

MONTANA PUBLIC DEFENDER COMMISSION

CONFERENCE CALL

Public Location: Butte Central Services Office
44 W. Park, Butte MT 59701

November 15, 2016

MINUTES

(Approved at the January 20, 2017 Meeting)

Commissioners Present

Richard E. "Fritz" Gillespie, (Chair), Helena; Ann Sherwood, Pablo; Bonnie Olson, Marion; Brian Gallik, Bozeman; Mark Parker, Billings; Larry Mansch, Missoula; Maylinn Smith, Missoula; Terry Jessee, Billings; Margaret Novak, Chester; Roy Brown, Billings

Commissioners Absent

Mike Metzger, Billings

Staff Members Present

Bill Hooks, Chief Public Defender; Chad Wright, Chief Appellate Defender; Kristina Neal, Conflict Coordinator; Scott Cruse, Chief Administrator; Wendy Johnson, Contract Manager; Peter Ohman, Training Coordinator; Carleen Green, Accounting Supervisor; Marsha Parr, Case Management Support; Cathy Doyle, Administrative Assistant; Lynn MacMillan, Contract Assistant; Jennifer Streano, Region 2 Deputy Public Defender (Missoula); Jenny Kaleczyc, Region 4 Deputy Public Defender (Helena); Chris Abbott, Assistant Public Defender, Helena

Interested Parties

Jim Taylor, Legal Director, ACLU Montana; Malissa Williams, Office of Budget and Program Planning (OBPP); Dan Miller, Contract Attorney

1. Call to Order and Roll Call

Chairman Fritz Gillespie called the meeting of the Public Defender Commission to order at 2:05 p.m. and called the roll. A quorum was present.

2. Budget Committee Report

The Budget Committee met on November 9 to review implementation of the mitigation plan and get an updated forecast for FY 17. The mitigation plan has not been well-implemented so far. The plan was to build a backlog and then bring on modified FTE to work it, but contract attorneys are still being assigned cases.

a.) Current FY 17 Forecast

Chief Administrator Scott Cruse said that expenditures for the current month are well over the run rate in the base forecast model, which could result in an even greater deficit.

b.) Discussion of Additional Mitigation Options

Mr. Cruse said that in order to mitigate the shortfall, immediate decisions need to be made. However the current management model makes this impossible due to lack of consensus.

c.) Committee Recommendations (***Action Item**)

The Committee recommended that the full Commission re-examine the management model.

3. **Re-examine Management Model** (*Action Item)

Commissioner Olson said that the Commission is not in a position to micromanage the agency, and the co-equal model has not been successful. She believes the agency needs one leader, not four. Commissioner Olson moved to revise the management plan to give the Chief Administrator final budgetary authority over all expenditures, and to manage and supervise all public defender services. Commissioner Jessee seconded, and Chairman Gillespie invited discussion.

Commissioner Brown thought that the mitigation plan adopted at the October 3 meeting would be well along by now and that Mr. Cruse would have implemented the plan. Chairman Gillespie said that modified positions have been posted, and one position has been filled so far. Commissioner Sherwood asked why we are continuing to contract for non-conflict cases. Commissioner Jessie assumed that the mitigation plan would be followed and is disappointed that the agency is still contracting for services. Commissioner Parker is not surprised; he was concerned that this problem would emerge sooner or later because of the divided leadership model.

Chairman Gillespie asked staff to respond. Mr. Cruse said that in response to Commissioner Brown, he has no authority over the other program managers or regional deputies under the co-equal model. The plan has to have a backlog in order to be successful. He agrees that five weeks is a short amount of time for hiring the modified FTE, but that is where you build the backlog. The 418 contract cases assigned since October 3 does not include conflict cases.

Chief Public Defender Bill Hooks said that he has not ignored the Commission's decision regarding the mitigation effort, even though implementation has not been as timely as everyone would have wished. He discussed some of the challenges in executing the plan, including inexperienced applicants for the modified positions, questions regarding what will happen if the modified positions aren't funded by the legislature, and considerations regarding the "six-month rule." Ethically, he doesn't feel that the regions can take on the full overload of cases until they know where relief will come from.

Conflict Coordinator Kristina Neal does currently have a backlog of cases, and she is frustrated when she takes calls from clients who want to know why they don't have an attorney yet. She has a triage protocol to prioritize case assignments. She and Chief Hooks are working together to review the applicant pool to determine whether individual applicants are more suited to Program 1 or Program 3, given the difficulties for her of remotely managing inexperienced attorneys. Part of the delay is recruiting for positions that might end on June 30; in addition, some contract attorneys are taking jobs with other organizations since they are facing the loss of OPD contract work and are not interested in the temporary OPD positions.

Chief Appellate Defender Chad Wright doesn't understand the Commission's authority to establish an executive director. He feels decisions are being made without his input, and he is concerned that the ethical issues regarding a non-attorney supervising attorneys seems to have gone by the wayside. He does have a backlog, and has an obligation not to accept cases when there is a backlog.

There was further discussion regarding the proposed change or clarification of the role of the Chief Administrator, attorney's ethical obligations, the impact of a backlog on FTE, and agency morale. Chairman Gillespie then invited public comment.

Jim Taylor, ACLU Montana Legal Director, objected to the lack of public access to the meeting as a result of making the public location the Central Services office in Butte. He asked about the size of the current backlog and Chief Hooks responded that he doesn't have the exact number for any one region. Mr. Taylor said the Commission is focusing on the statutory obligation to operate within the appropriation and ignoring constitutional obligations. In his opinion, the only way to do it is to cut off intake at some point; hiring a bunch of inexperienced attorneys won't solve the problem and puts licenses at risk. He further stated that

the Commission doesn't have the statutory authority to change the chief administrator's role and it would not go unchallenged.

Chris Abbott, Assistant Public Defender, Helena, reported that morale is terrible. He has been with the agency for 10 years through obstacles of all sorts, and this is the first time he is seriously contemplating leaving. He agrees with Mr. Taylor that the agency is violating the law no matter what choices the Commission makes. There are many sound reasons to have a lawyer in charge of the agency and it is required by statute. Mr. Abbott disagrees with the plan to stop contracting cases, and encouraged a plan to start refusing cases.

Jenny Kaleczyc, Region 4 Deputy Public Defender (Helena), said that when you are talking about a backlog of cases, you are talking about unethical caseloads. Her region did stop contracting cases, and her employees are feeling the stress of it. She has two inexperienced applicants for the modified positions; she cannot take on brand new attorneys and entrust them with the constitutional rights and lives of her clients.

Jennifer Streano, Region 2 Deputy Public Defender (Missoula), generally agrees that there are significant issues, and thinks this is one of the worst positions the agency has been in since inception. It is creating a lot of anxiety within her office. Ms. Streano said the management model is contributing to some of the problems the agency faces. There are four people not getting along; they either need to get along, or have one person in charge.

Chairman Gillespie asked for final comments from Commission members and staff. Mr. Cruse said that he is not advocating to have this job; no one would want it. The agency is in a very precarious position. Someone needs to take on a leadership role, communicate with staff, and build consensus. Chief Hooks said that this is a matter of life and limb for some clients, even if it is not for employees. He urged the Commission to seriously consider that if one person is in charge, that person be a lawyer.

The question was called and the motion failed 5-5 on a roll call vote. Commissioners Olson, Brown, Jessee, Parker and Chairman Gillespie voted in favor; Commissioners Sherwood, Smith, Mansch, Gallik, and Novak voted against.

The Commission discussed possible next steps including a declaratory judgment that Chairman Gillespie is working on, and a variation on the motion to stop case intake as Chief Hooks made during the last session. Staff were instructed to continue with the current mitigation strategy, and to provide weekly progress reports. Chairman Gillespie asked program managers to build consensus and show that the agency has made the most extreme effort to mitigate the anticipated shortfall. He will meet with them tomorrow to explore additional options.

4. Public Comment

There was no additional public comment.

5. Old Business/New Business

A. Adopt Additional Mitigation Strategies (*Action Item)

This will be an ongoing discussion.

B. Revise or Affirm Current Management Model (*Action Item)

The motion to revise the management model failed.

6. Adjourn

Commissioner Jessee moved to adjourn; Commissioner Olson seconded and the motion carried. The meeting adjourned at 4:15 p.m.