

MONTANA PUBLIC DEFENDER COMMISSION

CONFERENCE CALL

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

And All Statewide OPD Offices

December 16, 2016

MINUTES

(Approved at the January 20, 2017 Meeting)

Commissioners Present

Ann Sherwood, Pablo (Acting Chair); Mark Parker, Billings; Larry Mansch, Missoula; Maylinn Smith, Missoula; Mike Metzger, Billings; Margaret Novak, Chester; Roy Brown, Billings.

Commissioners Absent

Brian Gallik, Bozeman. Terry Jessee, Billings, has resigned.

Staff Members Present

Bill Hooks, Chief Public Defender; Chad Wright, Chief Appellate Defender; Kristina Neal, Conflict Coordinator; Peter Ohman, Interim Chief Administrator and Training Coordinator; Wendy Johnson, Contract Manager; Carleen Green, Accounting Supervisor; Cathy Doyle, Administrative Assistant

Interested Parties

Jim Taylor, Legal Director, ACLU Montana; Dan Villa, Budget Director, Office of Budget and Program Planning; Timm Twardoski, Executive Director, AFSCME Council 9. The following OPD offices joined the call and hosted staff, contract attorneys and other interested persons: Kalispell, Polson, Missoula, Hamilton, Great Falls, Helena, Bozeman and Billings.

1. Call to Order and Roll Call

Vice-Chair Ann Sherwood assumed the chair and called the meeting to order at 2:05 p.m. The roll was called and a quorum was established.

2. Mitigation Timelines (*Action Item)

Chief Public Defender Bill Hooks met with his regional deputies recently. They will have answers to the questions posed in the memo from Commissioners Sherwood, Smith and Mansch by December 30. They will also report on the number of modified employees hired to date, and the latest numbers on case intake and case weighting. Chief Hooks expects to have two months' worth of good data to evaluate how sustainable the workloads are in each office and whether the quality of representation is being maintained. Commissioner Sherwood said the memo was intended to be open-ended and encouraged all relevant comments be forwarded to the Commission.

Accounting Supervisor Carleen Green said that the forecast is unchanged based on the November expenditures, and December is expected to be about the same. The forecast estimate does not include payroll for the modified FTE; it will be added to the forecast as they are hired. So far about 20 individuals

have been hired in Programs 1 and 3, although not all have started. The forecast is to hire 31 FTE, including full-time and part-time positions.

3. Contract Attorney Perspective

Contract attorney Noel Larrivee spoke on behalf of the contractors. Mr. Larrivee, William Boggs, Kathleen Foley and Julie Brown also submitted written comments to the Commission. Mr. Larrivee has been in conversation with other contractors as well, and there is consensus among those he spoke to in their willingness to work with the Commission to address the current financial situation.

Mr. Larrivee believes the Commission has inherited a problem 10 years in the making; the deficit has existed since the agency has existed. He said that contractors, including mental health providers and investigators, want to help fix the problem; they are committed to seeing the agency succeed. However, it is not realistic to think that a small number of modified FTE will fix a \$2.5 million problem. Mr. Larrivee said that there will always be a need for contract attorneys to do conflict work.

Mr. Larrivee encouraged an effort by all—Commission, employees, and contractors—to implement the mitigation plan. He senses that people are willing to do whatever is needed, and noted that as a contractor he is not bound by the same constraints as employees or management in going to the legislature. He will be happy to explain why there is a shortfall and why it is important to fund public defense. Commissioners Brown and Sherwood agreed that educating legislators is a high priority. Commissioner Novak wants to make sure that the agency is treating the Task Force on State Public Defender Operations as partners, especially as they introduce bills during the session. Chief Hooks agreed. He said several Task Force members will be on the budget subcommittee which will begin meeting in January. He is optimistic they have a much better idea of the issues facing OPD from their experience on the Task Force and hopes to work with them on the budget. He is already in conversation with the legislative fiscal analyst. The Commission asked Chief Hooks to develop a one-page front and back fact sheet as an educational starting point. Chief Hooks will do that, and has begun identifying critical documents provided to the Task Force that will be important to share with the rest of the budget subcommittee members. He intends to make the information available electronically.

4. Future Planning

A. Pay Adjustment for Interim Chief Administrator (*Action Item)

No action was taken on this item.

B. Legislative Session

Chief Hooks confirmed that he will go to the session and present the budget. The first opportunity to discuss OPD's piece of the governor's budget will be with the Section D subcommittee in January. As Chief Hooks mentioned, he is in conversation with the legislative fiscal analyst, and will also work with the Office of Budget and Program Planning on how best to present information to the subcommittee.

Commissioner Sherwood is willing to do what she can in terms of going to legislature and providing a message, but she wants to find a way to coordinate one single message so everyone is on the same page. Mr. Larrivee offered to assist with coordination. Commissioners Smith, Brown and Novak will also try to help as the session proceeds. Chief Hooks appreciates the support. He will work on a one-page memo that can be used to hone the message. Commissioner Parker said the legislature has preordained what is going to happen to the organization; Commissioners and staff have to prepare for a reorganization that will give the agency a more credible voice going forward. There was general agreement that the restructuring will make the agency more effective.

5. Election of Officers (*Action Item)

Commissioner Brown moved to nominate Commissioner Parker as Chair. Commissioner Novak seconded and the motion carried unanimously. Commissioner Sherwood was thanked for her efforts over the last few weeks. She is willing to continue as vice-chair. Former chairman Fritz Gillespie was thanked again for his service as chair over the years.

6. Public Comment

Jessica Polan, Assistant Public Defender in Kalispell, asked if there is a forecast about how long it will take to return to a managed caseload. Chief Hooks doesn't know the answer, although he knows that is not satisfactory to anyone laboring under the workload. He will look at case weights for regular and modified FTE at the end of the year along with the regional reports the Commission has requested to see how people are managing. Ms. Polan thanked Chief Hooks and asked that he communicate his findings to staff attorneys at the end of the month to help alleviate the fear and stress they are experiencing.

Region 1 Deputy Public Defender Nick Aemisegger (Kalispell) announced that Eldena Bear Don't Walk is the new managing attorney in Polson.

Jim Taylor, ACLU Montana Legal Director, requested Commissioner Jessee's resignation letter, but it is not available. He criticized the agency's lack of a communication strategy, especially in light of recent articles in the press. He encouraged OPD to send a memo to the Law and Justice Interim Committee, the Task Force on State Public Defender Operations, and the Section D subcommittee so they are clear on what the agency is trying to do to mitigate the anticipated shortfall. Mr. Taylor requested that Chief Hooks provide updated caseload data as of December 30. Chief Hooks will provide the information when it is available; he is not sure of the timeline. Mr. Taylor asked about the memo from Mr. Larrivee, which will be posted following the meeting. He asked if there is a plan in place for what an attorney is supposed to do when they feel they can no longer take cases, because there needs to be clear direction when they reach that point. Chief Hooks said that a procedure was put in place a number of years ago when the motion to stop taking cases in Helena was filed. It is based on an ABA ethics opinion, and he will make sure that every regional deputy is aware of the procedure. It will also be posted on the website. Mr. Taylor asked if there is a methodology in place to track the number of those occurrences so that it can be reported to the Commission. Chief Hooks will take that under consideration and try to report the information by region.

Contract attorney Bill Boggs said that when the agency was created in 2006, all kinds of cases were folded into the agency, including DNs and misdemeanors. It's not possible to handle all case types on the budget the agency has been given. He suggested that it is time to stand up to the legislature and say the budget is not nearly sufficient to provide quality representation for 36,000 cases. Commissioner Novak agreed that the organization can't assume that legislators know the history of the agency, and that should be part of the information sheet.

Diane Stenerson, Administrative Support Supervisor in Hamilton, agreed with Mr. Taylor and Mr. Boggs.

Region 3 Deputy Public Defender Matt McKittrick (Great Falls) said that he is continuing to implement the mitigation plan by not contracting out overflow cases. His attorneys are experiencing the increased caseloads and trying to keep a positive outlook. He has a modified FTE starting this week and is optimistic that will help the budget situation as we continue forward.

Contract attorney Mark Mackin seconds what Mr. Taylor said about the bad publicity the agency has received, without OPD even offering a correction. The long-lasting credibility problem won't evaporate on its own, and others competing for the same funds will perpetuate the image. Mr. Mackin works

primarily DN cases in the Helena region. The Helena office has shifted some of their contract costs by using FTE support staff to do notices of appearances and notices of objections. However, recently he was told that the county attorney will ask all DN attorneys to do redaction on discovery at Child and Family Services, shifting those costs to OPD. He said that changes like that, resulting in higher costs to the agency, should be challenged. Mr. Mackin suggested that contract attorneys be surveyed to find out what their goals are and how changes in OPD are affecting them. Commissioner Sherwood invited the contractors to respond to the three questions posed to the regional deputies.

Region 4 Deputy Public Defender Jenny Kaleczyc said that her region has done everything possible to implement the mitigation plan. She stopped contracting on November 3, so caseloads have skyrocketed and it is not sustainable. Several attorneys have informed her they can't ethically accept new cases. Staff and clients are suffering greatly.

7. Old Business/New Business

A. Mitigation Timelines (*Action Item)

No action was taken on this item.

B. Pay Adjustment for Interim Chief Administrator (*Action Item)

No action was taken on this item.

C. Election of Officers (*Action Item)

This item was acted on previously.

D. Other Business

Commissioner Novak asked about the minutes of the last meeting. They will be published before the January 20, 2017 meeting.

8. Adjourn

Chairman Parker moved to adjourn. Commissioner Smith seconded and the motion carried. The meeting adjourned at 3:30 p.m.