

# OFFICE OF STATE PUBLIC DEFENDER



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December 17, 2009

Montana Public Defender Commission  
Michael J. Sherwood, Chair  
44 West Park Street  
Butte, MT 59701

RE: Office of the State Public Defender Caseload Management Report for  
12/1/2008 to 11/30/2009

Dear Mr. Sherwood and members of Public Defender Commission:

We are submitting this information to the Public Defender Commission (PDC) as the union representatives in the Billings office. We propose that the PDC refrain from making any decisions regarding the workload or future resources to be allocated to the Billings Office until a committee is formed to compile accurate statistics. In the meantime, we have compiled partial statistics to provide with this letter. Our office received a copy of the Office of the State Public Defender Caseload Management Report for 12/1/2008 to 11/30/2009 (hereinafter referred to as the CWS spreadsheet) yesterday. Since that time we have reviewed the CWS spreadsheet, obtained case assignments lists from our supervising attorneys, and printed various reports on Justware. We have also spoken to David Duke and Richard Phillips about the CWS spreadsheet and case assignments in our office. Roberta Drew is currently out of the office.

The total case units that are attributed to Region 9 on the CWS spreadsheet for December 2008 through November 2009 are 2134.50. Case units are as follows:

Felony = 1  
Misdemeanor = ½  
Probation Violation = ½  
DN = 1.5  
DJ = .75

Whether these case unit designations are an appropriate reflection of the work required for each type of case will be discussed at a Labor Management Committee Meeting in January 2010. The Billings office was not told to report monthly case unit assignments to OPD management until late 2009. As a result, on the CWS spreadsheet, OPD management came up with a default number of 11 to be backfilled in for months

when OPD management did not have the actual unit assignments. According to the case unit scheme above, attorneys are not to be assigned more than 12.5 units per month.

We have compiled a spreadsheet with actual case unit assignments for Region 9, and that spreadsheet is attached. Where 11's were filled in on the CWS spreadsheet by OPD management, we filled in actual units assigned. The numbers on our spreadsheet have been converted to case units, not number of cases. We did not have time to compile statistics for all 16 attorneys currently working in our office and all attorneys who have previously worked for our office in the last year. However, we compiled case unit assignment for 13 current and 3 former attorneys as shown on our spreadsheet. We have a high rate of turnover in our office and several new attorneys. Because we were not able to determine which one of our former attorneys was previously assigned the attorney designation numbers 91, 92, and 93, we were not able to include those previous attorneys' case units for the columns designated as attorneys 91, 92, and 93. As a result, we backfilled in 11's for new attorneys, Jesse Meyers (91), David Arthur (92), and Mike Usleber (93), just as OPD management did for months they did not know actual units. The actual units on our spreadsheet do not count a case assignment more than once when that case is transferred between attorneys because doing so would falsely inflate our statistics a great deal considering our high turnover.

The CWS spreadsheet prepared by management assigns one attorney number (i.e. 85, 86, etc.) to each attorney while the Central Office previously provided Dick Phillips with different attorney numbers for each attorney. Therefore, we do not even know if the statistics designated on the CWS spreadsheet prepared by OPD management correctly match statistics to the correct attorney and Region.

For the 13 current and 3 former attorneys reflected on our spreadsheet, those attorneys were attributed **1781.50** units by the CWS spreadsheet prepared by OPD management, and they were attributed **2650.35** units by our spreadsheet. Clearly, the CWS spreadsheet is not an accurate count due to the incomplete data available to OPD management when the CWS spreadsheet was prepared and other factors.

The case units reflected on our CWS spreadsheet are consistent with the projected statistics that has previously been provided to the PDC by OPD management:

Region		cases	# of attorneys
Region 9	Billings	5862	16
Region 1	Kalispell	4396	16
Region 2	Missoula	4886	23
Region 3	Great Falls	2163	12
Region 8	Bozeman	1960	10

Mr. Sherwood's letter dated December 3, 2009 to Randi Hood states: "I note that Region 9 (Billings) is not reporting elevated CWS numbers and is, in fact, in fifth place as far as overall case loads." As shown by our spreadsheet with actual units assigned,

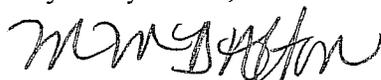
Billings has been undercut by 1000 units and probably more as we have only had time to compile statistics for nine attorneys. Because Yellowstone County has more law enforcement officers, more prosecutors, more people, and more cases filed than any other Region, it is not a reasonable belief that Billings ranks fifth for overall case loads. OPD's own projected statistics listed above show that to be inaccurate.

Mr. Sherwood's letter also states: "As best I can tell from all of this, one of three things is happening: (1) Billings is not being asked to carry an excessive case load in spite of perceptions to the contrary; (2) there is still a flaw in the CWS reporting that should be sorted out on the regional level; or (3) the CWS is not yet sophisticated enough to detect an excessive case load in some instances....The main concern seems to be that Billings is not being allocated resources on the same level as Missoula. If this is not the case, we, nevertheless, need to provide the Billings folks with that data and our analysis in order to put this issue to rest so that we can move onto the pressing need of providing quality legal representation to our clients."

The PDC cannot rely on the data provided the CWS spreadsheet provided by OPD management to make the determination as to whether Billings should be allocated more resources at some point in time. The units reflected on the CWS spreadsheet are not accurate and undercut the units actually assigned to Billings' attorneys. The reason Billings' attorney would like to have more resources is so that we can in fact provide quality representation to our clients. This is a very pressing issue that cannot be swept under the rug and must be addressed at length and with accuracy by the PDC. The CWS does not accurately reflect amount of work done on cases; statistics are not kept consistently from Region to Region; and case counts or case units need to be reported universally by all Regions.

Please feel free to contact our Regional Attorney, David Duke, or the Supervising Attorneys, Richard Phillips and Robert Drew, to verify the accuracy of the statistics reflected on our spreadsheet. Thank you for your time and attention to this matter.

Very Truly Yours,



Moira Murphy D'Alton  
Union Representative for Region 9 Attorneys

Gary Quigg  
Union Representative for Region 9 Staff



cc: David A. Duke, Richard Phillips, Roberta Drew, and Randi Hood

# Memorandum

**To:** Public Defenders Commission  
**From:** Marilyn Pulver & Violet Kober  
**CC:** Moira D'Alton & Gary Quigg & David Duke  
**Date:** December 17, 2009  
**Re:** Case Counts

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We were advised by Sandra Law that the same date incidents for a client were to be combined in Justware, even with different docket numbers. Since about March, Violet and Marilyn have been combining these dockets into just one OPD#. Our case counts remain high, especially in Billings Municipal Court, but not because we are entering the cases incorrectly. Please see the following links:

<http://www.ktvq.com/news/new-city-court-ordinance/>

**Posted: Dec 16, 2009 6:06 PM BILLINGS - The Billings City Council approved a new ordinance that decriminalizes a number of misdemeanor offenses. The list of infractions include minor traffic violations, animals at large and code enforcement violations. If a matter goes to trial, the procedure will be less formal under the new law, similar to small claims court. The new code only applies to people assessed a fine, not to anyone facing jail time. City Administrator Tina Volek said the new municipal infractions ordinance will benefit the public and city. The new code is expected to take affect in February.**

[http://billingsgazette.com/news/opinion/editorial/gazette-opinion/html\\_65704b4e-cccf-11de-8eca-001cc4c03286.html](http://billingsgazette.com/news/opinion/editorial/gazette-opinion/html_65704b4e-cccf-11de-8eca-001cc4c03286.html)

### **Billings Municipal Court statistics**

**Posted: Sunday, November 8, 2009 6:30 pm**

- **38,000 charges filed last year, a 150 percent increase over the previous fiscal year.**
- **16,585 arraignments conducted, including 4,740 for defendants in jail.**
- **6,222 hearings held, including revocation, pretrial, sentencing and omnibus hearings.**
- **371 petitions for protective orders filed.**
- **373 trials held, including 18 jury trials.**

Sincerely Violet  
Marilyn Parker

**Case Weighting System (CWS) Regional Comparisons**  
 (Listed in order of highest to lowest average caseload/attny.)

Region	Avg CWS/attny	FTEs	Total CWS/FTEs
1. Region 9, Billings:	165.64	28.75	92.18
2. Region 4, Helena:	165.05	13.5	116.14
3. Region 1, Kalispell:	141.22	25.25	90.88
4. Region 2, Missoula:	139.56	36.25	89.51
5. Region 7, Lewistown:	132	2.5	52.8
6. Region 6, Havre:	126.25	4	63.125
7. Region 5, Butte:	124.22	15	74.5
8. Region 11, Miles City:	120.88	3.5	69.07
9. Region 8, Bozeman:	116.16	18.5	69.06
10. MCU:	112.94	5.75	78.56
11. Region 3, Great Falls:	109.30	20	60.11
12. Region 10, Glendive:	108.14	3.5	54.07

*new - for  
attached mail*

**Doyle, Cathy**

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**From:** Chatman, Todd  
**Sent:** Friday, December 18, 2009 2:26 PM  
**To:** Kain, Barbara (OPD); Doyle, Cathy  
**Subject:** CWS comparisons corrections  
**Attachments:** cws-region-comparisons-121709-corrected.docx

Barb and Cathy,

Attached is an update to the chart we handed out this morning at the PDC meeting. Barb pointed out that some of my numbers of FTEs were wrong. I believe the attached contains the correct information, for whatever it's worth.

Sincerely,

-Todd Chatman

\_\_\_\_\_ Information from ESET NOD32 Antivirus, version of virus signature database 4628 (20091122)  
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The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>