I, in conjunction with my staff, regionally audit contract attorney's claims on a monthly basis, e.g. January = Region 1, February = Region 2, etc. This audit examines the length of time a case is open and requires a justification from the contract attorney as to why a misdemeanor case is open for longer than 180 days, or why a felony case is open longer than 250 days.

It is my intention to combine a standards compliance review with a proficiency determination for each contract attorney. This will be in conjunction with the audit as stated above; that is, I will review and discuss a case or cases pursuant to our standards compliance policy with the Region 1 contract attorneys during the month of January.

I intend to select a recently closed case or an older case which remains open in each area (DC, DN, DJ, DI or DG) in which the attorney practices. Either Eric, the RDPD or I will visit or call the attorney to discuss and review each case while using OPD's Standards checklists as a guide. Eric, the RDPD and I will identify any Standards non-compliance or performance deficiency and develop a training plan for the attorney. During this process I intend to elicit comment from judicial personnel, clients and peers, if possible. I will reduce the recommendation to writing and have the contract attorney sign the same. This document will be kept on file in the Central Office and will act as a certification of proficiency and standards compliance. This process will commence in September, 2010 with the contract attorneys in Region 10.