

MONTANA PUBLIC DEFENDER COMMISSION

CONFERENCE CALL

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

December 30, 2014

MINUTES

(Approved at the January 29, 2015 Meeting)

Commissioners Present

Fritz Gillespie, (Chair), Helena; Chuck Petaja, Helena; Margaret Novak, Chester; Brian Gallik, Bozeman; Bonnie Olson, Marion; Ken Olson, Great Falls; Terry Jessee, Billings

Commissioners Absent

Ann Sherwood, Pablo; Majel Russell, Billings; Roy Brown, Billings; Mike Metzger, Billings

Staff Members Present

Bill Hooks, Chief Public Defender; Wade Zolynski, Chief Appellate Defender; Kristina Neal, Conflict Coordinator; Harry Freebourn, Administrative Director; Wendy Johnson, Contract Manager; Chris Abbott, Assistant Public Defender

Interested Parties

Niki Zupanic, Public Policy Director, American Civil Liberties Union of Montana (ACLU)

1. Call to Order

Chairman Fritz Gillespie called the meeting of the Public Defender Commission to order at 10:00 a.m.

2. Minutes of October 31, 2014 Meeting (*Action Item)

Commissioner Petaja moved to adopt the minutes of the October 31, 2014 meeting as drafted. Commissioner Bonnie Olson seconded and the motion carried.

3. Substitution of Judges Policy – Discussion (*Action Item)

Commissioner Jessee moved to adopt the revised policy on Substitution of Judges. Commissioner Bonnie Olson seconded and Chairman Gillespie invited discussion.

Commissioner Petaja has reservations about the policy in terms of infringing on the rights of individual public defenders, and he is interested in hearing comments from Assistant Public Defender Chris Abbott. He is also concerned that he hasn't seen any data showing how many judges OPD disqualified last year and how it compares to what other attorneys are doing around the state. Commissioner Jessee agreed that the judges should have to demonstrate that there is a problem by producing data.

Chairman Gillespie recapped the incidents in Missoula and Great Falls where managers were unaware of judge substitution issues until they were brought to the attention of Central Services by other parties. The proposed policy will require that a public defender consult with their supervising attorney (managing attorney or regional deputy) and their client when they wish to make a substitution. The purpose behind the policy is to show the Supreme Court that OPD has taken the judges' concerns seriously and that OPD management will be aware of substitutions, while leaving the final decision to the individual attorney.

Commissioner Bonnie Olson said that from the judges' perspective, substitutions are a hassle, especially in small districts. She views the proposed policy as an internal control—a way to ensure that managers are aware and part of the discussion regarding substitutions without impeding the attorney's ability to do what they think is in their client's best interest.

There was further discussion regarding specific language, the prevalence of substitutions, whether certain instances constituted abuse, and the ultimate need to follow the ethical rules cross-referenced in the policy.

4. Public Comment

Mr. Abbott is an assistant public defender in the Helena office and a member of the union executive board. At the last meeting he raised concerns about two aspects of the proposed policy: one, that a manager approve substitution decisions in certain instances; and two, the "exceptional circumstances" language in section 2.2.1, given the difficulty in meeting with clients within the designated time frame to request substitution.

Mr. Abbott understands the need to show the Supreme Court that the agency is being responsive, in the hope that the Court won't approve the rule changes requested by the judges. He can live with the policy as revised, because maintaining autonomy over the substitution decision is the primary concern. The change from mandatory *approval* by a supervisor to mandatory *discussion* with a supervisor is okay with him and with the few other attorneys that responded to the revised draft. The policy preserves the obligation to the client, while making sure management is well-informed.

Commissioner Gallik said that he shared some of Commissioner Petaja's concerns about the policy. Although he has problems with much of the language and would not approve the policy in the current form, he will defer to Mr. Abbott's judgment.

Chairman Gillespie invited additional public comment, but there was none.

5. Action on Substitution of Judges Policy

After further discussion, Chairman Gillespie summarized the language changes to be made in the policy:

- Delete the last sentence in section 1.0

- Change "must" to "should" in the first sentence of section 2.1

Add the word “with” between “consultation” and “the” in the last sentence of section 2.2.

Commissioner Petaja moved to amend the policy with those changes to the language. Commissioner Jessee seconded and the motion carried.

Commissioner Novak moved to adopt the amended policy. Commissioner Jessee seconded and the motion carried unanimously.

Chairman Gillespie will submit the final policy as a supplemental comment to the Supreme Court on behalf of OPD and the Commission.

6. Set Future Commission Meeting Dates

OPD is tentatively scheduled to appear before the Section D Joint Appropriations/Finance and Claims subcommittee January 28-30. Chairman Gillespie would like commissioners to attend in support of the budget request if possible. If a quorum can be established, a half-day Commission meeting will be scheduled following the hearing.

The agency has been invited to appear before the House Judiciary Committee on January 8 to introduce OPD representatives to the Committee. Chairman Gillespie is working on a one-page summary of the mission statement for legislators. Staff will provide the Commission with membership listings for key legislative committees.

7. Adjourn

The meeting adjourned at 11:10 a.m.