

**Conflicts Coordinator Report to the Montana Public Defender Commission
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EXHIBIT 1

1. Overall job description: The Conflicts Coordinator, under the direct oversight of the Montana Public Defender Commission (PDC), is responsible for assisting conflict attorneys in securing payment for legal services directly relating to the delivery of case resources. [*Standards for Counsel, III., F., 1.*]

2. Functions of Conflicts Coordinator:

- A. Files written financial reports monthly and as directed with the PDC. [*Standards, III., F., 2.*]
- B. If requested by the PDC, provides reports to the PDC to assist the PDC in evaluating the work of attorneys providing conflict services. [*Standards, III., F., 2.*]
- C. Handles only administrative functions unrelated to the direct provision of legal services to clients. [*Standards, III., F., 5.*]
- D. Verifies, approves or denies bills for services or resources for conflict cases submitted to the Conflicts Coordinator. [*Standards, III., F., 6.; Commission Minutes 07/31/06*]
- E. Verifies, approves or denies all expenditures requested by conflict counsel, only to ensure compliance with State disbursement procedure and promote sound fiscal practices. [*Standards, III., F., 7.; Commission Minutes 07/31/06*]

3. Financial Report:

A. <u>July 2006</u>	
Setup, planning organization	29.15
Travel, meetings out of town	35.35
Staff assignable work	0
Admin-claims, approvals, troubleshooting	<u>5.70</u>

CC hours.....	70.20
@ \$60.00	\$4,212.00
Mileage	\$ 382.70
Overhead stipend	<u>\$ 100.00</u>
Total for July	\$ 4,694.70

B. August – Administration of July claims

CC case administration hours	61.55
CC admin cost per case.....	\$ 10.17
(61.55/373=.165hr @ \$60 = \$9.90+\$.27)	
CC total cost per case	\$ 13.22
(79.05/373=.211hr @ \$60 = \$12.66+\$.27+\$.29)	
Planning, organization hours	6.95
Travel, meetings out of town hours	10.55
Staff assignable work hours	10.70
Admin-claims, approvals, troubleshooting hours.....	<u>50.85</u>
CC hours billed	79.05
@ \$60.00	\$4,743.00
Mileage	\$ 106.80
Overhead stipend	<u>\$ 100.00</u>
Total for August	\$ 4,949.80

C. September 2006 – Administration of August claims

CC case administration hours	39
CC admin cost per case.....	\$ 5.82
(39/417=.093hr @ \$60 = \$5.58+\$.24)	
CC total cost per case	\$ 6.72
(45.4/417=.108hr @ \$60 = \$6.48+\$.24)	
Planning, organization hours	6.4
Travel, meetings out of town hours	0.0
Staff assignable work hours	7.75
Admin-claims, approvals, troubleshooting hours.....	<u>31.25</u>
CC hours billed	45.40
@ \$60.00	\$ 2,724.00
Mileage	0.0
Overhead stipend	<u>\$ 100.00</u>
Total for September	\$ 2,824.00

D. October 2006 – Administration of September claims

CC case administration hours	42.05
CC admin cost per case	\$ 6.24
(42.05/417 <i>assumed</i> = .10hr @ \$60 = \$6.00+\$.24)	
CC total cost per case	\$ 8.83
(58.95/417 <i>assumed</i> = .141hr @ \$60 = \$8.46+\$.24+\$.13)	
Planning, organization hours	15.2
Travel, meetings out of town hours	1.7
Staff assignable work hours	10.15
Admin-claims, approvals, troubleshooting hours	31.9
CC hours billed	58.95
@ \$60.00	\$ 3,537.00
Mileage	53.40
Overhead stipend	\$ 100.00
Total for October	\$ 3,590.40

E. November 2006 – Administration of October claims

CC case administration hours	30.55
CC admin cost per case	\$ 4.62
(30.55/417 <i>assumed</i> = .073hr @ \$60 = \$4.38+\$.24)	
CC total cost per case	\$ 4.62
(30.55/417 <i>assumed</i> = .073hr @ \$60 = \$4.38+\$.24)	
Planning, organization hours	0.0
Travel, meetings out of town hours	0.0
Staff assignable work hours	5.6
Admin-claims, approvals, troubleshooting hours	24.95
CC hours billed	30.55
@ \$60.00	\$ 1,833.00
Mileage	0.0
Overhead stipend	\$ 100.00
Total for November	\$ 1,933.00

4. **Evaluation of conflict attorney work.** No evaluations or reports have been requested.

5. **Conflict case administration.**

A. **Goals:**

- i. Establish a *system* for administration and oversight of conflict cases that is independent of case supervision by Office of the State Public Defender (OPD) to ensure independence of action by conflict case counsel and to prevent inadvertent disclosure of conflict client confidences and case strategy.
- ii. The conflict case system should create the least additional work for conflict client counsel as is possible while achieving the prior goal. Payment for services should be at least as fast as will occur for cases administered by the OPD. Authorization for non-attorney services should occur within one business day for tasks expected to cost less than \$2,000, and within two business days for tasks expected to be \$2,000 or more.
- iii. To ensure timely and efficient delivery of services to the clients by having a short path to assignment of conflict attorneys and speedy authorization of needed services.
- iv. To organize the system for administration and oversight of conflict cases so that it integrates with the OPD to allow for a consistent presentation of case load, resource deployment and needs analysis by the OPD.

6. Conclusions and observations about Conflicts Coordinator position after about 150 days of operation:

A. Ongoing workload for the Conflicts Coordinator position as presently established. Based upon the last four months I think the time that this position will take per month should be:

CC case administration hours	30 – 55 hours per month (reviewing claims, approvals & troubleshooting)
Reporting, PDC meetings	12 – 15 hours per month
Planning, organization hours	<u>8</u>
Total time	30 – 78 hours per month

This estimate reflects several variables:

- Administrative time should increase from about 30 -35 hours per month as the number of conflicts cases administered by the Conflicts Coordinator increases. About 30% of the identified conflicts cases are bypassing the CC position and passing through the RDPD offices and the Contract Manager. This occurs because of inattention by the conflicts attorneys, the RDPDs or intentionally. Inattention is a training or procedural issue. Intention is an expediency issue. See also the following paragraph on "Conflicts are not being identified."

- Administrative time varies from month to month depending on troubleshooting items, preapprovals, setting up vendors, correspondence, billing adjustments and so forth.
- Written reports to the Commission take time for assembly and analysis of the information presented. As regular reporting from the Financial Manager and Administrator become available, the time to assemble information should decrease.
- If the Commission continues the Conflicts Coordinator position, the position should be integrated into the OPD information and decision making scheme so that the Conflicts Coordinator can assist in planning and policy at the OPD and be consistent in policy and procedure implementation.

B. Conflicts are not being identified. The common understanding in public defender systems is that 10% to 15% of the total case load will be conflicts cases. The preliminary case numbers reported in October for September 30, 2006 show about 6% (600) of the *total* cases (assuming 10,000 open cases) were identified as conflicts cases. The percentage of identified conflicts cases is lower than expected. The place to address this issue is at intake. Long term planning for the administration of conflicts cases should anticipate a greater case load based on increased identification of conflicts and reduction of the 30% of present cases that bypass the Conflicts Coordinator.

C. Conflicts System as set up and evaluation of bottlenecks.

- i. *Payment of some or all conflict case bills is delayed at the Central Office.*

When I receive a claim, I examine the billing detail, make calls to answer my questions and otherwise correspond with conflicts attorneys to address the issue as presented. I usually check the math and look at the costs claimed for compliance with overhead cost stipend policy as implemented. If a bill is adjusted I inform the conflict attorney and send them a copy of the adjusted claim form. This process takes 1 to 5 business days.

When I approve a claim, I scan the completed claim form and email it directly to Sandra Law, Financial Manager. At that point, the Financial Manager has only the approved summary claim form. All of the supporting detail is at the Conflicts Coordinator's office. The approved conflicts case claim should go directly to the accounts payable unit, the required case information entered, and the claim paid.

Proposed fix: Determine that the Conflicts Coordinator has authority to approve claims for payment without further review.

- ii. *Preapproval of experts and investigators over the \$2,000 authority limit incurs additional processing time.*

Commissioner approval for costs exceeding \$2,000 adds at least one business day to the process because of PD Commissioner availability and alternative follow-up.

Proposed fix: None.

- iii. *Information about policies, procedures and authority is not shared or usefully distributed.*

Proposed fixes:

- **Include the Conflicts Coordinator in policy discussions and in the distribution of information.**
- **Put everything on the OPD website in addition to distribution to the Regional Deputy Public Defenders.**
- **Don't rely on the RDPDs to pass information along to the contract lawyers.**
- **Give advance warning about policy or procedure changes to the people they will impact. Solicit ideas for policy or procedure from the people the policies or procedure will impact. Identify the time-line and place for response.**
- **Post job descriptions or areas of responsibility for all personnel with contact information.**

D. Re-evaluate system design based upon:

- i. Policies and procedures being proposed and implemented by OPD at the Regional and Central Office levels.
- ii. Reported problems.
- iii. Additional information from other state systems design and operation and state and national standards. Examine how multiple conflicts are handled.

System design

Colorado's public defender system has full time public defender offices . Conflicts cases are administered through the separate Alternate Defender office. The Alternate Defender has a separate budget and administration. The Alternate Defender office is essentially a contracted attorney administrator.

Iowa's public defender system has full time public defender offices. Conflict case administration is done from the central public defender office, but the administrators are considered separate and the conflicts cases are handled by contracted and non-contract attorneys. Conflicts case administration is separately budgeted through Iowa's Indigent Defense Fund. There are two conflict case administrators .

In Georgia the public defender system is staffed with FTE attorneys and contracted attorneys. In urban areas there are separate FT E conflict offices. Where there are not FTE conflict offices , then contract attorneys are used. Conflict attorney oversight occurs by office and as a separate part of the central bureaucracy.

For all three systems, where contract attorneys are used for c onflict cases oversight separation exists only to separate the oversight of conflict attorneys from the direct oversight of regular FTE attorneys. There is no separation of oversight between contract attorneys that have clients in conflict with each other . This is what I call the multiple conflicts problem.

In practice, there is little confide ntial client information exchanged between the conflict attorney and the C onflicts Coordinator. There has been little time , or the inclination, to connect what could be confidential information between cases through the contact between conflict attorneys and the C onflicts Coordinator. The discussion tends to be centered on the appropriateness and cost options of preapproval requests. A policy or standard addressi ng disclosure of case information to other attorneys and OPD administrative personnel should adequately address this issue.

The separation of conflicts attorneys , by contracting with outside counsel or by creating separate FTE conflicts offices, from the regular public defender staff is the primary method of preserving client confidences. A non -disclosure policy or standard for administrators and separation of the day to day conflict case administration from the regular OPD offices is probably sufficient.

How to Organize Conflict Case Administration

As long as contracted attorneys are used for conflicts cases, and the administration of those cases is separate from the regular OPD FTE supervision, the organization of Conflicts Case administration depends upo n what else is to be accomplished.

Option 1

Consolidating administration of all contract attorneys at the Contract Manager position.

- Integrate all contract claims processing at a central point instead of the present 3 points of administration (Conflicts Coordinator, RDPDs and Contract Manager).
- The Contract Manager must be “fire walled” from other Central Office personnel, especially when Central Office personnel are tasked with client representation.
- There would be no physical separation of the Contract Manager to assist with prevention of client confidences and case strategy.
- The Contract Manager would be exposed to an increased number of multiple conflicts cases. Rules restricting exchange of any case information should be in place and followed to prevent comparison of claims in companion cases. Each case should be considered on its own merit and according to the line attorney’s judgment.
- Consolidation may require greater financial autonomy for the RDPDs, taking the Contracts Manager out of the authorization role for regular PD FTE case costs over \$2,000.
- This option could operate much like the Iowa Indigent Defense Fund only without the separate budget.
- This option would shift most of the administrative load, except for logging and assigning cases, from the RDPDs to the Contract Manager. A disadvantage is that all contract administration would be focused on the Contract Manager in Butte.
- Decide if there is to be oversight for case fees and costs – for the RDPDs and for the Contract Manager.
- Assigning cases for representation to either the Chief Public Defender or the Contract Manager should preclude either from an oversight role on conflicts cases.

Option 2

Contract Manager administers conflict cases.

- RDPDs reviews and approves or denies claims and cost requests (less than \$2,000) for contracted attorneys but not conflict cases. The Contract Manager provides oversight of the RDPD decisions

and approves costs in excess of \$2,000. The Contract Manager reviews most contracted attorney fee claims and approves them for payment.

- Contract Manager reviews and approves or denies claims and cost requests for conflict cases.
- This option leaves the Contract Manager without oversight on case costs over \$2,000, not only for conflicts cases, but for contract attorney and OPD FTEs as well.
- There would be no physical separation of the Contract Manager to assist with prevention of client confidences and case strategy.
- The Contract Manager must be "fire walled" from other Central Office personnel, especially when Central Office personnel are tasked with client representation.
- Assigning cases for representation to either the Chief Public Defender or the Contract Manager should preclude either from an oversight role on conflicts cases.

Option 3

Continue the Conflicts Coordinator as a separate, independent administrator for conflicts cases.

- Separate administration of conflicts cases is the cleanest method of administration, but it does not address the multiple conflicts problem.
- Rules restricting exchange of any case information should be in place and followed to prevent comparison of claims in companion cases. That is each case considered on its own merit and according to the line attorney's best professional judgment.
- A separate location, apart from the administration and discussion of ongoing OPD cases eliminates much of the potential for accidental disclosure of client confidences and case strategy.
- Allows a "back channel" to the PD Commission for troubleshooting and an alternate view in policy and procedure discussions. *To follow up on this kind of information and function effectively in this role the Conflicts Coordinator must be included in policy and procedure discussions and have sufficient authority to resolve problems and ensure collaboration in policy and procedure formation.*

- Separate administration of conflicts cases from other contract cases requires additional coordination but it also shares the administrative work load. The conflict coordinator could assist with contract attorney evaluations in the regions where contract attorneys handle mostly conflicts cases.
- Backup for the Conflicts Coordinator
 - Could be the Training Coordinator, since he is located in an office physically separate from the Butte office.
 - The Training Coordinator is located in the Missoula Regional Office so the location is not entirely clean.
 - If the Training Coordinator is assigned cases, then he is probably precluded from an oversight function in conflicts cases.
 - Backup for the Conflicts Coordinator should not be a Commission member; it should be somebody the OPD can pay. It could also be a private attorney, familiar with criminal case concepts and procedure and the OPD policies and procedure.

7. Considerations for your decision on the Conflict Coordinator position.

- As presently structured the most time I've put in is under 80 hours (August, the first month for processing claims). Without additional duties, the time required is probably 30-40 hours per month with about 10 more hours for the months the Commission meets. So the job is between 1/5 to 1/2 time.
- I can continue if you decide to retain the position as presently structured. As long as I can shift the time I work on the Conflict Coordinator position to accommodate my mediation schedule. If retained, I would like to be able to terminate on 45 - 60 days notice.
- Allow between 30 and 45 days to implement a change in the way conflicts cases are administered.
 - Allow about 5 days to box and transfer the materials from my office. This will include the paper files, and electronic copies.
 - Allow another 15 days to:
 - Draft and vet a notice for email and mail with the new contact information;
 - Revise and repost website information;

- Circulate policies and procedures, job function; and
 - Revise and repost existing forms.
- If there is a transition, I will forward all email, fax and telephone contact information as directed. I will also reply with the new contact information and revised procedure so that the information about the change is provided in response to an inquiry. I'll do that daily for days I'm in the office. I occasionally travel for settlement conferences and mediation so it will be next business day for those days.