

OFFICE OF THE STATE PUBLIC DEFENDER



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To: Montana Public Defender Commission
From: Kristina Neal, Conflict Coordinator
RE: Report to the Commission

UPDATES

Conflict cases: For the past quarter I have appointed counsel in slightly more than 1,000 cases or an average of 340 cases per month (see attached).

Staffing Changes: I have hired Melody Brown, a staff attorney from the Great Falls office, to work for me as a conflict attorney. Melody will handle mostly Region 3 conflict cases but will also be available to handle work in other regions, such as Havre, Lewistown, or Helena. Melody comes to this position with a wealth of experience. She started October 7 and is excited and eager for the challenges. Almost immediately after she accepted the position, I assigned her an aggravated kidnapping case and also an aggravated assault case that had the potential of becoming a deliberate homicide. Therefore, Melody's skill was instantly utilized to the benefit of these clients.

The decision to place a conflict attorney in Region 3 was based on the number of cases for that area compared with the number of available contract attorneys. As an example, during the month of July, I appointed counsel for 59 cases in Region 2. I have 46 attorneys in Region 2 that will accept district court appointments. During the month of July, I appointed counsel in 53 cases in Region 3. I have 13 attorneys in that region that will accept district court cases. Although the numbers vary month to month, this pattern has been consistent over the span of time that I have had this position. Often I was recruiting attorneys from Helena, Lewistown, or Havre to take Region 3 work. The intent behind placing a full-time conflict attorney in Region 3 is to take the stress off of the current limited contract pool and provide more cost-effective but higher quality representation. Melody can also serve as a back-up for me in my absence.

I also intend to hire another half-time support staff. This person will provide legal assistance to Melody and will also assume duties that had still been handled by the Central Office such as closing conflict cases and tracking the conflict pre-approvals.

Summary of Operating Plan: The new conflict attorney position and the new half time support staff position will be modified positions. Therefore, I will need to develop a decision package for the 2015 legislative session to make these positions permanent.

Also, in consultations with the Chief Public Defender and the Chief Appellate Defender, we are exploring ways to move the conflict contract costs under the management of the Conflict Coordinator Office. The money will still be coming from Program 1 and Program 2. Current estimates for Program 1's share of the conflict contract costs is slightly more than \$4 million, and Program 2's share of the conflict contract costs is approximately \$70,000.

VII. STANDBY COUNSEL IN CRIMINAL CASES

Goal: To provide standby assistance to criminal defendants who are proceeding pro se while insuring their individual dignity and autonomy. Standby counsel's participation shall never destroy the jury's perception that the defendant is representing himself and the defendant shall personally manage and conduct his own defense. Attorneys providing standby assistance shall comply with the general standards for public defenders as well as these specific standards.

1. Defense counsel acting as stand-by counsel shall:

A. Permit the accused to make the final decision on all matters, including strategic and tactical matters relating to the conduct of the case.

B. If the defendant requests assistance, bring to the attention of the defendant matters beneficial to him.

C. Not actively participate in the conduct of the defense unless specifically asked to do so by the defendant.

D. Assist the defendant in overcoming routine procedural or evidentiary obstacles that the defendant has clearly shown he wishes to complete.

E. Help to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.

Provide advice without interfering with the Defendant's presentation of his defense. See, McKaskle v. Wiggins, 465 U.S. 168, 177, 104 S. Ct. 944 (1984).

F.

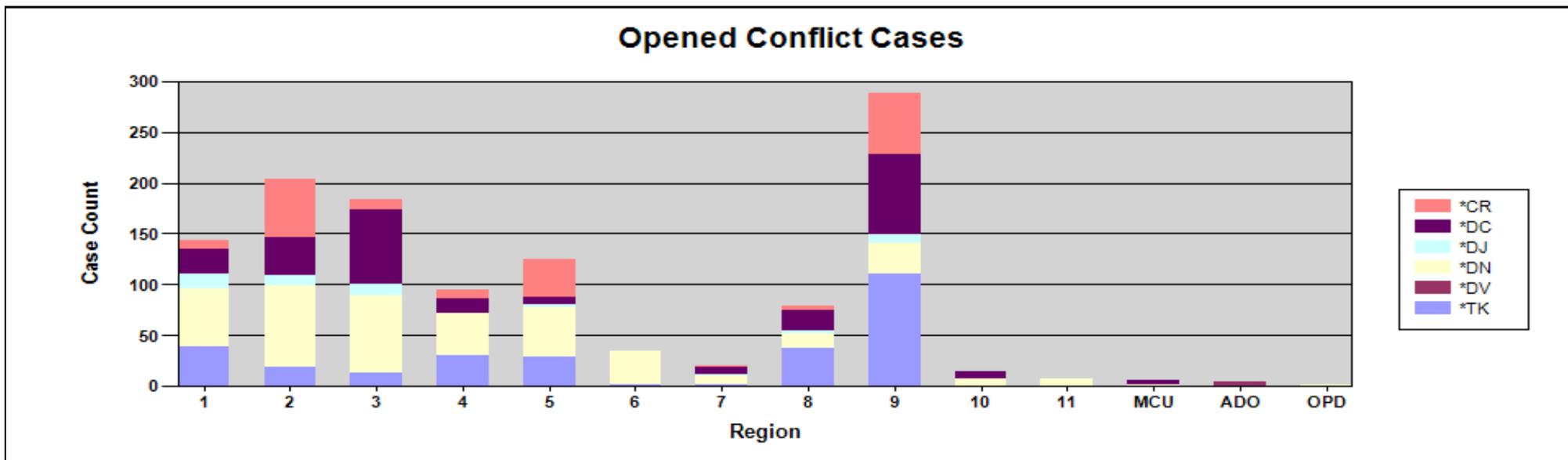
2. Standby counsel shall be prepared to assume representation of the Defendant at any stage of the proceedings.

3. Standby counsel shall recognize that they are appointed by the Court and that they do not have the same duties that arise out of the client-lawyer relationship. The client-lawyer relationship is modified until and unless the client defendant accepts representation. Thus, the pro se defendant must be allowed to control the organization and content of his own defense and must make his own motions, make his own oral arguments, participate in voir dire, and address the judge and jury. See, McKaskle v. Wiggins, 465 U.S. 168, 174, 104 S. Ct. 944 (1984). See also, American Bar Association Standing Committee on Ethics and Professional Responsibility, Formal Opinion 07-448, "Appointed Counsel's Relationship to a Person Who Declines to be Represented" (2007).



Office of the State Public Defender: OPD Opened Conflict Cases by Type Report

Period from: 7/1/2013 through 9/30/2013 11:59:59 PM



	*CR	*DC	*DJ	*DN	*DV	*TK	Total
Regional Office, Region 1	8	25	14	58	0	38	143
Regional Office, Region 2	58	37	10	80	0	19	204
Regional Office, Region 3	9	73	12	76	0	13	183
Regional Office, Region 4	8	14	0	42	0	30	94
Regional Office, Region 5	37	7	4	48	0	29	125
Regional Office, Region 6	0	0	0	34	0	1	35
Regional Office, Region 7	1	7	1	10	0	1	20
Regional Office, Region 8	4	21	2	15	0	37	79
Regional Office, Region 9	61	79	8	30	0	111	289
Regional Office, Region 10	0	7	0	7	0	0	14
Regional Office, Region 11	0	0	0	7	0	0	7
Major Crime Unit	0	5	0	1	0	0	6
Appellate Defender's Office	0	0	0	0	4	0	4
Office Of State Public Defender	0	0	0	1	0	0	1
Total	186	275	51	409	4	279	1,204