

# MONTANA PUBLIC DEFENDER COMMISSION

Montana State Capitol Building, Rm. 152  
Helena, MT 59620

**October 8, 2010**

*Approved at the January 10, 2011 Meeting*

## **Commissioners Present**

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

## **Commissioners Absent**

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 were in attendance. Laura Masica, liaison for union support staff and investigators, had nothing to report and did not attend.

## **Interested Persons**

Scott Crichton, Executive Director, American Civil Liberties Union of Montana; Timm Twardoski, Executive Director, American Federation of State, County and Municipal Employees

### **1. Call to Order**

The Montana Public Defender Commission meeting was called to order by Chairman Fritz Gillespie at 8:10 a.m.

### **2. Approval of Minutes**

Commissioner Petaja moved to approve the minutes of the August 30, 2010 meeting as submitted. Commissioner Jessee seconded and the motion carried.

### **3. Chairman's Report**

Chairman Gillespie reported that he met with Budget Director David Ewer recently, and appeared before the Law and Justice Interim Committee in September. He will elaborate on these meetings under committee reports. Chairman Gillespie has also been in contact with Commissioner Snell. Commissioner Snell is concerned because his work conflicts with his ability to attend Commission meetings. Chairman Gillespie assured him that he would not be dismissed from the Commission, and offered to work with Commissioner Snell to be an active participant in Commission duties.

### **4. Commission Liaisons**

Union attorney liaison Laura Simonson said that all of the issues that have come to her recently are either bargaining or Labor-Management Committee (LMC) issues. She assumes that the Commission doesn't want to hear about disgruntlements, and asked what they would like her to bring to the table. Chairman Gillespie's recollection regarding the creation of the liaisons was to allow non-managers in the field to bring matters to the Commission that may be filtered out by management. Commissioner Russell said that she is interested in information on any trends in the complaints going to the LMC. Ms. Simonson wants the Commission to know that many people care deeply about the public defender system.

Appellate liaison Lisa Korchinski said that the appellate staff wants to unanimously express their gratitude to the Commission for soliciting staff comments regarding Chief Appellate Defender Joslyn Hunt's performance evaluation. They recommend that the Commission renew Chief Hunt's contract and give her a raise.

Chairman Gillespie said that there doesn't appear to be consensus among the contract attorneys regarding organizing, and he has talked to Montana Association of Criminal Defense Lawyers President Wendy Holton about finding a contract attorney liaison from within those ranks.

## **5. Appellate Defender Program Report**

Chief Hunt gave highlights from her written report. The case base continues to grow, as expected. A draft case weighting system has been developed, based on the National Legal Aid and Defender Association standards. It is however, specific to Montana because oral arguments are a given here, unlike other areas.

The *St. Dennis* case addressing region to region conflicts is still pending. The conflict issue as it applies to the appellate office was declared moot in the *Sellers* case.

Assistant Appellate Defender Koan Mercer provided the analysis on specialty courts. The question addressed is whether there is a conflict in representing clients in specialty courts? In summary, the attorney must act in the client's interest and cannot disclose client information unless the client gives consent. Chief Hunt offered to do further analysis if the Commission wishes. Chairman Gillespie and Commissioner Taylor continue to have concerns that there is undue pressure on the client to give consent, because the client is seen as hiding something if they refuse, putting their success in the specialty court at risk.

Chief Hunt reported that ineffective assistance of counsel (IAC) and plain error claims are being raised about 40% of the time on appeal. She said this is largely based on the way arguments are structured for the court, and it is done as a back-up argument. Chairman Gillespie thinks that the barometer for standards compliance will be based largely on what the appellate office sees coming out of appeals, and asked if there is a consistent pattern of IAC? If so, the solution is training for trial attorneys so they don't make those errors again. Chief Hunt said that Justice Cotter will be among the presenters at a two-hour training session at the annual meeting to improve the trial court record. Commissioner Petaja said that it is important to know the result of the IAC claim if it is to be used as a barometer, and not just the fact that it was raised. Commissioner Kuntz agreed.

## **6. Committee Reports from September 23, 2010 Committee Meetings**

### *A. Legislative*

Progress on the American University (AU) items assigned to this committee was as follows:

#### *#6 Commission aggressive in demanding reliable reports*

Chief Public Defender Randi Hood said that the regional field reports and a variety of certifications the agency is doing will ensure that the Commission has reliable reports.

#### *#7 Separate Conflict Office reporting to the Commission*

The *St. Dennis* decision is still pending. However, the committee recommends an interim solution of hiring a half-time conflicts coordinator to report directly to the Commission. This will help to further separate conflict management without creating a separate office, and will enable the Training Coordinator and the Conflict Manager to spend more time on Standards compliance and other duties.

*#29 Commission evaluate statutory provision*

Legislative proposals removing supervision of the appellate office from the Chief Public Defender, allowing access to clients before the initial appearance, flat fee contracts, and recovery of fees in certain civil cases have been submitted. The team defers to the Commission on any further action on this recommendation.

*#30 Commission and staff advocate value of agency to others*

This will be satisfied in part by the report that Chairman Gillespie is preparing. In addition, Chief Hood is on the Montana Board of Crime Control and the Council for the Courts of Limited Jurisdiction.

Chairman Gillespie said that a carryover from the last meeting is AU item #6; what information is required to satisfy the needs of the Commission and other stakeholders? An extensive information request from Senator Wanzenried was distributed. Chairman Gillespie hopes to meet with him to clarify his request.

The Commission engaged in a lengthy discussion of various information needs, including the routine needs of the Commission and how the agency should respond to individual information requests from Commission members, legislators and the general public. There was general consensus that guidelines should be developed to respond to requests that will require large amounts of staff time to fulfill.

The discussion turned to the routine reports that the agency should provide to the Commission. Commissioner Olson moved that the Commission request and require that the agency report on the following information on a regular basis, in addition to financial and budgetary information:

1. Date case file opened;
2. Date client first contacted by attorney;
3. Description of charges;
4. Whether motions filed;
5. If motions filed, disposition – positive or negative to client;
6. Disposition of case;
7. Sentencing; imposed as to each charge; and
8. Date closed.

Commissioner Jessee seconded the motion. Discussion followed regarding the types of motions to include. Commissioner Olson amended his motion to say “substantive motions filed” under number 5. Commissioner Petaja seconded. Commissioner Olson invited comments from the audience regarding the proposal because the intent is not to make data collection overly burdensome to the staff.

Several line attorneys and management staff expressed concerns including attorney frustration with the ever-increasing need for data, whether or not client contact and motions filed will be used as criteria for performance evaluations, the difference between attempting to contact clients and the date when contact is actually made (especially for those not in custody), and the efficacy of verbal agreements with prosecutors versus filing motions.

Mr. Freebourn discussed how much of the suggested case summary information is currently gathered and reported, and with what frequency. Brian Smith, case management attorney specialist, elaborated on the current use of JustWare in collecting and reporting on data. Much of the information is already collected, and it was suggested that a simple one page form to be completed when the case is closed could provide the remainder. This would also allow the capture of information from contract attorneys, who do not have access to JustWare.

Commissioner Olson restated his motion as follows:

That the Commission request and require that the agency report on the following information on a regular basis, in addition to financial and budgetary information, with a goal of obtaining the information needed to run the public defender system without being oppressive to attorneys providing services in the field:

1. Date case file opened;
2. Date client first contacted by attorney;
3. Description of charges;
4. Whether motions filed;
5. If substantive motions filed, disposition – positive or negative to client (substantive motions include but are not limited to motions to suppress, dismiss, probable cause);
6. Information regarding jury/bench trials
7. Disposition of case;
8. Sentencing; imposed as to each charge; and
9. Date closed.

Commissioner Petaja seconded the amended motion. Mr. Freebourn will submit a report design for the Commission's review. Commissioner Russell clarified that this information is just for the Commission's use and is an agency performance measure, not to be used for performance evaluations of individual attorneys.

Laura Simonson addressed the Commission as the union attorney representative, not as the liaison. She said that there are already staff that work more than 40 hours per week without being paid for it, and now another layer of responsibility is being added. She recognizes the importance of providing information to the Commission, but the work they are asked to do can't be done in 40 hours, and she said that people don't complain because they are afraid for their jobs. Commissioner Jessee said that if people are working over 40 hours, more attorneys may be needed, but resources can't be allocated if the Commission doesn't have accurate data because people are not recording their hours. Chief Hood will look at this as a human resource issue. The discussion will continue after public comment.

## **7. Public Comment**

Lisa Kauffman, a contract attorney from Missoula, has been contracting with OPD since the inception of the agency. She is qualified in all areas except DI. She said the checklist is a good idea and not a problem for her as a contractor. She applauded Chief Hood and others for creating the statewide system and feels privileged to be a part of it. Ms. Kauffman clarified that she is speaking as a private attorney, not as a liaison for the contract attorneys, but said that the general area of complaint from her perspective is pay. The criteria for receiving cases is also challenging because it appears to her that there is no objective standard or criteria used to assign cases.

Bozeman Regional Deputy Public Defender Peter Ohman was recently involved in a conference call addressing how rural attorneys do youth work. He said that the Friday afternoon video training conferences are fantastic, and that Montana is a few steps beyond some of our sister states.

Missoula Regional Deputy Public Defender Ed Sheehy presented a letter to the Commission from Dave Stenerson and the entire Hamilton office. Mr. Sheehy noted that prior to the inception of the statewide public defender system, Mr. Stenerson's contract in Ravalli County was terminated because he filed too many motions. Chief Hood and Mr. Stenerson have made sure that since the agency began, public defense work is better than ever in Ravalli County.

Great Falls Regional Deputy Public Defender Matt McKittrick responded to media reports over the last few weeks regarding the status of the public defender system. He disagrees that the system is falling apart and needs to be disbanded or reorganized. He talks to attorneys daily who conduct themselves with utmost professionalism in trying circumstances. Mr. McKittrick recently invited the Cascade County Department of Corrections supervisor to the office for a Q&A which was helpful and enjoyable. He also invited two of the candidates for sheriff on separate dates for Q&A and got a commitment from both candidates to make improvements in terms of client access and treatment. Mr. McKittrick asked the Commission not to let the comments of a few cast aspersions on the whole system.

Helena Regional Deputy Public Defender Jon Moog echoed Mr. McKittrick's comments. His staff are hardworking and he approves overtime with every payroll. He has also conducted regional training, including sessions with the Department of Corrections, youth probation, federal defenders, and OPD mental health consultant Dr. Laura Wendlandt. Mr. Moog addressed Ms. Kauffman's concerns regarding case assignments and said that it is important for the agency to retain the ability to assign cases at its own discretion.

Regional Deputy Public Defender Sherry Staedler agrees with her colleagues about how well the system is working. Her attorneys love their work, and when they see the negative publicity, they say that people don't understand how far we've come. The pay is better and caseloads are much lower than under the old system. Although there have been some complaints, they are not substantive. It is primarily a lack of communication, not that the attorney made a big mistake. The agency is still young, and there is room for improvement, but the system is working.

Kalispell Regional Deputy Public Defender John Putikka said that his region was a hot spot under the old system, and conditions there were one of the reasons the statewide system was created. His region depends on their contract attorneys for conflicts as well as case overload. He is proud of the attorney retention rate in his office, and said that this is a good system. The agency is effectively and efficiently representing our clients.

Assistant Appellate Defender Garrett Norcott asked to add to the evaluation form that he recently submitted, saying that in the five months he's worked for Chief Hunt he's found that she has a great balance between being a boss and being a friend, and she provides excellent feedback to all of his briefs.

## **6. Committee Reports from September 23, 2010 Meetings (continued)**

### *A. Legislative (continued)*

Commissioner Olson's motion regarding information items to be routinely provided by the agency is on the table. If the motion carries, the result will be a one page case closing form that Mr. Freebourn will design for Commission review within the month. It will be a go-forward process. The question was called and the motion carried.

Commissioner Jessee moved to hire a half-time conflicts coordinator and a half-time assistant to report directly to the Commission to address AU recommendation #7. Commissioner Novak seconded. Commissioner Fleming asked if there was money in the budget to hire these positions? Chief Hood said that it could be done. Commissioner Petaja asked if the *St. Dennis* decision will make this moot? Chairman Gillespie doesn't believe that this is only an interim solution. It will address any appearance of impropriety so that the *St. Dennis* situation won't be encountered again. Commissioner Russell agreed that it is for the improvement of the operation, regardless of the *St. Dennis* decision. Commissioner Taylor said that when a contract conflict coordinator was used during the agency start-up, it was ultimately decided that the Commission didn't have the statutory authority to contract for the service. Chief Hood said that hiring the position as an FTE will avoid any vagueness in the statute regarding the

Commission's authority to contract directly. The question was called and the motion carried. Human Resource Officer Barb Kain will work with the Personnel Committee to develop a job description and set a salary range based on the state pay plan.

*B. Budget*

Chairman Gillespie will combine the Budget Committee discussion with Mr. Freebourn's report under item #9.

*C. Proficiency Determination*

Commissioner Taylor, chair of this committee, would like to defer this discussion until the next meeting to allow time for him to follow up with Commissioner Kuntz, who was unable to attend the committee meeting.

**8. Legislative/Executive Reporting**

Mr. Freebourn reviewed the reports that were submitted to the Legislative Finance Committee on September 30. The case duration, collections and net case reports are being submitted for the second time. The net case reports by case type were produced for the first time this year at the request of the Commission. Mr. Freebourn did extensive verification with the regional deputies in preparing this report and believes that it will be a good benchmark going forward. All reports are snapshots as of June 30.

The Governor's Report is due prior to the start of the legislative session. It will be updated continuously until it is submitted. Commissioner Taylor asked if cases are now being counted the same statewide. Mr. Freebourn said that the final decision was to follow the courts when entering cases, but the difference is not material. Trying to conform the Billings municipal court data entry to the way other courts enter cases proved to be too confusing since the discrepancy turned out to be immaterial. The remaining sections of the Governor's Report will be circulated to the Commission for review as available.

The Financial and Operating Information report was developed to show trends over time. It shows that expenditures have not grown much, and in fact were actually less in 2010 than the prior year. It is unlikely that the agency will make it through FY 11 without supplemental funding, however. The current projection is between \$400,000 and \$1 million, which is markedly better than last year's estimate of \$1.4 million. The improvement is mostly due to field staff taking on more cases and substantially reducing contractor costs as well as implementing other measures as outlined in the agency's cost mitigation plan.

**9. Public Defender Program Report**

*A. Chief Public Defender Report*

Chief Hood reviewed her written report, and provided a summary on the first group of field reports. Chairman Gillespie reviewed the individual field reports and will continue to do so; he agreed with Chief Hood that a summary document was appropriate for distribution to the Commission and the public. Chief Hood said that she has ideas on improving the form, and will prepare a synopsis for the Commission each quarter.

There is concern about participation in specialty courts, and the regional deputies hope that the Commission will continue to address this issue. Chief Hood reports that a significant number of cases are going to trial. Chairman Gillespie said that both the number going to trial and the dismissal rate are impressive. The Top 10 challenges are very telling; almost all regions requested more staff, while few identified a need for more attorneys.

Central Office staff and Chairman Gillespie have been significantly involved in the legislative process since the last Commission meeting, including meetings with the Legislative Finance Committee, Law and Justice Interim Committee (LJIC) and the Office of Budget and Program Planning. The LJIC has agreed to request bills related to changes in penalties for certain misdemeanor offenses.

Chief Hood expects to have some significant management changes soon. Glendive Regional Deputy Public Defender Olivia Norlin has a good chance of being elected Dawson County attorney, and Havre Regional Deputy Public Defender Dan Boucher is a candidate for appointment to the 12<sup>th</sup> Judicial District judgeship. In addition, Mr. Sheehy will be transitioning to the Major Crime Unit over the next several months. These are all exempt positions, hired by the Chief at her discretion, and do not require open recruitment. Chief Hood said that it is a credit to the people OPD employs that they are seen as vote-worthy in their communities.

Time-tracking compliance is over 80% and continues to improve each month. Policy 215 has been amended to allow for disciplinary action if time tracking is not completed as required.

In response to a question regarding the file retention policy at the last meeting, Chief Hood said that the OPD policy is not inconsistent with the State Bar's guidelines. Commissioner Taylor asked for more information, and Chief Hood replied that an email from Betsy Brandborg states that although the State Bar has only guidelines and not an actual policy regarding file retention, the three-year retention period for misdemeanors was appropriate.

A meeting with the regional deputies was held on August 31. Agenda items included time-keeping, budget and legislative issues. The Executive Team also met recently. The orientation project is complete and another item will be added to the executive top 10.

*B. Audit Report*

Legislative Auditor Vicki Rauser presented the Commission with a clean opinion on OPD's most recent financial compliance audit. While there are no recommendations, there are two disclosure issues. One relates to exploring the possibility of generating income from guardianship cases, and the other is a transfer that was non-compliant with state law. When the agency determined that it did not need the entire amount that was transferred from FY 11 to FY 10, the budget office was asked to transfer the difference back to FY 10. The "re-transfer" is inconsistent with state law, but because both transfers were approved by OBPP, it is mentioned only for disclosure purposes. This will be further reviewed in the audit of the Governor's office. Mr. Freebourn thanked Ms. Rauser and Mark Alldredge; they worked quickly and efficiently and were a pleasure to work with. Commissioner Taylor commended Mr. Freebourn and the OPD staff; to get a clean audit is a great accomplishment.

*D. Training Report*

The annual meeting will be held October 20-22 in West Yellowstone. Attendance is mandatory for all FTE staff, and Commission members are invited to attend. Chief Hood gave a brief overview of the agenda, which includes a broad range of topics.

An OPD staff attorney will be attending a national training event on sex offenders. The agency has received a grant for capital offense training, which will also pull in people

from other nearby states. The recent DN practice workshop was well attended by a wide variety of DN practitioners.

### **Public Comment**

Chairman Gillespie invited public comment on the items addressed so far.

Assistant Public Defender Noel Larrivee was formerly the Managing Attorney in Polson, and has been a member of OPD since its inception. Part of what he does now is mentoring. It is one of the more rewarding aspects of his career at this point, because the agency has such an effective network that anyone can pick up the phone and call a coworker for help day or night. He complimented Chief Hood and Mr. Freebourn for providing guidance to the offices and ensuring that Commission policies and directives are followed without micromanaging. Mr. Larrivee acknowledged that there is always room for improvement and offered the following suggestions: provide retention incentives for attorneys (pay or other); provide ways for support staff to advance their careers through pay or training incentives to become paralegals; provide social workers to monitor/facilitate DN cases to ensure the parents are working the treatment plan; and to increase the summer law student intern program.

Steve Eschenbacher is the current Managing Attorney in Polson. Mr. Eschenbacher commented about what is going well with the public defender system. His attorneys are young, smart and hardworking. He also has an outstanding support staff. He said that public defenders are wanted now because of all of the people who care and make a difference.

Sarah Braden is the paralegal and office manager in the Appellate Office. She expressed confidence in the leadership of both Chief Hood and Chief Hunt. She left a higher paying, less stressful job with the Supreme Court to join in bringing up the new public defender system, and she does not regret the move. Ms. Braden urged the Commission not to micromanage, but to provide guidance on providing services to clients.

### **9. Public Defender Program Report, continued**

#### *E. Budget/Finance Report*

Progress on the American University (AU) items assigned to the Budget Committee was as follows:

#### *#4 Budget submission must show accomplishments*

The committee recommends contacting the University of Montana School of Journalism about producing a short promotional film that would echo what was heard in public comment today, and Commissioner Taylor offered to explore the possibility.

#### *# 17 Next biennium budget should begin immediately*

The budget submission has been made and this item is complete.

#### *#18 Establish a separate fund for emergency cases*

Emergency funds have been identified under the Contract Manager and Chief Public Defender budget areas to cover extraordinary costs in the contract attorney and FTE areas respectively. This item is complete.

Chairman Gillespie met with David Ewer and his staff on October 6. He was appreciative of their willingness to accommodate his travel schedule. Although the Budget Committee did establish budget priorities, Chairman Gillespie said those recommendations are moot since the budget office has already put together the Governor's preliminary budget. The specifics are subject to change, but Chairman Gillespie said it was a productive discussion. Although not all of the Commission's requests are included in the current budget proposal, there is an effort to increase FTEs to relieve the stress points within

system. Pay increases, both in terms of pay plans and contractor rate increases, are being addressed globally. Commissioner Taylor asked that the Commission vote on the budget priorities anyway as a statement to the Governor's office.

*F. Contract Manager Report*

Contract Manager Larry Murphy reviewed his written report. The current number of contract attorneys with an MOU for FY 11 and FY 12 is 174. Contract attorneys are being asked to update their summary of education and experience, but Mr. Murphy is finding that typically there is no difference from what is currently on file (based on 57 responses to date). He is asking that the Standard be modified to require that the contract attorney submit a copy of the annual CLE affidavit to demonstrate changes in their training and experience instead of updating the summary of education and experience.

At the last meeting, a Proficiency Determination Committee was created. Mr. Murphy suggested changes to both the Standards Compliance Policy and the Standards related to proficiency determination of contract attorneys. He recommended that the Standards Committee take up the proposed amendment. Mr. Murphy has initiated the Standards compliance process with four attorneys and it seems to be going well.

Chairman Gillespie asked the Contracts Process Committee to undertake a process to define the criteria for selecting contract attorneys. He suggested that they include Mr. Murphy, the regional deputies and contract attorneys to create a transparent process that will result in having the attorney who is best qualified assigned to the case. Ms. Kauffman would welcome the opportunity to participate. Commissioner Kuntz was asked to join the committee as a former contract attorney and he agreed.

Mr. Murphy again asked for clarification on the Commission's position regarding specialty courts. The Commission has instructed the agency not to engage in post-sentencing DUI courts. However, in two DUI courts, the client is not actually sentenced unless they fail at DUI court. If the client is unsuccessful in the treatment court, they go to sentencing; if they are successful they are done. The Commission verified that OPD can continue to represent a client if there is still a potential for jail. If the client has not been sentenced **and** qualifies for services, the public defender can continue to provide representation. Public defenders will not represent clients in specialty courts post-sentence.

The Commission discussed a situation where a contract attorney withdrew from a case following judgment, and the appeal time ran with no one representing the client. In this case, the contractor said that the client did not say that he wanted to appeal, and ultimately the client realized there was no basis for the appeal. Mr. Murphy will create a policy requiring a contract attorney to remain on an assigned case until appeal time has elapsed. Chairman Gillespie said that when in doubt, the attorney should file the notice of appeal. It can always be withdrawn.

**10. Commission General Discussion**

*A. Standard Report Definitions*

This item was discussed earlier, and there was no further discussion.

*B. Specialty Courts*

This item was also discussed earlier, and had no further discussion.

*C. Legislative Preparation*

Although there are many unknowns prior to the election, each office will be asked to prepare a local plan to connect with their legislators and demonstrate the value that the public defender system brings to local communities. The Central Office will gather the local information,

supplement it, and develop a system-wide plan. In addition to providing information, Chief Hood would also like to invite legislators to be “public defender for a day” to improve their understanding of the system. Commissioner Novak asked for talking points to help her as a new commissioner in discussions with legislators. Chief Hood will develop and provide them to the Commission. She will also ensure that all employees are aware of the guidelines on testifying during the session and clarifying that they are on personal time.

#### **11. Public Comment**

Assistant Public Defender Myshell Uhl from Missoula is disappointed in the Commission’s reluctance to participate in specialty courts. She would like the Commission to revisit the issue because these courts are becoming more prevalent and she believes they are benefitting clients. She suggested developing standardized training for how public defenders should represent clients in treatment courts, as well as stock language for treatment court contracts. She recommended charging clients for services if they do not qualify as indigent, and would like to see legislative changes to further enable participation in these courts by public defenders. On another topic, Ms. Uhl took offense at the final item in the Top Ten regional issues that “a few whiners tend to poison others.” She noted that the Commission had heard from many regional deputy public defenders that work at the will of the Chief, and very few who do not work at her will; she thinks that line attorneys might have a different message.

Commissioner Jessee asked if budgetary considerations were part of the decision not to participate in treatment courts? Commissioner Petaja said that the basis for declining to participate is that there is no further defense purpose. All specialty courts operate differently, and it is difficult to determine how public defenders fit in when there is no uniformity. He believes that OPD should only be involved if there is a defense purpose and clients qualify for services. Chairman Gillespie said that the issue of specialty courts will remain open for further discussion.

Brian Smith agreed with Laura Simonson’s earlier point regarding clarifying the role of the liaisons. Commissioner Petaja agreed that the intent to provide for “open communication with the front line troops” is not specific enough, and the issue of the role of liaisons should be resolved. Mr. Smith also addressed Ms. Simonson’s comments regarding comp time. He knows that people are not always reporting it, but he’s not sure why. He shares Commissioner Jessee’s concern that if it is not entered, the resource demand is unknown. Commissioner Kuntz agreed that this is an area that deserves attention. All of the managers present said that they never deny comp time and think that it is a communication issue. Ms. Simonson said that she never meant to imply that managers are not allowing comp time. However, she thinks there is a perception that an attorney will be scrutinized for working excess hours. The question should not be why someone can’t get their work done in 40 hours, but instead, why can’t these jobs be done in 40 hours? Commissioner Russell asked if there is state policy regarding comp time? Chief Hood replied that yes, state policy addresses everything from how you can earn it, how you can use it, the maximum amount that can be carried, and more.

Assistant Appellate Defender Eileen Larkin worked in Ravalli County for six years. She said that comp time issues are not unique to this agency, and that professional respect and communication are needed.

Lisa Kauffman said that she practices in all three types of treatment courts in Missoula. They are very much evolving, and best practices have changed in just two years. She supports Ms. Uhl’s efforts to be at the table in specialty courts because she thinks it is critical to be involved as they

develop. She also commented on flat rate contracts for less than \$60 per hour, saying that they may not necessarily provide good representation, even if they are a good deal. Finally, she stated that it should be standard procedure to hand a client of copy of a notification form regarding appeal rights, and she thinks the agency already has a form for this.

Jon Moog informed the Commission that all of his staff attorneys wanted him to attend today's meeting, and there is no culture of fear in his office. He has been a line attorney, a roving attorney, and has now been regional deputy for the last two years. It is obvious to him that the system has matured, and he is thankful for that.

Scott Crichton, Executive Director of the American Civil Liberties Union, Montana, said that there were many wonderful things said today about the importance of supportive management, about mentoring, and the agency's unity and team spirit, especially on the management level. However, he has had conversations with a number of bright and articulate attorneys who give a different picture than what was portrayed today. He tells them he cannot represent them; they have a union and a grievance process. He still hears contradictions to management's rhetoric regarding evaluations, job descriptions, conflicts, and other issues. He offered hats off to the Commission for what they've put into the system thus far, but warned that there is still heavy lifting to do as the system goes forward.

## **12. Old Business/New Business (\*Action Items)**

Commissioner Taylor moved to pursue legislative action to move the appellate office completely out from OPD including budgeting, and to require the office to report directly to the Commission. This will provide the Commission with an independent set of eyes and ears around the state, and will answer questions about the role the appellate office plays. Commissioner Novak seconded. The motion carried.

Commissioner Fleming moved to authorize Chairman Gillespie to sign the letter to the Governor and submit the Governor's Report on behalf of the Commission when it is complete. Commissioner Jessee seconded. The motion carried.

### **A. Approval of Revised Standards (\*Action Item)**

Commissioner Jessee moved to approve the revision to the Standards incorporating the Major Crime Unit (pages 7-15). Commissioner Olson seconded. Commissioner Taylor asked that "MCU" be changed to "Major Crimes Unit" in paragraph B. Commissioner Jessee moved to accept the change. Commissioner Fleming seconded and the motion carried. During discussion of the main motion, it was clarified that the Major Crime Unit is physically separate from the regional and appellate offices; although they are in the same building they occupy different floors. The same is true for the Major Crime Unit attorneys in the Missoula office; they are separate from the regional office. The question was called and the motion carried.

Commissioner Jessee moved to approve the revision to the Standards regarding conflict cases (page 15). Commissioner Olson seconded. During discussion, it was clarified that it refers to all staff within a particular office. Commissioner Taylor moved to amend the language to include "within that office." Commissioner Novak seconded and the modification carried. The Commission returned to the main motion, and Commissioner Kuntz asked how paragraph C of the standard relates to the previous discussion regarding hiring a conflict manager? The standard will need to be further revised to address that issue once that transition is made. The question was called and the motion carried.

*B. Approval of Budget Priorities (\*Action Item)*

Commissioner Jessee moved to adopt the budget priorities as drafted. Commissioner Novak seconded and the motion carried.

*C. Set future Commission meeting dates*

The next meeting will be Monday, January 10, 2011 in Helena.

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 individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed."

The Commission went into closed session at 3:55 p.m. for performance evaluations of the Chief Public Defender and the Chief Appellate Defender.