



Steve Bullock  
Governor

# OFFICE OF THE APPELLATE DEFENDER STATE OF MONTANA

Wade Zolynski  
Chief Appellate Defender

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To: Public Defender Commission

From: Wade Zolynski, Chief Appellate Defender

RE: **Information Sheet – Stopping the Inflow of Cases to the Office of the Appellate Defender.**

**The Problem.** OAD has experienced a nearly 40% increase in its caseload since FY 2012. DN cases have increased significantly. The increased cases have slowed the appellate process in Montana; thereby negatively impacting the criminal justice system as a whole. Comparing 2012 to 2014, criminal appeals take 143 days longer (a 65% increase). DN cases take 105 days longer (an 86% increase). These delays cause:

- Abused children to languish in foster care because children cannot be adopted into permanent homes until the appellate process is complete.
- Victims of crime and their families to await some measure of closure. Victims have called and e-mailed OAD expressing frustration over appellate delays.
- OAD's clients (both adult and juvenile) to sit incarcerated, sometimes wrongly, without legal advice.

**Interested Parties.** On August 6, 2014, Chief Justice McGrath wrote a letter to the Governor's Budget Director, Dan Villa, expressing his "ongoing concern regarding the staff shortages in the appellate defender's office, and the concomitant impacts these shortages have on [the Supreme Court's] responsibility to process cases in a timely fashion." Chief Justice McGrath noted the caseload increase is "dramatic" and that OAD employees "are hardworking, diligent employees, but they do not have adequate resources to conduct their duties in a timely fashion."

The Montana Supreme Court has issued orders indicating it would not permit further extensions on appellate cases. In one instance, the Court denied an extension. The Attorney General's Office has given informal notice to OAD that on December 1 it intends to start objecting when OAD seeks more than one extension in a DN case.

**Effective Assistance of Counsel.** The spike in appellate cases is not temporary. With the Montana Supreme Court indicating no further extension will be granted and with the Attorney General's Office indicating its intent to start objecting to some extensions, a violation of constitutional proportions is imminent. If OAD attorneys lack the time necessary to review the record and draft briefs they cannot offer effective assistance of counsel.

**Stopping the Intake of New Cases.** Preliminary talks with the Governor's budget office suggest that the funding needed to remedy the situation outlined above may not be forthcoming. Therefore, as the Chief Appellate Defender, I request authority to file a motion to cease the assignment of cases to OAD when I deem it appropriate.