

# OFFICE OF THE STATE PUBLIC DEFENDER



STEVE BULLOCK  
GOVERNOR

WILLIAM F. HOOKS  
CHIEF PUBLIC DEFENDER

## STATE OF MONTANA

Phone: (406) 496-6080  
Fax: (406) 496-6098  
www.publicdefender.mt.gov

44 WEST PARK STREET  
BUTTE, MONTANA 59701

October 21, 2014

To: Montana Public Defender Commission

From: Wendy Johnson, Contract Manager

RE: Report to the Commission

### **State of the Contract Program.**

There are 237 contract/conflict attorneys with a current MOU, 28 investigators with a current MOU, and 65 mental health providers with a current MOU. As has been noted in my previous reports, the current rate for contract attorneys increased to \$62 dollars per hour as of January 1, 2014.

### **Contract Manager Activity.**

The following is a brief explanation of all that has taken place since the Commission meeting in August.

#### *New Forms*

We have been using the new Memorandum of Understanding (MOU) and Attorney Education and Experience Questionnaire forms for all new contract attorneys as well as for all contract attorneys renewing their expired MOUs. This seems to be going well and we have not received any negative feedback from our pool of attorneys. It seems that the new Attorney Education and Experience Questionnaire in particular is giving us better and more accurate information regarding the type of work that attorneys may be interested in doing. Prospective attorneys are also routinely submitting a resume and writing sample which allows us to have a better idea upfront about what their capabilities are.

#### *Waiting Lists*

Following discussions with Kristina Neal, Conflict Coordinator, and various Regional Deputy Public Defenders throughout the state, we have implemented waiting lists in Missoula, Ravalli, Flathead, and Gallatin counties based on the size of the attorney pools in those areas. Applicants are able to be added to the pool for surrounding areas if they so choose, and are willing and able to travel. All of the applicants who have been wait-listed

have been understanding of the need to limit the pool in certain areas and are eager to be added to the active roster of contract attorneys.

### Mental Health Coordinator and Process Update

Chief Hooks and I recently met with Dr. Michael Scolatti, our current Mental Health Coordinator, to discuss the terms of his contract with OPD and to determine his interest in renewing the contract. We have received positive feedback about Dr. Scolatti from Regional Deputy Public Defenders, full time staff, and contract attorneys throughout the state. Dr. Scolatti is very interested in remaining on and we are working on preparing a contract to secure his services for another year. During our meeting with Dr. Scolatti, we also discussed the current Mental Health Provider Memorandum of Understanding and will be working on updating some of the provisions of that MOU to coincide with the changes that were made previously to the Contract Attorney MOU. The new Mental Health Provider MOU will be ready to distribute at the beginning of December, if not sooner, as all of the extensions for the current mental health providers will expire on January 1, 2015.

### Proficiency Determinations

As was discussed in my last report and at the last Commission meeting, we have been working hard to revamp the Proficiency Determination process. In an effort to incorporate many of the ideas that were discussed at the Contract Process Committee meeting in July and at the Commission meeting in August, we have begun putting together Proficiency Determination Packets for each Contract Attorney, instead of relying on the one-page form that was used in the past. Included in each packet will be the following:

- Comments from the Regional Deputy Public Defender or a member of the Regional staff whom has seen the Contract Attorney in court. This may include comments about a specific observation, or it may be general comments about whether or not the attorney is prepared for court, whether the attorney frequently receives client complaints, etc.
- Comments from the Conflict Coordinator;
- Comments from Clients;
- Comments from Judges and/or Court Personnel;
- Comments from OPD Accounting staff;
- Comments from the Contract Manager;
- Information relating to the Contract Attorney's current case count;
- A billing audit;
- A copy of the Contract Attorney's CLE transcript;
- Information about any Client Complaints and how said complaints were resolved;
- Pre-Approval/Expert Witness Information;
- Motion/Brief samples that have been filed with the Court;
- Disciplinary Information if the Contract Attorney has been disciplined; and
- A case review that will either be conducted face to face with the Contract Attorney, or, at the discretion of the Contract Manager and Conflict Coordinator, may be completed by submission of a report prepared by the Contract Attorney.

The thought behind the new process is that we will have a better, more consistent way of determining who is doing a good job for the agency, and any determination will not be based on a single interaction in court. We will have 10 Proficiency Determination packets completed within a few days of the end of this month. As such, we believe a realistic goal is to complete 10 a month or 120 a year.

### Contract Committees

There are currently two Commission committees that relate to the Contract Program—the Contracts Process and Approvals Committee, and the Proficiency Determination for Contract Attorneys Committee.

The Contracts Process and Approvals Committee is described as follows:

“The committee receives briefings from staff about major contractor-related issues, including rates for attorney and non-attorney services, information related to possible adjustments to these rates, and other contractor issues. The committee assists the Conflict Coordinator with pre-approval requests of an extraordinary nature, and acts as the final level of appeal in determining conflicts of interest. The committee may also consider requests from contractors for reconsideration of claims or pre-approvals for services that have been denied because agency personnel have determined them to be outside of the scope of the agency’s legislative authority for payment or approval.”

The Proficiency Determination for Contract Attorneys Committee is described as follows:

“The committee was tasked 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. At the first committee meeting in September 2010 they identified the purpose of the committee as “to assist with proficiency determination for contract attorneys per statute and policy.”

Historically, the Proficiency Determination for Contract Attorneys Committee has only met once, on September 23, 2010. The Contracts Process and Approvals Committee has met more frequently, with most discussion relating to the hourly rate of the attorneys. At this time, I believe it would be appropriate and beneficial to have the Commission re-evaluate the purposes of the existing committees, and combine them into a single “Contract Steering Committee” that will meet to address any and all issues that may be related to the Contract Program.

### Other Updates

- The Request for Proposal for the new billing system is nearing completion. We have submitted a draft to State Procurement and are working with them to finalize it. We have had discussions with contractors throughout the state, all of whom are excited about the prospect of having a streamlined online process available to them.
- The Annual OPD Conference that took place earlier this month was well attended by contract attorneys. In fact, we had so much interest in the conference by contract

attorneys that we had to create a waiting list as the venue could not accommodate all who wanted to attend. The feedback I have received from contract attorneys who attended has been overwhelmingly positive.

- Kristina Neal and I have now traveled to Kalispell, Great Falls, Missoula and Billings to meet with contract attorneys. We have received great feedback and been asked questions that have helped us to address several areas that were identified by our contractor pool. One issue that we heard several times was that many contractor attorneys do not know who the OPD-approved Mental Health Providers are. As such, with the help of my assistant Lynn MacMillan, we were able to compile a Mental Health Directory that lists every OPD-approved Mental Health Provider, the areas in which the providers practice, and the contact information for each. These directories were distributed at the annual conference and are available to contract attorneys throughout the state.