

Appellate Liaison Report to the Public Defender Commission
October 31, 2014

Justice delayed is justice denied.

Three of our attorneys currently have opening briefs on their ninth extensions. Two others have cases on their sevenths. The delay before attorneys can begin substantive review of newly assigned cases is around four months and is trending upwards. We fear for the future. By this winter, all but the newest hires will have cases in the eighth to ninth extension range. That is three-quarters of a year before an unlawfully imprisoned client can even take the first step towards an appellate remedy.

Such delay is professionally unacceptable and potentially unconstitutional. We are pushing every day to move our cases; however, the unfortunate truth is that the length of delay is getting worse, not better. There is still time to act, but without additional resources, we are headed towards disaster. The ethical obligation to provide competent and diligent representation will eventually preclude appellate defenders from taking on additional cases. Indigent appellants could file petitions or suits that Montana is depriving them of their federal rights to effective assistance of appellate counsel and due process. The Court may stop granting extension requests, resulting in missed deadlines and dismissed appeals. The exact form of the final wreck is still uncertain, but we can hear the waterfall coming and there is no doubt that we are on a course to go over.