

MONTANA PUBLIC DEFENDER COMMISSION

Conference Call

Public Location: Helena Regional Office
139 N. Last Chance Gulch, Helena MT 59601

December 14, 2012

MINUTES

Approved at the February 15, 2013 Meeting

Commissioners Present

Margaret Novak, Chester; Charles Petaja, Helena; Richard (Fritz) Gillespie, Helena; Ann Sherwood, Pablo; Brian Gallik, Bozeman; Kenneth Olson, Great Falls

Commissioners Absent

Christopher Daem, Billings; William Snell, Billings; Majel Russell, Billings

Staff Members Present

William Hooks, Chief Public Defender; Wade Zolynski, Chief Appellate Defender; Harry Freebourn, Administrative Director

Liaisons

Cathy Huston, liaison for union support staff and investigators, and Eileen Larkin, liaison for non-management appellate defender staff and attorneys, were in attendance. The union attorneys were not represented.

Interested Persons

Timm Twardoski, Executive Director, American Federation of State, County and Municipal Employees (AFSCME); Niki Zupanic, Public Policy Director, American Civil Liberties Union of Montana (ACLU)

1. Call to Order

The Montana Public Defender Commission meeting was called to order by Chairman Fritz Gillespie at 10:05 a.m.

2. Investigator Firearm Proposal (*Action Item)

The Commission discussed this item and voted on it at the December 7, 2012 meeting. Following the vote, they realized that they hadn't published it as an action item on the agenda for that meeting, and decided to undertake it again with proper public notice.

Commissioner Novak moved to support the OPD investigators' efforts to seek a sponsor for legislation allowing them to carry concealed weapons on the job. Commissioner Petaja seconded the motion and Chairman Gillespie invited discussion.

Commissioner Sherwood said that she cannot support the idea without a formal proposal with a detailed explanation of the security issues they are addressing, and more clearly developed policies and procedures regarding firearms in the workplace. Commissioner Novak agreed that to ensure the security of investigators there should be a systemic plan in place. Commissioner Petaja asked investigator liaison Cathy Huston if the investigators are requesting approval for the proposal, and Ms. Huston replied that the majority of the

investigators are in favor of it. They don't want to be *required* to carry weapons every day, but they want to have that option when they are going into risky situations.

Chairman Gillespie said the action the Commission is being asked to take today is to endorse a legislative change allowing OPD investigators to carry concealed weapons at work. The legislation would go into effect July 1, which would give six months to create policy and procedure defining the circumstances in which investigators should be armed, and the necessary training and certification. He favors the motion to seek the legislation. Commissioners Gallik, Petaja and Olson supported Chairman Gillespie's comments.

Commissioner Novak amended her motion to make it clear that the Commission is supporting the investigators' efforts to draft legislation that would allow them to carry firearms in certain circumstances, and that if the legislation carries, the Commission will create policy and procedure to ensure the safety of the workforce. This is not a blanket motion to allow investigators to carry concealed weapons.

Administrative Director Harry Freebourn said that since the deadline for agency legislation has passed, the investigators found a legislator willing to sponsor the bill, and it will be drafted and introduced at the request of the legislator, not the agency. The Commission is only being asked to support the legislation as proponents. The fiscal and operating effects of the bill will be fleshed out during the legislative process. Commissioner Sherwood said that Mr. Freebourn's comments support her position that we are doing things in the wrong order.

Chairman Gillespie invited public comment. Timm Twardoski, AFSCME Executive Director, said that policies, procedures and collective bargaining issues related to the associated costs all need to be resolved before implementing any change. Just because legislation has passed, it doesn't mean that everyone will be automatically armed. Ms. Huston agreed that passing the legislation is only the first step.

The question was called and a roll call vote was taken. The motion carried 4-2 with Commissioners Sherwood and Novak opposed.

3. Approve Strategic Plan (*Action Item)

Commissioner Gallik moved to approve the final draft of the strategic plan. Commissioner Sherwood seconded and discussion ensued.

Mr. Freebourn noted that there is one outstanding item, the strategy statement on case limits. Commissioner Petaja would like to address case caps under goals and objectives. He proposes that the agency (1) monitor attorney caseloads to establish maximum case limits for ethical representation of all persons entitled to assistance of counsel; and (2) establish rules and procedures for setting reasonable and ethical caseloads, including procedures for refusing additional court appointments if necessary.

Commissioner Novak moved to adopt both of Commissioner Petaja's suggestions, to be inserted into the appropriate place in the plan. Commissioner Olson seconded. Chief Public Defender Bill Hooks had one reservation—the reference to establishing a maximum caseload could be inferred to be a numerical value, which is contrary to agency standards which decline to set numerical limits but are based on reasonableness. Commissioner Petaja said that it is not his intent to establish numerical limits, but only ethical and reasonable limitations, and he is open to language refinements. Chief Appellate Defender Wade Zolynski asked if the Commission intends for the case limits to apply to both Program 1 and Program 2, and Commissioners Petaja and Olson agreed that is the intention.

Chairman Gillespie invited public comment and there was none. A roll call vote was taken and the motion passed unanimously. Commissioner Novak thanked the Strategic Planning Committee for their work. The committee in turn thanked Courtney Nolan, assistant public defender in Kalispell, for her work on revising the case weighting system and chairing the labor-management case caps committee.

Mr. Freebourn said that in the past the strategic plan was presented to the governor's budget director and policy advisor under the chair's letterhead. The Commission agreed that they would like to do this again.

4. Update on Pay Parity Legislation Request

Mr. Freebourn researched the possibility of creating automatic pay adjustments for public defenders in statute as requested by the Commission at the last meeting. In Montana there are very few statutory pay increases, including the governor, supreme court justices, district court judges, and the highway patrol. Paula Stoll, state director of labor relations, said that there are 64 pay plans, and most would like to have an automatic pay adjustment, so she would have a hard time supporting this for just one agency. Budget director Dan Villa would prefer to support the decision packages the agency has already submitted this session, including a substantial pay ladder increase.

Commissioner Novak would like to look at this systematically as part of the strategic plan. Chief Zolynski said that OPD is uniquely positioned because the original lawsuit that resulted in the creation of the agency specifically addressed parity in resources. Although he understands Ms. Stoll's concerns, he believes OPD is different.

5. Public Comment

There was no further public comment.

6. Vote on Action Items

- A. Investigator Firearm Proposal
- B. Strategic Plan

Both items were voted on previously.

7. Adjourn

Commissioner Petaja moved to adjourn and Commissioner Gallik seconded. The motion carried and the meeting adjourned at 10:40 a.m.