

MONTANA PUBLIC DEFENDER COMMISSION

Minutes

The Yogo Inn

Lewistown, Montana

October 10, 2008

(Approved at the January 9, 2009 Commission Meeting)

Call to Order

The Montana Public Defender Commission meeting was called to order by Chair Tara Veazey at 8:10 a.m.

Commissioners Present

Mike Sherwood, Missoula; Vic Miller, Harlem; Tara Veazey, Helena; Stephen Nardi, Kalispell; Jennifer Hensley, Butte; William Snell, Billings; Kenneth Olson, Great Falls; Majel Russell, Billings; and Caroline Fleming, Miles City. James Park Taylor, Missoula, attended via videoconference from China.

Commissioners Absent

Commissioner Wendy Holton, Helena, has resigned.

Interested Persons

Scott Crichton, American Civil Liberties Union of Montana (ACLU); Scott Spencer, Assistant Public Defender; Steve Eschenbacher, Assistant Public Defender

Approval of Minutes from the July 17-18, 2008 Meeting

Commissioner Miller moved to adopt the minutes as submitted. Commissioner Hensley seconded the motion. The motion carried.

Introduction of New Members

Chair Veazey welcomed new commissioners Bill Snell, Ken Olson, and Majel Russell and thanked them for accepting the call to service.

Committee Meetings

The committee chairs briefly explained the purpose of each of the four committees scheduled to meet (Budget, Contracts Process, Standards and Legislative). The meeting recessed for committee meetings.

Committee Reports

Chair Veazey reconvened the committee of the whole. Commissioner Sherwood invited public comment related to the Contracts Process and Legislative Committees, since no comment was offered during the committee meetings.

Scott Crichton said that the ACLU may offer a bill relating to jail standards this session. Lack of mental health services and adequate medical care are key issues.

Budget Committee

Committee Chair Hensley reported that due to the hard work of everyone in the agency, OPD came in just under the FY 08 appropriation while maintaining an excellent level of service. The committee had a good discussion of the expenditure percentages in each region, and they continue to monitor those percentages.

The commission's FY 2010-11 budget request was significantly reduced by the governor's office, especially in regard to the proposed increase in contract attorney rates. The career pay ladder for attorneys was funded at 50% of the request, the request for supporting an increase in caseload was cut by 75% and the death penalty appropriation was eliminated. Brent Doig from the Office of Budget and Program Planning (OBPP) attended the committee meeting by conference call and indicated that although there could be shifts between categories, it is unlikely that more funds will be added to the appropriation. Chief Public Defender Randi Hood is particularly concerned about the lack of resources for the increase in caseload, and said that management will be looking at every position in the agency to maximize efficiency.

Contracts Process Committee

Committee Chair Sherwood said that Chief Hood reported on some specific contractor issues. The committee supported her decision not to pay an attorney who billed for the entire year all at once for the second time.

The committee discussed Greg Jackson's claim regarding the clemency case. Commissioner Taylor proposed modifying the Standards to exclude civil litigation even in a death penalty case, unless preauthorized by OPD. Commissioner Sherwood will draft the revision for the next meeting.

Legislative Committee

Commissioner Sherwood reviewed the Commission's proposed legislation from the last meeting. Chief Hood said that the Law and Justice Interim Committee approved both items, but will not provide sponsors. She doesn't anticipate any difficulty obtaining sponsors. Both bills have been submitted for drafting.

Chief Hood raised the possibility of eliminating jail time for certain lesser offenses as a way to reduce the draw on resources, but doesn't yet have the data to support a proposal. Mr. Crichton said that proposed drug law reform legislation regarding decriminalizing marijuana may have some impact if it proceeds. Commissioner Sherwood asked Mr. Crichton to keep the Commission informed regarding this issue.

Standards Committee

Having reached the end of the test period, the committee did a final review of the caseload management tool. Chief Hood said the tool is informative and working well, but she will be discussing some refinements to the weighting with the regional offices.

Committee Chair Nardi will offer a small amendment to the post conviction relief standard as an action item later in the meeting.

Commission Report to the Governor/Legislature/Supreme Court

Administrative Director Harry Freebourn reviewed the purpose and statutory requirements of the report. Commissioner Nardi asked that the change to the post conviction relief standard be

incorporated into the report. Case counts in last year's report included inherited cases, and they have been removed from the current year report which reflects only new cases. The growth rate from the prior year is approximately 4% based on new cases alone. The August version of the case management tool will be included in the report to provide more complete information, since the June report was very preliminary. Commissioner Sherwood requested that a description by city be included in reports that identify "regions" by number. Commissioner Nardi moved to approve the report as revised. Commissioner Fleming seconded. The motion carried.

Public Comment

Mr. Crichton was surprised to see the high costs associated with family law and asked if those costs were managed differently than criminal cases. Chief Hood said that they are managed in the same way, but those costs are difficult to contain since the cases can go on for years.

Chief Public Defender Report

- *Public Defender Program Update*

Chief Hood thanked everyone for coming to Lewistown. The annual conference had 120 participants, including 20 contract attorneys. She reviewed the staffing report ([exhibit 1](#)) and reported that OPD recruited a good crop of new attorneys following the recent release of the bar results. There is currently one attorney vacancy in Polson and one in Billings. Chief Hood is planning for the retirement of the managing attorney in Polson next summer and the departure of the regional deputy in Billings in December.

Chief Hood reported that the death penalty is off the table in the Billings case she is defending.

Mr. Freebourn and Chief Hood met with the Legislative Finance Committee to report on performance measures. All objectives except for performance appraisals have been completed. Performance appraisals are a multi-step process that involve a significant amount of travel and are taking longer than expected. Commissioner Nardi asked how competency is evaluated. Chief Hood said that the courtroom visit by Central Office staff is very important. Problems with specific attorneys can be identified in the courtroom, and then discussed with the managing attorney so that training issues can be addressed. Commissioner Russell said that when she gets questions from OPD clients she would like to be able to confirm the competency of their attorneys. Chief Hood agreed that providing competent counsel is very important.

Chair Veazey asked about the status of the Native American liaison position, which was funded by a federal grant managed by the Department of Corrections. Apparently the Department did not file to extend the grant. They did ask Senator Baucus's office for two positions for two years, one in Great Falls and one in Billings, but there is currently no funding available.

Chair Veazey would like the Commission's Grants Committee to seek funding for racial disparity work, and Commissioners Russell and Snell offered to assist. Eric Olson, Training Coordinator, plans to do three more training sessions on cultural bias this year. Commissioner Russell said that new federal employees are now required to take an on-line cultural sensitivity curriculum within 10 days of hire. She would like to see a similar requirement for OPD employees. Chair Veazey asked Mr. Olson to bring a curriculum plan to one of the next two meetings; she suggested Indian Education for All materials as an

excellent resource. Commissioner Miller asked that the curriculum include urban areas, and Commissioners Russell and Snell offered to work with Mr. Olson on developing the plan.

Training Coordinator Update (exhibit 2)

Mr. Olson reported that all of last year's satellite training sessions are now on DVD, and they were distributed to the regional deputies this week. As the incoming secretary/treasurer of the Montana Association of Criminal Defense Lawyers, he will be able to do some training coordination between the two entities.

Public Comment

There was no public comment offered at this time.

Chief Public Defender Report (continued)

- *Appellate Defender Program Report (exhibit 3)*

Chief Hood reported on behalf of Chief Appellate Defender Jim Wheelis. Of particular note is the Supreme Court decision in the State v. Goetz and State v. Hamper cases argued by Region 8 Deputy Public Defender Peter Ohman. The decision regarding the use of wired informants is based on the Montana's right to privacy law, and the Appellate office will try to expand the scope of the decision to include conversations as well as recordings.

General Discussion

Chair Veazey said that her new job diminishes her ability to participate in the legislative process as acting chair. She presented the Commission with the option of selecting a new chair, or asking other Commissioners to volunteer to appear in Helena for legislative hearings as needed. Commissioners Nardi and Miller are both willing to be on call during the session. Commissioner Sherwood may also be available.

Commissioner Miller spent the previous two days attending the annual conference and heard several comments from attorneys that they really appreciated the Commission's presence. He was impressed with the training sessions and encouraged commissioners to attend all or part of next year's conference as they are able.

- *Clemency Claim*

Chief Hood recapped the information from the Contracts Committee meeting. The Committee concluded that OPD should pay only for portions of Mr. Jackson's bill related to the clemency work, and not for any civil proceedings. The bill has not yet been received. Commissioner Taylor made a recommendation to change the standards to exclude payment for civil litigation even in death penalty cases unless authorized by OPD. Commissioner Nardi said that this is a policy issue and not related to standards of practice. Commissioner Sherwood asked if there might be broader implications and wants to discuss the issue with Chief Hood in more detail.

- *Complaints Process*

The Commission engaged in a lengthy discussion of how they should handle complaints from employees, clients, contractors and the public. When the agency was being launched, the Commission encouraged feedback and had an open door policy, especially for offices that were transitioning from counties and cities to the new system. Now that the agency is well established, some commissioners are no longer comfortable in the role of fielding complaints.

Chief Hood and Mr. Freebourn explained the procedures that are in place to handle various complaints and grievances from union and non-union staff, contractors, and clients. Complainants should be encouraged to follow all of the appropriate internal procedures. For the next meeting, Mr. Freebourn will provide the Commission with details on the agency's grievance processes.

Agency Audit, FY 2007-2008

Legislative Auditor Jennifer Erdahl reported on the results of the FY 2007-2008 audit. She said that overall it went very well. Chief Hood and Mr. Freebourn will meet with Ms. Erdahl next week to give comments before the final report is issued. A written response from the agency is required after the report is issued.

Ms. Erdahl congratulated the office staff on having no problems at all on the expenditure side. There were two minor issues on the revenue side and one compliance issue related to witness payments. She applauded the agency for being in full compliance with new standards that require increased documentation and testing of internal controls.

Public Comment

Mr. Crichton congratulated Chief Hood for having the capital charges dismissed in the Billings case. He asked if the costs for that case had been tracked, and they had.

Old Business/New Business (Action Items)

Post-Conviction Relief

Commissioner Nardi moved to adopt the amendment to the Post-Conviction Relief standard labeled 1. A., Appointment ([exhibit 4](#)). Other changes to this standard were approved at the last meeting. Commissioner Hensley seconded. The motion carried.

Commissioner Hensley asked if the Contract Committee had addressed the MOU issue. Chief Hood said that the contract attorney MOU has been fine tuned and she expects all of the previously resistant attorneys to sign. There is also good compliance with the mental health professionals now.

The next meeting is scheduled for January 9 in Helena. Office staff are looking for July dates in Polson. Chair Veazey will circulate dates for future meetings.

Adjourn

Commissioner Nardi moved to adjourn. Commissioner Snell seconded. The meeting adjourned at 1:20 p.m.

Exhibits 1 – 4 have been posted with these minutes to the Office of the State Public Defender website at: <http://www.publicdefender.mt.gov/>.