

MONTANA PUBLIC DEFENDER COMMISSION
CONTRACTS PROCESS COMMITTEE MEETING

Butte Public Defender Office
49 N. Main, Butte MT 59701

December 20, 2010

MINUTES

Approved at the August 8, 2012 Meeting

Call to Order

Chairman Chuck Petaja called the meeting of the Contracts Process Committee to order at 1:50 p.m.

Committee Members Present

Chuck Petaja, Helena; Ken Olson, Great Falls; Ray Kuntz, Red Lodge. 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; Larry Murphy, Contract Manager; Timm Twardoski, American Federation of State, County and Municipal Employees, Montana

Approval of Minutes

Commissioner Olson moved to approve the minutes of the August 18, 2010 meeting as submitted. Commissioner Kuntz seconded and the motion carried.

American University Recommendation

#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.

Commissioner Petaja reviewed the evaluation process, which consists of a self-evaluation, peer review by the regional deputy, and a final evaluation by Contract Manager Larry Murphy. Mr. Murphy reported that all of the self-evaluation forms have been returned. An observation checklist has been distributed to the regional deputies, and they have until May to complete their observations and compile comments/complaints, etc. Mr. Murphy will combine these with his own information to complete an evaluation form and review it with the contractor. If a contract attorney is determined to be lacking in proficiency in any area in which they practice, he and Training Coordinator Eric Olson will develop training recommendations to allow the contractor to achieve proficiency.

Mr. Murphy also discussed the progress of the Standards compliance evaluations. The process is cumbersome, but it is working. To date, he's met with all the contractors in Havre and some in Missoula, Kalispell, and Billings. He hopes to complete the process in a year.

Commissioner Kuntz had a concern regarding the amount of time that Mr. Murphy is spending trying to evaluate 180 contractors. He asked if it could be moved to the regional level once the process is fine-tuned, or if it needs the Central Office component? Mr. Murphy replied that if he is ultimately accountable, he would prefer not to rely on someone else. However, he only saw seven of 20 contract attorneys during his recent two-day visit to Billings and he said that it might be helpful to have a longer period of time to complete the process instead of doing it annually. Commissioner Petaja noted that this recommendation specifically says that a review of fee petitions and closing documents should be used to evaluate contractors. Mr. Murphy has gone way beyond this, even evaluating the contract attorneys' writing, and Commissioner Petaja believes that this recommendation is complete.

Transparency in the Contracting Process

Chairman Gillespie had asked the Contracts Committee to look at a protocol for ensuring fairness in the assignment of cases to contract attorneys. Commissioner Petaja said that the Memorandum of Understanding clearly states how cases are assigned, and includes a prohibition of discrimination. He does not recommend adopting any additional formal protocol regarding case assignments for contractors. However, this may need to be revisited if the contract attorneys unionize.

Chairman Gillespie said that complaints among contract attorneys that they are not getting enough cases has led him to focus on the question of whether there is transparency, on the website and within written documents, so that people who are considering contracting with the agency know how appointments are made. He understands that the regional deputies know the abilities of lawyers in their region and make assignments based upon their assessment of who would best serve an individual client. However, Chairman Gillespie said the process must be made clear to the public.

Commissioner Petaja said that the contract attorneys have not taken any initiative to organize, leading him to doubt that dissatisfaction is running rampant. Chairman Gillespie has contacted Montana Association of Criminal Defense Lawyers President Wendy Holton for help in identifying a contract attorney liaison.

Commissioner Kuntz moved that Mr. Murphy develop a draft website posting for the committee's review that outlines the factors to be considered in assigning cases to contract attorneys, including a concise statement that the regional deputies are given discretion in case assignments. Commissioner Olson seconded and the motion carried. The committee asked that Mr. Murphy have this ready for the second Commission meeting in 2011.

Public Comment

There was no public comment.

Old Business/New Business (*Action Items)

There was none.

The meeting adjourned at 2:30 p.m.