

MONTANA PUBLIC DEFENDER COMMISSION

Montana State Capitol Building, Rm. 152
Helena MT 59620

August 30, 2010

Approved at the October 8, 2010 Meeting

Commissioners Present

Terry Jessee, Billings; Charles Petaja, Helena; Richard (Fritz) Gillespie, Helena; Kenneth Olson, Great Falls; Majel Russell, Billings; Jim Taylor, Missoula; Ray Kuntz, Red Lodge; and Margaret Novak, Chester

Commissioners Absent

Caroline Fleming, Miles City; Bill Snell, Billings; Jennifer Hensley, Butte

Liaisons

Laura Simonson, liaison for union attorneys, and Lisa Korchinski, liaison for non-management appellate defender staff and attorneys (by phone) were in attendance. Laura Bailey, liaison for union support staff and investigators, had nothing to report and did not attend.

Interested Persons

Scott Crichton and Niki Zupanic, American Civil Liberties Union of Montana (ACLU); Pat Gervais, Legislative Fiscal Division; Will Soller, Legislative Audit Division; Timm Twardoski, Executive Director of American Federation of State, County and Municipal Employees, Montana (AFSCME)

1. Call to Order

The Montana Public Defender Commission meeting was called to order by Chairman Fritz Gillespie at 8:15 a.m.

2. Introductions

Chairman Gillespie welcomed new commissioners Margaret Novak and Ray Kuntz. Commissioner Novak is from Chester and advocates on behalf of indigent persons. Commissioner Kuntz is an attorney nominated by the Supreme Court and he is from Red Lodge.

3. Approval of Minutes

Commissioner Olson moved to approve the minutes of the June 17, 2010 meeting as submitted. Commissioner Taylor seconded, and the motion carried. Commissioner Russell missed the closed session at the last meeting, and requested a brief closed session recap at the end of the day.

4. Chairman's Report

Chairman Gillespie spent a fair amount of time with Chief Public Defender Randi Hood, Administrative Director Harry Freebourn, and other Central Office staff over the last few weeks to improve his understanding of the agency. He has also been meeting with legislators. He intends to be active during the upcoming legislative session, and his primary objectives between now and April are to try to obtain maximum funding for the agency, and to encourage passage of the proposed legislation.

Chairman Gillespie also intends to continue implementing the American University (AU) recommendations. He noted that the information AU collected is now two years old and a lot has been accomplished since then. The recommendations can be considered to be a baseline against which success or failure is measured.

5. Commission Liaisons

Appellate liaison Lisa Korchinski said that they have reviewed the agenda and budget, and she received a few comments, but they have not reached consensus. She conveyed a co-worker's support of Item 11.D.2, proposed legislation removing supervision of the Chief Appellate Defender from the Chief Public Defender's duties, but the co-worker also advocated for going further by also removing the Chief Public Defender's budgetary control of the Appellate office. Ms. Korchinski said there is general consensus regarding the proposed legislative change to supervisory authority, but not about independent budgetary authority.

Union attorney liaison Laura Simonson reported that most of the issues they brought forth previously have been referred to the Labor Management Committee (LMC). Those minutes will be posted shortly. Ms. Simonson said that attorneys are pleased with the work to improve indigency determination and the proposed requirements for more documentation because they think it will help with the workload.

Commissioner Taylor asked about progress related to the contract attorney liaison. A new timeline needs to be set and this will be an action item later today.

6. Appellate Defender Program Report

Chief Appellate Defender Joslyn Hunt gave highlights from her written report. The appellate case base grew throughout the last fiscal year. The drop in the case base in July was the first ever and is not expected to continue. The conflict issue was argued on July 28, and a decision is expected in the next couple of months. The appellate training in July was phenomenal. Sarah Braden met with some of the court reporters who expressed concerns regarding the use of recordings, especially in regard to confidentiality issues. Chief Hunt will follow up with Chief Justice McGrath.

Chief Hunt is still gathering information regarding the potential for conflict issues in specialty courts. She will present a detailed report at the next meeting.

In response to Commissioner Taylor's request for information on ineffective assistance of counsel (IAC) and plain error claims, Chief Hunt said that contract attorneys raised 9 IAC claims, and 11 plain error arguments. She can report on these each time, but with the caveat that she doesn't think these numbers are useful, because they are both over- and under-inclusive. Chief Hunt believes that some of this is a training issue, and has discussed it with Training Coordinator Eric Olson. Chairman Gillespie asked if there are occasions where IAC is raised at the client's insistence? Chief Hunt replied that, no, they are very firm that the client does not raise issues. The Appellate Defender Office determines what the issues are, and they only include those with merit. Commissioner Taylor asked to see the information at each meeting, and hopes to see the numbers go down over time. He would also like to know how many prevail.

7. Committee Reports from August 18, 2010 Meetings

A. Personnel Committee

Commissioner Jessee chairs the Personnel Committee, and he reviewed the summary of issues and recommendations from the August 18 meeting (see item 7.A.).

Under AU item #10, the committee encouraged staff to share successes and strategies so that the whole system will know when something good happens. Chairman Gillespie asked when trial notebooks might be available system-wide. So far, the general work on criminal cases is done, but work for each region or judicial district remains and is expected to take about nine months.

The committee deferred AU item #14, which raised some concerns for Commissioner Jessee as a law enforcement officer, but he acknowledged that questioning can be stopped by the client at any time in the absence of an attorney.

The committee recommended adoption of option 1 under AU item #20, with the addition that any region or department or program that did not agree with the allocation would be able to come to the Commission to state why it does not agree and the Commission would make the final decision. Commissioner Petaja added that Chief Hood is to inform the Commission when there is a region with an objection so that the Commission can schedule a discussion. Commissioner Taylor asked for clarification regarding resource allocation. Chief Hood explained that regional budgets are "guideline" budgets, because the agency operates out of one appropriation. The role of the regional deputy or department or program manager is involvement in the process to help identify trends and unanticipated needs. The budget allocations are a goal, but nothing will actually go unpaid based on the allocations. Mr. Freebourn noted that any apparent discrepancy between regions can be explained by the story behind the numbers. For example, cases and dollars can't be compared, because regions with small populations are the largest geographically, resulting in more travel and a higher cost per case.

Commissioner Jessee wants to go on the record regarding AU item #21 that he is tired of hearing anonymous complaints and that people who feel they are being treated badly are encouraged to use existing venues for assistance.

Commissioner Kuntz asked whether AU item #16 relates to individual or systemic case overloads. The committee recommended approval of the Case Weighting System (CWS), which will alleviate individual case overload, but his impression was that the AU's thrust was that at some point you have to stop taking cases to get the legislature to give the agency more money. Chairman Gillespie agreed that a policy for systemic overload needs to be developed, and he will make this an item under Old and New Business. Chairman Taylor wants a policy that will identify the "trigger" and what action is to be taken once the trigger is reached. Commissioner Jessee confirmed that the committee does not believe that refusing cases is an option.

B. Collective Bargaining Committee

Commissioner Jessee also chairs the Collective Bargaining Committee, and he discussed the issues and recommendations made by the committee (agenda item 7.B.)

Chief Hood noted that all of the policies discussed in the committee meetings will be formally adopted following this meeting and are not yet on the web.

C. Contracts Process and Approvals Committee

Commissioner Petaja chairs this committee, and he distributed his written report (agenda item 7.C.-1). Chief Hood clarified that the Commission will have to approve the proposed standard to satisfy AU item #13.

D. Standards Committee

Chairman Gillespie reviewed the issues and recommendations made by the committee (agenda item 7.D). Regarding AU item #22, Mr. Olson reports that of the 10 reviews since implementation of the Standards Compliance policy no one has been out of compliance. Commissioner Taylor requested the compliance checklists that Mr. Olson is using and expressed concern that to monitor compliance for all FTE and contract attorneys is a full-time job.

Mr. Olson agreed that it is a full-time job. He had anticipated a quick meeting and documentation process, but discovered that the attorneys are very eager and willing to discuss their cases and the standards. He emphasized that standards compliance monitoring is a training exercise, and not part of the evaluation process. He will distribute the DI, DN and criminal checklists; the DJ checklist is still in development.

AU item #23 was deemed an item for Commission action. Chairman Gillespie emailed Commission members asking what information is necessary about a week ago, so that staff can work on developing a standard reporting format.

8. New Committee Assignments

Chairman Gillespie will chair the Budget Committee in Commissioner Hensley's absence. He is ex-officio on all other committees, and will remove himself from membership on the Collective Bargaining Committee. Commissioner Kuntz will replace him. Commissioner Petaja will chair the Contracts Process Committee. Commissioner Jessee will chair the Personnel Committee. Commissioner Novak joins the Budget Committee.

The Commission discussed the purpose of the Grants Committee, and Commissioner Russell wondered if it is an appropriate committee of the Commission since they are not approving staff efforts to obtain funding. Commissioner Russell moved to abolish the Grants Committee. Commissioner Jessee seconded. During further discussion, the Commission agreed to act as an ad hoc committee of the whole, and will pass information on funding opportunities to staff via Cathy Doyle. Mr. Olson said that the statute imposes a responsibility on the Training Officer. Ms. Doyle will route potential opportunities to Mr. Olson and Mr. Freebourn for discussion and determination regarding whether staff resources should be devoted to following up. The motion carried, and the Grants Committee was abolished.

9. Public Comment

Niki Zupanic, Public Policy Director for the ACLU, said that the ACLU filed an amicus brief in the St. Dennis case, asserting conflict between OPD regional offices. She offered to make the brief available to the Commission, including an email from Regional Deputy Public Defender Ed Sheehy that was attached. Ms. Zupanic views the email as typical of the type of pressure attorneys are subject to.

Ms. Zupanic is pleased with the committee meetings and the systematic approach the Chair has implemented to encourage committee members and staff to meet specific goals. She commented favorably on the work of the committees, including the mentoring program and the Case Weighting System (CWS). She noted that the agency must develop ways to discover problems, such as the issue where it was learned that not all performance evaluations had been completed despite statements to the contrary. Ms. Zupanic believes that the Appellate Defender Office should be independent, and doesn't see an advantage to keeping it's budget within OPD. She generally agreed that the need to collect information should accurately reflect operations as well as allow the Commission to supervise. The ACLU will make a written submission regarding information that they consider to be important.

10. New Employee Orientation Video

Mr. Olson explained the new orientation procedure, which consists of three components. The first is face to face with the first line supervisor, completing forms, introductions to co-workers, etc. The second is a binder with a new employee checklist, focused on state employment, local resources, general law practice and criminal practice. The final piece is an orientation video which consists of multiple chapters. The chapter on Guardianship Standards was demonstrated. Each chapter is an introduction to tell the new employee where to go to read more in depth on each topic, not an attempt to teach the standards and policies themselves. New attorneys are expected to spend the first week of

employment working through the materials with the hope that by spending a week in preparation, they will be most prepared for their new caseload.

Chairman Gillespie said that this is a great step in dealing with the AU recommendation, and should bridge any gaps that might have existed. Commissioner Taylor agreed that it is a great step forward, and thanked Mr. Olson and IT staff member Kyle Belcher for their great work.

11. Public Defender Program Report

A. Chief Public Defender Report

Chief Hood said that the new CWS is much improved. Roll-out will begin September 1, and she will discuss it with the Regional Deputy Public Defenders, who will be meeting in Helena tomorrow. She has site visits planned to verify information and answer questions beginning a week or two after implementation. Chief Hood will also work on making the indigency determination process more uniform statewide during the site visits, which will begin with the eastern regions in late September.

Commissioner Petaja and Region 11 Deputy Garry Bunke will be doing some work on the indigency questionnaire form. Hardship determinations represent only 5-8% of cases, but they are subjective, so the policy has been revised to require that all hardship cases are verified by requiring clients to produce paystubs and tax returns, and doing property checks. For the other 95% of cases qualifying under income guidelines, it becomes an impossible task in large offices to verify every case, so the policy requires verification in every tenth case. It does not prohibit the indigency determination specialist from requesting more information in any case, however.

The fifth management training session is scheduled for early November. Chief Hood will also participate in an evidence training session at the annual meeting, including how to preserve the record for appeal.

The Executive Team, consisting of Chief Hood, Chief Hunt, Mr. Freebourn, Contract Manager Larry Murphy and Mr. Olson have begun meeting on a monthly basis. They recently developed a "Top Ten" list of priorities for the next 12-15 months. Addressing the AU recommendations is item #1; others include completion of the orientation materials, the indigency determination process, and continued JustWare implementation and training.

Chief Hood said that access to people in jail is still of concern in Polson; sometimes they are allowed in, and the next week not. Region 1 Deputy John Putikka and Polson Managing Attorney Steve Eschenbacher are working on the issue and monitoring it closely.

Commissioner Russell asked about moving the indigency determination process for hardship cases to the Central Office, which was mentioned in Chief Hood's written report. Chief Hood said that since there are so few cases, this could ensure that verification is done uniformly. In addition, these are the cases that the regional offices are criticized for taking by private citizens and legislators. She would be in a better position to address issues if the determination was made in the Central Office. Commissioner Jessee asked how quickly the determination could be made. Chief Hood replied that the agency represents them until they are determined to be unqualified, but it is a process that should be done quickly. Obtaining the required verification could

be a bottleneck, so there is some hesitation there. The alternative is to better describe the hardship criteria and verification process.

Commissioner Taylor asked about the status of the continuity plan. It is being developed in cooperation with the state's continuity planning group and lays out responsible individuals under various scenarios.

B. Audit Report

Vicki Rauser from the Legislative Audit Division addressed the Commission. They are in the wrap-up stage of OPD's second financial compliance audit. She and Mark Aldridge found the staff to be easy to work with, and they appreciated the enthusiasm for the work that the field staff showed during their visits, sometimes on short notice. The audit is scheduled to be heard by the Legislative Audit Committee on September 28.

C. Loan Forgiveness Program

Lily Yamamoto from the Montana Board of Crime Control (MBCC) discussed the John R. Justice loan forgiveness grant. The MBCC will administer the grant, and Ms. Yamamoto explained the process (agenda item 11.C). The grant is an incentive to recruit, hire and retain qualified attorneys for public service. Half of the amount awarded will go to defenders, half to prosecutors. Federal defenders will also be eligible to apply. Ad hoc committees of the MBCC will review applications, and prioritize by region. The ad hoc committees will take recommendations to the full board, who will make the final decisions. The request for applications will open in September, with final decisions made in December and awards in January.

The ad hoc committees will also act as quality control and help refine the process for future years. Montana received only \$100,000 this year, but there have been rumors that Montana's share of the funding could be up to \$1 million in future years, so it is important not to have any defaults in this early stage. Although MBCC may not be able to give an award to every applicant this year, they hope to eventually include everyone if the funds continue to be available in the future.

D. Legislative Report

Chief Hood reviewed the legislative timeline (agenda item 11.D. 1) and noted that decision packages (DPs) must be approved today. She also reviewed the proposed legislation amending Title 47 (agenda items 11.D.2-5).

Amendments to five sections of traffic and criminal code to eliminate jail time under certain circumstances will also be submitted as a way to temper caseloads, especially in municipal and city courts. In response to Commissioner Jessee's inquiry regarding local ordinances, Chief Hood said that she is trying to identify new local ordinances since inception of the agency that were not included in the original funding. Commissioner Jessee's sense is that some municipal courts abuse the public defender system, wasting resources on defense of offenses such as being in a park after hours. Chief Hood agreed, but noted that as long as the potential for jail time is there the agency is obligated to take the case. Chairman Gillespie suggested that the judge make a determination at the outset as to whether or not jail time will be imposed, but Chief Hood said that part of the problem is that if the judge wants to give the offender six months to pay a fine, the sentence is suspended which puts OPD on the hook again. Chief Hood tried to identify eliminating jail time for items that seemed most likely to pass, although there are many

others that fall into the same category. Chairman Taylor offered a language suggestion for the change to 47-1-104.

E. Training Report

Mr. Olson discussed recent training on oral advocacy for the ADO, multi-disciplinary training at Montana State Hospital, and support staff training in Butte. Support staff training will occur at least semi-annually as a new part of the training program. "Boot Camp" was held in August and it continues to improve in providing trial skills training for OPD FTE and contract attorneys, some right out of law school, some from other areas of legal practice.

Next week the court administrators program will sponsor a statewide DN workshop for a wide spectrum of DN practitioners. The intent is to begin work on identifying best practices for the entire state. The monthly Friday afternoon video training will resume shortly, as will the noon civil practice updates. The agenda for OPD's fifth annual statewide conference is almost finalized. The purpose of the conference is both educational and morale building.

Commissioner Kuntz asked about the policy in regards to representing children in DN cases. Currently, the child will have a guardian ad litem (GAL) who advocates for the best interests of the child, but sometimes the child will have an additional attorney who advocates for the *wishes* of the child. Mr. Olson said that this is a hot topic being examined in the whole DN evaluation process and they are hoping to get some consistency statewide.

Chairman Gillespie requested a status update on JustWare. Brian Smith introduced Marsha Parr, the new case management administrator. Mr. Smith hopes to have the JustWare user manual revised within the month. New Dawn will be in Butte in September to help explain where the data for various reports comes from, and will provide guidance on business rules. He and Ms. Parr will train users on the new attorney user interface that has been developed.

Commissioner Taylor asked about the level of compliance with time tracking. Mr. Smith reported approximately 75% compliance for June and July, which is an improvement. Chief Hood said this will be a topic at tomorrow's meeting with the regional deputies and they will explore why some regions are more successful than others. Chief Hood learned some time tracking tips at boot camp which she found very useful. Time tracking must be a priority, and help is available to enable compliance.

*F. Budget/Finance Report (*Action Item)*

Mr. Freebourn said that although the Legislative Audit staff could not comment on the recent financial compliance audit until the report was finalized, he was pleased to report that OPD had a perfect financial audit with an unqualified opinion.

Mr. Freebourn reviewed results and trends of actual expenditures for Program 1 and Program 2 from inception through FY 2010 (agenda items 11. F. 2 and 11. F. 3). Commissioner Taylor noted that the system actually operated with fewer dollars in FY 10 than FY 09.

The Commission must finalize the budget submission at this meeting. Mr. Freebourn briefly discussed each decision package (DP), and noted that DP 10 had not yet been approved by the Commission. In addition, each agency is required to submit a 5% reduction plan (about \$1 million for OPD) as part of the budget. So far OPD does not have a specific reduction plan. Goals and objectives are also included with the budget submission, and Mr. Freebourn suggested that the Commission may wish to revise them at a future date.

Human Resource Officer Barb Kain and AFSCME Executive Director Timm Twardoski discussed the attorney salary survey that DP 4, the attorney career pay ladder, was based on. The salary survey included attorneys from all large cities, all county attorneys, and all state-employed attorneys in pay band 7. A range was established to move people through the career ladder, and resulted in the midpoint being increased from \$58,762 to \$64,728. Mr. Twardoski thanked OPD for allowing the union to be part of the budgeting process; most agencies don't involve them except during negotiations. He gives full support to the proposed budget and will do whatever he can to ensure that it gets through the legislature. He noted that OPD attorneys will still be the lowest paid in the state system, even with this package.

Mr. Freebourn asked the Commission to approve DP 10, which is a reversal of the 4% personal services reduction required by the Executive branch. The agency does not have a plan to comply with the reduction, which equates to approximately 8 FTE. Commissioner Taylor moved to approve DP 10. Commissioner Jessee seconded. Chairman Gillespie suggested that complying with the reduction by cutting positions might result in the risk of providing ineffective assistance of counsel. The Commission discussed reducing caseloads by 5% in various ways as another way to comply with the reduction. Suggestions included changing the number of people eligible for services by increasing the income requirement, changing how DN cases are handled, and reducing penalties for certain crimes. Without identifying a specific solution for reducing caseloads, the motion carried.

There were no changes to the other items previously approved by the Commission. Chief Hunt asked that the Commission make the career ladder for the appellate attorneys a top priority when they prioritize the decision packages.

Mr. Freebourn received information from the budget office that the Commission can defer the setting of priorities. Commissioner Taylor moved to table prioritization of the budget items until the Budget Committee meets. They can then discuss the priorities with the full Commission and provide the opportunity for public comment. Commissioner Petaja seconded, and the motion carried.

Mr. Freebourn also noted that the Commission will be asked to approve the Report to the Governor before the beginning of the legislative session, and they will start to see portions of it as it is compiled.

G. Contract Manager Report

Mr. Murphy reported that he has terminated a flat fee contract in Richland County that resulted in an hourly rate greater than \$60 per hour. That attorney will continue to work on an hourly rate. The other flat fee contracts, for specialty courts and GAL services in Gallatin County, are coming in at less than \$60 per hour.

Mr. Murphy discussed the process for proficiency determination of contract attorneys. So far, the process has been informal, but OPD management has knowledge of every attorney that OPD contracts with. Not only are contract attorneys observed in court (primarily by the local regional deputy), but comments and complaints also come through judges and other third parties. Most issues are resolved informally, but sometimes changes are made in number or type of case assignments. So although there has not been a document in the Central Office certifying proficiency, oversight has been happening since the beginning of the agency.

Policy requires that the attorney summary of education and experience be updated annually, so Mr. Murphy is in the process of doing that and will have a report at the next meeting. In addition, he intends to combine a standards compliance evaluation with the proficiency determination process in a more formalized way. This will also be integrated into the current audit he conducts on cases that are open longer than expected.

In response to Commissioner Taylor's question about Mr. Murphy's numerous roles within the agency, Mr. Murphy said that since he supervises the Major Crimes Unit, he does not do approvals related to those cases to avoid conflicts. Instead, Central Office staff divert those cases to Mr. Olson.

Chairman Gillespie asked about compliance with the continuing education requirements for contract attorneys required by the Standards. Mr. Murphy said that the Standards require a certain number of hours annually for each area of practice. For an attorney with multiple practice areas, this could amount to a significant number of hours. In June, 2006 a contractor in eastern Montana refused to comply with the requirement and the Commission decided to waive the continuing education requirement, and it has not been addressed since then. Commissioner Taylor said that he didn't think the Commission intended to take the standard off the books, and his understanding is that the agency is not even tracking the continuing education units, let alone ensuring compliance. Mr. Olson asked if the Commission wished to set forth a requirement that he maintain attendance for every training session? That would be more stringent than the State Bar requirements for annual reporting, because they operate on the honor system. If mandatory attendance reporting will be required it would have to be for both FTE as well as contract attorneys, which leads back to morale issues. There was further discussion regarding the continuing education standard and the economic cost of compliance for contractors, some of whom do relatively little work for OPD

Mr. Murphy intends to start the standards compliance/proficiency determination process next month in Region 10 (Glendive). He will report on his progress at the next meeting. He intends to pay the contract attorneys for their time meeting with him, and Chairman Gillespie asked Mr. Murphy to track how much that will cost.

Commissioner Petaja moved to table the discussion of continuing education requirements for contract attorneys until the next meeting. Commissioner Jessee seconded. The motion carried.

Commissioner Taylor moved that in the interim, an ad hoc committee be established to 1) work on review of the standard regarding continuing education for contract attorneys and recommendations for changes to the standard; and 2) develop a checklist for proficiency determination of contract attorneys. Commissioner Olson seconded. Commissioners Taylor, Kuntz and Russell will form the committee. The motion carried.

12. Commission General Discussion

A. Information Request from Commissioner Taylor

Staff responded verbally and in writing to Commissioner Taylor's extensive email request for information on caseloads, contractor case assignments, support staff ratios, representation of parents in DN cases, felony/misdemeanor attorney cross-over and numerous other issues.

Commissioner Petaja asked about the cost of providing some of the information requested, and questioned the value of tracking, for instance, the number of motions filed. The Commission proceeded to discuss at length how staff resources should be expended in providing information

to the Commission and other stakeholders, and the importance of determining what information is critical to the agency's mission. Commissioner Jessee asked about the legislature's information needs, and Mr. Freebourn replied that most of those are statutory.

Mr. Freebourn noted that the agency has done a good job on the financial side as evidenced by the audit results, but now the issue is how to show routine operations in a meaningful way. Chairman Gillespie asked each Commissioner to give serious thought to what information needs to be collected and reported on a regular basis, and to respond to him by September 20.

B. Specialty Courts

Chairman Gillespie said that Mr. Murphy has provided information he has not yet had time to digest regarding specialty courts. The Chair will deal directly with specialty court judges that are working with unqualified clients. Mr. Murphy will attend a specialty court conference in September and he will report back to the Commission. A Missoula contract for specialty courts is included in the materials.

C. Legislative Preparation

Chairman Gillespie asked if the Commission would like to propose additional legislative changes. If so, please submit them as soon as possible. The deadline is September 9, the date of the final Law and Justice Interim Committee meeting.

D. Commission Attendance Policy/Changes to Operating Procedure

Commissioner Jessee moved to adopt the proposed revision to the Commission's operating procedures, including the new attendance policy. Commissioner Kuntz seconded. A question was raised regarding whether the phrase "three of four scheduled meetings" was meant to refer to consecutive meetings or on an annual basis. Commissioner Jessee amended his motion to change the language to "three of four consecutively scheduled meetings." Commissioner Russell seconded the amendment. The motion carried as amended. Commissioner Russell asked about implementation of the attendance policy. Chairman Gillespie said that his intent in drafting the policy was there should be a consensus among other Commission members if they feel someone is not contributing, and it would be scheduled as an agenda item.

13. Public Comment

Niki Zupanic restated the importance of caseload data including type, duration, and disposition of cases. She said it helps with the budget process and also provides information regarding standards compliance. Seeing how that data squares with the new CWS will show the pressure the system is currently under and will make the best case for adding FTE. Tracking overtime requests may also show the strain on the system.

Ms. Zupanic asked how the managerial shift to more hours spent doing administrative, supervisory and mentoring functions is reflected in the JustWare data. She also suggested that certain standards, such as the requirement to see incarcerated clients within three days, might be suitable for data collection.

Eric Olson made a statement as a private citizen. Part of his job duties relate to dealing with morale, and he is disgusted that OPD attorneys are the lowest paid. He said that no one does this for the money, and OPD attorneys are extremely dedicated. Second, in regard to the previous discussion regarding changing the indigency standards, he said nothing is to be gained by passing the buck. There is no judge that will allow a person to come into court without representation and the agency should not encourage cutting off people who deserve services. Everyone benefits from having people stand up for them.

Chief Hood commented that she very much supports the passage of the career pay ladder, but she wants everyone to know that her regional deputies do not get a pay raise because of the pay freeze. Every one of them works exceedingly hard, and they still won't get a raise next year.

14. Old Business/New Business (*Action Items)

- A. *Commission Attendance Policy/Changes to Operating Procedure (*Action Item)*
This item was previously acted upon.

B. *Set Future Commission Meeting Dates*

Commissioner Russell expressed the opinion that having a Commission meeting in conjunction with the annual meeting was very useful because it gave the Commissioners a chance to interact with line staff. Mr. Freebourn said that unfortunately holding them at the same time puts a massive amount of stress on support staff. In addition, Chief Hood, Mr. Olson and others are involved in the training events and it is very difficult for them to work the Commission meeting into the schedule. Mr. Olson invited the Commissioners to attend the annual meeting to be held October 20-22 in West Yellowstone.

Commissioner Novak moved to meet October 8 in Bozeman, and to request that staff help make arrangements for Commissioners to attend annual meeting in West Yellowstone. Commissioner Petaja seconded. Mr. Freebourn will assist with scheduling the Budget and Legislative committees prior to October 8. The motion carried.

C. *Contract Attorney Liaison*

Chairman Gillespie will send an email to contract attorneys via Mr. Murphy asking them to appoint a liaison by September 15. If a response is not received by then, he will ask the Montana Association of Criminal Defense Lawyers to choose a liaison.

D. *Approval of Committee Recommendations Including Caseload Limitations*

The Personnel Committee recommended that the Commission approve the adoption of the new case weighting system in response to AU items #15 and 16. Chairman Gillespie said that a lot of effort has gone into revising the CWS, and he recommends rolling it out and reviewing it in six months. Commissioner Jessee moved to adopt the new CWS. Commissioner Petaja seconded, and the motion carried.

The Personnel Committee recommended adoption of option 1 under AU item #20 (requiring that the Chief and her staff allocate the appropriation based on budget requests by the regions and departments), with the addition that any region or department or program that did not agree with the allocation would be able to come to the Commission to state why it does not agree and the Commission would make the final decision. Commissioner Jessee moved to adopt per the committee recommendation. Commissioner Petaja seconded and the motion carried.

Commissioner Taylor said that the CWS does not address a case overload recommendation. Commissioner Jessee agreed that a trigger needs to be identified. Identifying the trigger as well as the result (refusing cases or some other action) will be an agenda item for the next meeting.

Commissioner Jessee moved that the Commission adopt the Personnel Committee's recommendation to set the Chief Public Defender's caseload at 300 hours per year excluding mentoring time, and acting only as second chair. Commissioner Petaja seconded. Commissioner Jessee amended the motion to clarify that the 300 hours includes time spent as second chair and excludes only mentoring. Commissioner Petaja seconded the amendment. Commissioner

Jessee again amended the motion to clarify that the 300 hours is the maximum number of hours per year excluding mentoring time. Commissioner Petaja seconded the amendment. The motion carried.

Commissioner Novak moved to adopt the proposed standard prohibiting a contract attorney from taking a fee case that was originally an assigned case (AU item #13). Commissioner Taylor asked if there is a duty to disclose waiver in the original application or appointment letter? Chief Hood believes that there is and will check. Commissioner Russell seconded the motion. Chairman Gillespie said that it is important to know about the waiver to avoid breaching ethical standards. Commissioner Novak withdrew her original motion and moved to table this item until the next meeting. Commissioner Russell seconded. The motion carried.

Item #23, stating that the Commission must be assertive in demanding information from staff, is an action item for the next meeting. Chairman Gillespie has asked the Commission members to submit ideas for data collection to be discussed at the next meeting.

Mr. Freebourn asked, "If the Commission is not taking action on AU items that the OPD teams and Commission committees deemed complete, does that mean the Commission concurs with those actions?" Chairman Gillespie replied "Yes."

Commissioner Taylor asked for an update on the process for evaluating the Chief Public Defender. Commissioner Jessee will compile the comments the Personnel Committee has received and remove the names of the respondents for distribution to individual Commissioners. An executive session to evaluate the Chief Public Defender will be scheduled as an action item for the next meeting. A similar process will be used to evaluate the Chief Appellate Defender, also at the next meeting.

At Commissioner Russell's request for a recap of the June 17 Executive Session, Chairman Gillespie stated "The following portion of the meeting relates to matters of individual privacy. As Commission Chairman, I have determined that the demands of the individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed."

15. Adjourn

The regular meeting adjourned at 4:45 p.m. and the Commission went into Executive Session.