

MONTANA PUBLIC DEFENDER COMMISSION
CONTRACTS PROCESS COMMITTEE MEETING

Central Office
44 W. Park, Butte, MT 59701

August 18, 2010

DRAFT MINUTES

Call to Order

Chairman Chuck Petaja called the meeting of the Contracts Process Committee to order at 12:50 p.m.

Committee Members Present

Chuck Petaja, Helena; Ken Olson, Great Falls. Fritz Gillespie, Helena was also in attendance.

Committee Members Absent

Jennifer Hensley, Butte

Interested Parties

Randi Hood, Chief Public Defender; Joslyn Hunt, Chief Appellate Defender; Jon Moog, Regional Deputy Public Defender; Larry Murphy, Contract Manager; Harry Freebourn, Administrative Director; Niki Zupanic, American Civil Liberties Union of Montana

Approval of Minutes

Commissioner Olson moved to approve the minutes of the July 24, 2009 meeting as submitted. Commissioner Petaja seconded and the motion carried.

American University (AU) Recommendations

At the request of Administrative Director Harry Freebourn, Commissioner Olson moved to add discussion of AU recommendation 32 to the agenda. Commissioner Petaja seconded and the motion carried.

#12 Special procedures should be developed for evaluating contract lawyers, relying primarily on the information provided in the periodically filed fee petitions and the proposed closing documents.

OPD team leader Jon Moog said that self-evaluation forms were sent to contract attorneys with the most recent MOU. Peer review including meeting with the regional deputy public defender is next, with a final evaluation by Contract Manager Larry Murphy. Commissioner Petaja noted that this is the same process the federal defenders use. In addition, a standards compliance process has been initiated.

The committee asked how the agency is ensuring that contract attorneys are meeting the CLE requirements in the Standards. Mr. Murphy said that this has been an issue since the agency began, and the Commission previously decided not to enforce that standard. There is strong resistance to the requirement, especially in eastern Montana and on the high-line, and contractors

have threatened to refuse to take cases if it is enforced. Contractors have to travel to training events and are not paid for their time, and for some OPD work is a very minimal part of their caseload. In addition, it is unclear if the hours required in the Standards are a minimum or an annual amount.

Evaluation of contract attorneys is an ongoing process, and will also include judicial evaluation. Even without a caseload, Mr. Murphy is unable to personally observe each contractor and will rely on judges and regional deputies for feedback.

Chief Hunt said the appellate program uses very few contractors. She knows them all well and evaluates them based on the briefs that they file. There is not a formal process in place.

#13 Prohibit a contract attorney from taking a fee case that was originally an assigned case
The proposed amendment to the Standards will be referred to the full Commission at the August 30 meeting.

#32 All lawyers should have authority to use automated legal research engines
The Contracts Process Committee agreed to absorb this recommendation from the IT Committee since it relates directly to contract attorneys (all FTE are issued licenses upon hire).

Mr. Freebourn said that Lexis Nexis is the state standard. The agency previously purchased and distributed a lot of 50 licenses for contract attorneys. There are currently 20 contractors on the waiting list. Mr. Freebourn has requested a price on a smaller lot, and will do a cost analysis to determine how many licenses to purchase (50 or less). All qualifying contractors (those that do a significant amount of work for OPD) will then be issued a license.

Public Comment

There was no public comment.

Old Business/New Business (*Action Items)

There was none.

Commissioner Olson moved to adjourn. Commissioner Petaja seconded and the meeting adjourned at 2:45 p.m.