

## Office of the State Public Defender Administrative Policies

Subject: <b>Eligibility Determination</b>	Policy No.: <b>105</b>
Title <b>47</b>	Pages: <b>8</b>
Section: <b>1-111</b>	Last Review Date: <b>2-24-14</b>
Effective Date: <b>5-5-14</b>	Revision Date: <b>2-24-14</b>

### 1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) will provide public defender services to applicants who qualify under 47-1-111, MCA.
- 1.2 Certain clients determined to be eligible for public defender services may be required to pay for the cost of counsel per 46-8-113.

### 2.0 DEFINITIONS

- 2.1 **Household:** an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses.
  - 2.1.1 The term does not include bona fide lessees, tenants, or roomers and boarders on contract.
- 2.2 **Hardship:** When evaluation of an applicant's disposable household income (gross household income less reasonable and necessary expenses), extent and liquidity of assets, severity of crime(s) charged, time period until next court hearing date, and local private counsel rates demonstrate an individual would incur substantial hardship to his/her family to retain competent private counsel, the applicant qualifies for public defender services.
- 2.3 **Presumptive Eligibility:** An applicant who is a current verified or documented recipient of a state or federally administered public assistance program such as TANF, SNAP or SSI/SSDI shall be considered presumptively eligible and, therefore, qualified for public defender services.
- 2.4 **Presumptive Indigence:** An individual who is unable to complete the application process for good cause may be considered qualified for public defender services, unless the Eligibility Specialist (ES) has independent information that the applicant has sufficient, independent financial resources to hire private counsel.
- 2.5 **Current Client Status:** An applicant who has been approved for public defender services based upon the gross income guidelines or certain hardship determinations will remain qualified for services in any new cases for a three month period from the original approval date. Upon expiration of the three month period, the applicant must submit a new application and financial documentation for any subsequent cases.

### **3.0 APPOINTMENT OF COUNSEL**

- 3.1** All district courts and courts of limited jurisdiction shall send appointment forms to Regional Public Defender Offices. The appointment form is provided by the Central Office, and provides information about the applicant for public defender services.
- 3.2** When a regional office receives an appointment from the court, OPD shall immediately assign counsel to the individual who, in turn, shall promptly complete the application for public defender services. OPD's representation of the individual shall continue unless OPD determines that the individual is not eligible for services and a motion to rescind is filed and granted by the Court.

### **4.0 APPLICATION FORM**

- 4.1** The Central Office shall provide the Regional Public Defender Offices with the Application for Court-Appointed Counsel forms as prepared by OPD and approved by the Montana Public Defender Commission.
- 4.2** Regional Deputy Public Defenders or their staff will make forms available to all jails and courthouses and any other venues deemed appropriate.

### **5.0 APPLICATION PROCEDURE**

- 5.1** An applicant for public defender services must complete the Application for Court-Appointed Counsel form, sign it, and return it to the Regional Public Defender Office within ten days of appointment. The Regional Public Defender Office will move to rescind the appointment if the required materials are not provided as requested.
  - 5.1.1** Certain applicants may be considered qualified for public defender services under special circumstances, including, but not limited to, Presumptive Eligibility, Presumptive Indigence and Current Client Status (see 2.0, Definitions). In some instances application requirements may be waived.
  - 5.1.2** An applicant may be required to provide documentation to verify income, expenses and assets. The office may move to rescind the appointment if the requested materials are not provided in a timely manner.
  - 5.1.3** Information on the Application for Court-Appointed Counsel form and all supporting documentation is confidential.
- 5.2** An ES will aid any applicant requesting assistance in completing the application.

## **6.0 ELIGIBILITY DETERMINATION**

- 6.1** Each Regional Deputy Public Defender will appoint an ES and a backup for the region. This information will be maintained in the Central Office.
- 6.2** Regional Deputy Public Defenders are an integral part of the eligibility determination process. They will sign motions to rescind appointments when required and will appear in court as needed. They will also assist the ES in making difficult determinations. However, the RDPD will not act as the ES and will not be involved in the eligibility determination process for any of their own cases.
- 6.3** The ES will review the Application for Court-Appointed Counsel form, obtain missing information, and assure that the form is signed by the applicant.
- 6.4** If Presumptive Eligibility, Presumptive Indigence or Current Client Status is not indicated, the ES will determine eligibility for services based on:
  - 6.4.1** Income: Gross household income falls within the Gross Income Guidelines (Attachment A), which are based on the federal poverty level; or
  - 6.4.2** Hardship: Retaining private counsel would result in substantial hardship to the applicant or his/her household (see 2.2, Definitions).
- 6.5** The income and assets of another household member will not be considered in the eligibility determination if the household member is the alleged victim of the offense(s) allegedly committed by the applicant.

## **7.0 ELIGIBILITY VERIFICATION**

- 7.1** The ES will verify income and assets for 10% of all applicants seeking qualification under the gross income guidelines 6.4.1.
- 7.2** The ES will verify the information on the application form for all applicants seeking a hardship qualification under 6.4.2, including but not limited to income and assets. Verification may include, but is not limited to, production of paystubs, monthly bank statements, unemployment, food stamps/SNAP, TANF, Social Security, SSI, SSDI, Worker's Compensation, pension/retirement and financial aid benefit statements, and/or other documentation requested by the ES. The ES will also do a property records search when indicated.
- 7.3** New or additional information regarding an applicant's income, assets and/or expenses may result in a redetermination of eligibility.

## **8.0 DISQUALIFIED APPLICANTS**

- 8.1** If the applicant does not qualify for public defender services, the ES shall send the applicant a written notice of disqualification together with a notice of right to judicial review of eligibility determination (see Attachment B, Standard Letter of Notification of Denial).
- 8.2** The Regional Deputy Public Defender shall immediately notify the court of record upon determination that an applicant does not qualify for public defender services (see Attachment C, Motion to Rescind Appointment).

- 8.3** The public defender shall continue to provide representation to the applicant until receipt of a signed order from the judge rescinding the appointment of counsel.
- 8.4** A judge may overrule a determination that an applicant is ineligible for public defender services. If overruled, OPD will provide public defender services to the applicant.

**9.0 COMPLIANCE MONITORING**

OPD will monitor, on a systematic basis, regional compliance with statutory and administrative policies governing the eligibility determination process.

**10.0 CLOSING**

Questions about this policy should be directed to the OPD Central Office at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

**ATTACHMENT A**  
**GROSS INCOME GUIDELINES**

**2014**

<b>Household Size</b>	<b>Federal Poverty 100%</b>	<b>OPD Guidelines</b>			
		<b>133% Annual</b>	<b>133% Monthly</b>	<b>133% Bi-Weekly</b>	<b>133% Weekly</b>
1	11,670	15,521	1,293	597	298
2	15,730	20,921	1,743	805	402
3	19,790	26,321	2,193	1,012	506
4	23,850	31,721	2,643	1,220	610
5	27,910	37,120	3,093	1,428	714
6	31,970	42,520	3,543	1,635	818
7	36,030	47,920	3,993	1,843	922
8	40,090	53,320	4,443	2,051	1,025
Each Addtl	4,060	5,400	450	208	104

**ATTACHMENT B**

**STANDARD LETTER OF NOTIFICATION OF DENIAL**

Name  
Regional Deputy Public Defender  
Region (#)  
(Address)

(Date)

(Client Name)  
(Client Address)

Dear (Client):

Please be advised that in applying the criteria outlined in Section 47-1-111 MCA to the information you provided on your application form, I have determined that you do not qualify for public defender services. The Office of the State Public Defender will ask the Court to rescind the appointment of a public defender. You must hire a private attorney within 10 days of this letter or represent yourself.

Your next court appearance is scheduled for (date) (time) in \_\_\_\_\_ Court.

If you do not agree with this determination, you have the right to ask the judge in your case to review your financial status. If you do ask for review, we are required to make your application form available to the judge for inspection.

Sincerely,

Name  
Regional Deputy Public Defender

**ATTACHMENT C**

**MOTION TO RESCIND APPOINTMENT OF PUBLIC DEFENDER**

Name  
Regional Deputy Public Defender  
Region (#)  
(Address)

Telephone:

MONTANA (XXXXX) JUDICIAL DISTRICT COURT, (XXXX) COUNTY

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STATE OF MONTANA,	)	
	)	Cause No. _____
Plaintiff,	)	
	)	
v.	)	MOTION TO RESCIND
	)	APPOINTMENT OF PUBLIC
	)	DEFENDER
	)	
_____,	)	
	)	
Defendant.	)	

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COMES NOW, (RDPD), attorney for Defendant, (Name), and hereby moves the Court to rescind the appointment of the Office of the State Public Defender because the Defendant does not meet the criteria set out in Section 47-1-111, MCA, to be eligible for representation by the Office of the State Public Defender.

The Defendant has been notified of this determination as well as his right to ask this Court to review the determination.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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(Name)  
Regional Deputy Public Defender  
Region (#)

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing MOTION TO RESCIND APPOINTMENT, postage prepaid, by U.S. mail, to the following:

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



# Office of the State Public Defender Administrative Policies

Subject: <b>Closing Cases</b>	Policy No.: <b>106</b>
Title	Pages: <b>2</b>
Section:	Last Review Date: <b>02/20/13</b>
Effective Date: <b>10/01/07</b>	Revision Date: <b>4/25/13</b>

## 1.0 POLICY

The Office of the State Public Defender has established the following procedures for attorneys to follow in closing cases.

- 1.1 Every attorney will complete a case closing form for every case in a timely manner. The closing form will contain the minimum required information as determined by the Public Defender Commission.

## 2.0 PROCEDURES

### 2.1 CRIMINAL CASES

2.1.1 Felony criminal cases shall be closed not later than:

- 2.1.1.1 After dismissal; or
- 2.1.1.2 After receipt of the official judgment and the client has been advised of his appeal and sentence review rights; or
- 2.1.1.3 After any deferred prosecution or imposition of sentence has expired and the motion to dismiss has been granted.

2.1.2 Misdemeanor criminal cases shall be closed:

- 2.1.2.1 After dismissal; or
- 2.1.2.2 After sentencing; or
- 2.1.2.3 After any deferred prosecution or imposition of sentence has expired and the case has been dismissed.

2.1.3 Criminal cases shall be deemed inactive:

- 2.1.3.1 When the client is missing and there is no real expectation that s/he will turn up in a few weeks (true absconders).
- 2.1.3.2 When the client is serving time under another jurisdiction or in another state and there is not expectation that the prosecution will do anything until the client's release.
- 2.1.3.3 When there is a deferred prosecution or deferred imposition of sentence.

### 2.2 YOUTH COURT CASES

2.2.1 Youth court cases shall be closed:

- 2.2.1.1 After dismissal; or
- 2.2.1.2 Upon receipt of the Order of Adjudication and the time for appeal has expired without an appeal being filed.

2.2.2 Youth court cases shall be deemed inactive:

- 2.2.2.1 When the client is missing and there is no real expectation that s/he will turn up in a few weeks (true absconders).
- 2.2.2.2 When the client is in placement out-of-state and there is not expectation that the prosecution will do anything until the client's release.

### **2.3 INVOLUNTARY COMMITMENT CASES**

Involuntary commitment cases shall be closed:

- 2.3.1 After dismissal; or
- 2.3.2 After commitment and the time for appeal has expired without an appeal being filed.

### **2.4 INCAPACITATED PERSONS CASES**

Incapacitated persons cases shall be closed:

- 2.4.1.1 After dismissal of the petition; or
- 2.4.1.2 Upon termination of the guardianship

2.4.2 Incapacitated persons cases shall be deemed inactive:

- 2.4.1.1 After the guardianship and/or conservatorship is granted, but yearly reporting by the guardian and/or conservator is ordered.

### **2.5 DEPENDENT/NEGLECT CASES**

Dependent/neglect cases shall be closed:

- 2.5.1 After dismissal; or
- 2.5.2 After the relinquishment of parental rights by the client; or
- 2.5.3 After receipt of an Order Terminating Rights and the time for appeal has expired without an appeal being filed.

### **2.6 APPEALS OF ALL CASES**

2.6.1 All appeal cases shall be closed after a decision by the Montana Supreme Court, and the time for a motion to reconsider has expired without the filing of said motion. If a motion for reconsideration is filed, the case shall be closed upon final decision pursuant to the motion.

2.6.2 Appeal cases shall be deemed inactive when awaiting the Court's decision.

### **2.7 SENTENCE REVIEW**

Sentence review cases shall be closed after the decision of the Sentence Review Board has been issued and received.

## **3.0 CLOSING**

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701  
Phone: 406-496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Client File Retention</b>	Policy No.: <b>107</b>
Title:	Pages: <b>4</b>
Section:	Last Review Date: <b>2-20-13</b>
Effective Date: <b>3-15-10</b>	Revision Date: <b>4-25-13</b>

## 1.0 POLICY

- 1.1 All Office of the State Public Defender (OPD) client files are the property of the State of Montana and disposition of files must follow the rules established by the Montana Secretary of State.
- 1.2 Every client is entitled to one copy of their case file. Clients will be notified of this right and the scheduled date of file destruction in the case closing letter. Requested files will be delivered in electronic format unless the client requests a paper copy. There will be no charge to the client for providing the case file in either format.
- 1.3 OPD has established the following procedures for disposition of client files. This policy applies to all client files, whether maintained by OPD offices or by contract attorneys.
- 1.4 This retention schedule applies to investigative files that are maintained separately from the case file.
- 1.5 This retention schedule applies to mental health consultation files that are maintained separately from the case file.

## 2.0 PROCEDURE, OPD OFFICES

- 2.1 All client files will be retained by calendar year for the appropriate retention period by case type and disposition as described below.
- 2.2 Destruction will occur in January or February for all client files that fulfilled the retention period as of December of the prior year. The Central Office will notify all offices when the destruction request for that year has been approved by the Secretary of State.
- 2.3 Paper files will be shredded. Duplicate electronic files will be deleted.
- 2.4 Incoming FTE attorneys may not bring or store their private practice files in OPD offices, unless the case becomes an OPD case when they are hired.
- 2.5 Any hard copy files that are forwarded to the appellate office will be returned to the originating office when the appellate office has copied/scanned them for the appeal. Those files are subject to the retention period based on the disposition of the original case.
- 2.6 The Major Crime Unit (MCU) is the record holder in any case in which a regional employee is co-counsel. Co-counsel are responsible for providing attorney notes

or any other information that is not duplicated in the MCU file to the MCU. Any duplicative materials may be destroyed in the regional office.

### **3.0 PROCEDURE, CONTRACTOR OFFICES**

All contractor files, whether conflict or non-conflict, are the responsibility of the contractor.

**3.1** OPD should not accept or retain any contractor files in their offices.

**3.2** Contractors agree to abide by OPD's retention schedule when they sign the Memorandum of Understanding (MOU).

**3.3** Regional offices should prepare a list of contractor files at the end of each calendar year listing the files that the contractor holds that may be eligible for destruction at calendar year end. It is then up to the contractor to destroy or retain as appropriate.

**3.4** The appellate office is excepted from this policy and may retain their contractor files due to the cost of reproducing transcripts or other documents that may not be accessible for the entire 10-year retention period if left with a contractor.

### **4.0 CRIMINAL CASES**

#### **4.1 FELONY CASE FILES**

##### **4.1.1 DEFERRED**

###### **4.1.1.1 DEFERRED SENTENCE**

Destroy two years following the end of the deferral period, or a maximum of eight years after judgment.

###### **4.1.1.2 DEFERRED PROSECUTION AND/OR IMPOSITION**

Destroy three years following dismissal.

##### **4.1.2 SUSPENDED SENTENCES**

Destroy after completion of the sentence including any suspended portion. If the sentence is for a period of commitment followed by a suspended sentence, the file will be destroyed after completion of the suspended portion of the sentence.

##### **4.1.3 COMMITMENT SENTENCES**

**4.1.3.1** If the sentence is one of commitment to the Department of Corrections or the Montana State Prison *with no suspended portion*, destroy five years after the entry of judgment, or upon completion of sentence if earlier.

**4.1.3.2** If the sentence is one of commitment to the Department of Public Health and Human Services, destroy five years after the entire commitment is discharged, including any community placement.

**4.1.4** Individual offices will retain the file for a period exceeding the retention schedule, within their discretion and with documented management approval, when:

**4.1.4.1** The file is that of a client whom the office believes will be a client again; or

- 4.1.4.2 The file contains briefs or pleadings that may be of use in new cases but have not yet been entered into a brief bank; or
- 4.1.4.3 The file is that of a client whom the office believes may benefit from keeping the file for a longer period of time due to the nature of the offense or the disposition of the case.

4.1.5 If the client dies before sentencing, the file will be retained for three years.

**4.2 MISDEMEANOR CASE FILES**

Destroy three years following judgment unless there is a pending Order to Show Cause, Petition to Revoke or warrant relating to the case.

**4.3 JUVENILE CASE FILES**

Destroy when the youth reaches the age of 25 in all cases.

**4.4 EXTRADITION CASE FILES**

Destroy three years following the date of decision.

**5.0 POST-JUDGMENT**

**5.1 APPELLATE CASES**

Destroy ten years after the Supreme Court opinion is issued.

**5.2 POSTCONVICTION RELIEF**

Destroy three years following the date of decision, after notification to the client that the file will be destroyed.

**5.3 SENTENCE REVIEW**

Destroy three years following the date of decision.

**5.4 PETITIONS FOR RELIEF OF DUTY TO REGISTER AS A VIOLENT OR SEX OFFENDER**

Destroy three years following the date of decision.

**6.0 CIVIL CASES**

**6.1 DEPENDENT/NEGLECT CASE FILES**

Destroy when:

**6.1.1** The case has been closed for five years; or

**6.1.2** The concerned children have reached the age of 18; or

**6.1.3** The children have been adopted.

**6.2 INVOLUNTARY COMMITMENT OR GUARDIANSHIP CASE FILES**

Destroy five years after the date of commitment.

**7.0 OTHER**

**7.1 INDIGENCY DETERMINATION AND APPOINTMENT FILES**

Destroy three years following the appointment.

**7.2 RESCINDED APPOINTMENT**

Destroy one year following rescission.

**7.3**    **SUBSTITUTION OF COUNSEL**  
Destroy three years following the substitution.

**7.4**    **DISMISSED CASE FILES**  
Destroy three years following dismissal.

**7.5**    **ACQUITTED CASE FILES**  
Destroy one year after judgment.

**8.0**    **DECEASED CLIENTS**

**8.1**    If a client dies prior to sentencing, the file will be destroyed three years after the case is closed.

**8.2**    If a client dies after sentencing, the retention period is equal to the defined retention period based on case type and disposition.

**9.0**    **CLOSING**

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Client Grievance Procedure</b>	Policy No.: <b>110</b>
Title: <b>47</b>	Pages: <b>2</b>
Section: <b>1-202(10)</b>	Last Review Date: <b>12/22/10</b>
Effective Date: <b>7/1/06</b>	Revision Date: <b>01/26/11</b>

## **1.0 POLICY**

It is the policy of the Office of the State Public Defender to address client grievances in an efficient, timely, and courteous manner. The following procedures for are established for clients alleging grievance against the public defender attorney assigned to the client's case. For purposes of this policy the grieving client is referred to as the complainant.

## **2.0 PROCEDURE**

### **2.1 WRITTEN COMPLAINT**

Any client alleging grievance against the public defender attorney assigned to the client's case shall complete a written statement of grievance and submit it to the appropriate regional deputy public defender. All complaints must be submitted only by the client or by an individual that has the legal authority to act on behalf of the client.

### **2.2 ACTION ON RECEIPT OF WRITTEN COMPLAINT**

Upon receipt of a signed, written complaint against a public defender, the regional deputy shall take the following actions:

- A. Provide the respondent attorney with a complete copy of the complaint and follow up statement, if any;
- B. Carefully review the complaint; and
- C. Consult with the respondent attorney to discuss appropriate action to be taken.

In addition, the regional deputy may choose to contact the complainant (either in person or via telephone call) for the purpose of obtaining further clarification regarding the facts alleged.

### **2.3 DECISION BY REGIONAL DEPUTY PUBLIC DEFENDER**

Following step 2.2, the regional deputy shall make an initial decision regarding action, if any, to be taken by the respondent attorney and shall, thereafter, advise the complainant of the decision.

### **2.4 DETERMINATION DENYING CHANGE OF COUNSEL; APPEAL PROCESS**

- A. **Failure of the Complaint to Set Forth Adequate Grounds for Change of Counsel:** If the regional deputy determines that the complaint fails to establish adequate grounds for change of counsel, the regional deputy

shall so advise the complainant. Any decision denying a complainant's request for change of attorney shall inform the complainant of the right to file a request for further review by the Grievance Review Officer for the Office of the State Public Defender, as designated by the Chief Public Defender.

- B. **Appeal to Grievance Review Officer:** If the complainant disagrees with the decision of the regional deputy public defender, the complainant shall notify the regional deputy of that fact at the time the regional deputy notifies the complainant of the fact of denial. In such event, the regional deputy shall provide the grievance packet (containing a copy of the original complaint and a copy of the regional deputy's decision) to the Grievance Review Officer.
- C. **Review and Decision by Grievance Review Officer:** The Grievance Review Officer shall issue a written decision either upholding the regional deputy's decision or reversing it with instructions to implement an immediate change of counsel in a timely manner. The Grievance Review Officer may, but is not required to, consult with the complainant prior to issuing the decision.
- D. **Motion for Change of Counsel:** If the complainant decides, after proper notification from the Grievance Review Officer, that the complainant nonetheless wishes to pursue the grievance with the court of record, the Grievance Review Officer shall notify counsel of record in writing to file an appropriate motion.

## 2.5 DETERMINATION APPROVING CHANGE OF COUNSEL

**Adequacy of the Complaint to Support Change of Counsel:** If the regional deputy decides that the complaint does provide adequate grounds for change of counsel, the regional deputy shall immediately effectuate a substitution of counsel and shall advise the complainant, the attorney of record, new counsel, and the court. Reasons for the change shall be documented in the regional deputy's file but shall not be provided to the court, to new counsel, or to opposing counsel. The notice of substitution shall conform to standard pleadings of the jurisdiction.

## 3.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080



# Office of the State Public Defender Administrative Policies

Subject: <b>Management Caseload Limitations</b>	Policy No.: <b>114</b>
Title: <b>47</b>	Pages: <b>2</b>
Section: <b>1-215(2)(h) and 1-202</b>	Last Review Date: <b>4/23/13</b>
Effective Date: <b>4/23/10</b>	Revision Date: <b>4/29/13</b>

## 1.0 POLICY

Pursuant to Sections 47-1-215(2)(h) and 47-1-202, MCA, the following policy sets maximum caseloads for the Regional Deputy Public Defenders and Managing Attorneys, and prohibits caseloads for the Chief Public Defender and the Contract Manager. The policy is intended to serve the requirements of managers to maintain a caseload alongside the attorneys they supervise, while also providing effective management.

The Public Defender Commission's 2012 *Response to the 2009 AU Study and the 2011 ACLU Evaluation of the Statewide Public Defender System* is the basis for the following caseload limits. The report recommends limiting caseloads for managers to a quarter, third or half of their productive hours depending on the size of the operation managed. It assumes a maximum availability of 1500 productive hours annually, taking into consideration vacation and sick leave, paid holidays, mandatory training requirements, office meetings, etc.

## 2.0 PROCEDURE

- 2.1 Maximum caseloads as are defined herein are intended to be strongly recommended while understanding that unusual circumstance in any office may make them unrealistic.
- 2.2 Maximum caseload limits are expressed in terms of hours per calendar year.
- 2.3 The Chief Public Defender and the Contract Manager shall not maintain caseloads.
- 2.4 The maximum caseload limits for each Regional Deputy Public Defender are as follows:
  - 2.4.1 Region 1 375 hours
  - 2.4.2 Region 2 375 hours
  - 2.4.3 Region 3 500 hours
  - 2.4.4 Region 4 500 hours
  - 2.4.5 Region 5 500 hours
  - 2.4.6 Region 6 750 hours
  - 2.4.7 Region 7 750 hours
  - 2.4.8 Region 8 750 hours
  - 2.4.9 Region 9 375 hours

- 2.4.10 Region 10 750 hours
- 2.4.11 Region 11 750 hours

2.5 The maximum caseload limit for any Managing Attorney is 750 hours.

2.6 Supervisors will monitor caseloads on a quarterly basis, taking into consideration the following variables and any others relevant at the time:

- 2.6.1 Capabilities of the individual
- 2.6.2 Number of personnel supervised
- 2.6.3 Attorney vacancies
- 2.6.4 Management structure
- 2.6.5 Nature and status of cases being handled
- 2.6.6 Travel requirements
- 2.6.7 Extraordinary, temporary circumstances

### 3.0 CLOSING

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701

(406) 496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Substitution of Judges</b>	Policy No.: <b>115</b>
Title: <b>3</b>	Pages: <b>3</b>
Section: <b>1-804</b>	Last Review Date:
Effective Date: <b>1/5/15</b>	Revision Date: <b>12/30/14</b>

## 1.0 POLICY

The Office of the State Public Defender (OPD) has established the following procedures to ensure that when a public defender believes that a district judge should be substituted in a case, it is handled appropriately according to statute, rules of professional conduct, and Public Defender Commission Standards.

## 2.0 PROCEDURE

**2.1** When a public defender believes that a judge may need to be substituted, s/he should discuss the issue with the Regional Deputy Public Defender, or with his or her managing attorney in branch offices, prior to filing a notice of substitution, barring exceptional circumstances. The Regional Deputy Public Defender should advise the Chief Public Defender about the decision to substitute the judge.

**2.2** The decision to request a substitution of a judge shall only be made when it is a reasoned, strategic decision and in the best interest of the client. The final decision rests with the public defender, rather than the client, subject to consultation with the public defender's supervisor.

**2.2.1** Before filing a motion for substitution of a judge, the public defender must first consult with the client regarding the proposed motion, barring exceptional circumstances.

**2.2.2** This consultation will, at a minimum, include discussion with the client regarding the reasons the attorney believes a substitution is necessary, the benefits, disadvantages and risks relevant to the situation and the client's objectives. The public defender and his or her supervisor will sign a form memorializing the consultation with the client and the supervisor (Exhibit 1).

**2.2.2.1** The completed substitution form is confidential within the Office of the State Public Defender and will be retained in a secure storage area separate from the case file.

## 3.0 CROSS-REFERENCE

This policy is based in the following statute and ethical rules:

**3.1** Each adverse party is entitled to one substitution of a district judge. *Mont. Code Ann. § 3-1-804(1)*.

**3.2** Although a moving party is not required to state a reason for substituting a judge (*Mont. Code Ann. § 3-1-804(1)*), the Montana Rules of Professional Conduct (MRPC) provide that a lawyer is required to reasonably consult with the client about the means by which the client's objectives are to be accomplished. *MRPC Rules 1.2(a), 1.4(a)(2)*.

- 3.3** A lawyer must exercise independent judgment and render candid advice, referring to considerations of moral, economic, social, and political factors that may be relevant to the client's situation. *MRPC Rule 2.1.*
- 3.4** A lawyer may make the final decision to substitute a judge; however, a lawyer shall explain the matter to a degree similar to what would be reasonably necessary for the client to make an informed decision regarding the substitution. *MRPC Rules 1.0(g), 1.2(a), 1.4(a)(2), and 1.4(b).*
- 3.5** A lawyer shall not seek to influence a judge by means prohibited by law or disrupt a tribunal. *MRPC Rule 3.5.*
- 3.6** A lawyer shall not raise an issue in court for the purpose of harassment, delay, advancement of a non-meritorious claim, or solely to gain leverage. *MRPC Rule 3.1.*
- 3.7** It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or to engage in conduct that is prejudicial to the administration of justice. *MRPC 8.4.*

#### **4.0 CLOSING**

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender  
Administrative Services Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

EXHIBIT 1

**Substitution of Judge Form  
OPINION WORK PRODUCT**

Date \_\_\_\_\_ Attorney \_\_\_\_\_

Case Name \_\_\_\_\_

Case No. \_\_\_\_\_ JustWare ID \_\_\_\_\_

Presiding Judge \_\_\_\_\_

Date Client Consulted: \_\_\_\_\_

Date Regional Deputy Public Defender/Managing Attorney consulted: \_\_\_\_\_

Mindful of Montana Rules of Professional Conduct 1.2(a), 1.4(a)(2), 1.4(b) and 2.1, I hereby certify that I have informed my client of the benefits, disadvantages and risks relevant to making an informed decision regarding the substitution of a judge, and my reasons and recommendation. This form is a memorialization of an opinion work product after a confidential attorney-client discussion.

\_\_\_\_\_  
Attorney for Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Regional Deputy Public Defender/Managing Attorney

\_\_\_\_\_  
Date

# Office of the State Public Defender

## Administrative Policies

Subject: <b>Conflict Cases</b>	Policy No.: <b>116</b>
Title: <b>47</b>	Pages: <b>1</b>
Section: <b>1-105(5)</b>	Last Review Date: <b>4-11-13</b>
Effective Date: <b>10-25-11</b>	Revision Date: <b>5-10-13</b>

### 1.0 POLICY

The Public Defender Commission has established the following procedures to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically.

### 2.0 PROCEDURE

**2.1** When a case is determined to be a conflict of interest, the Regional Deputy Public Defender shall refer the case to the Conflict Coordinator. The Conflict Coordinator shall assign the case to a contract attorney whose name is maintained on the conflict attorney list or to a public defender employed outside the region. The Conflict Coordinator shall assign the case based on the nature of the case and the appointed attorney's qualifications and caseload.

**2.2** A contract conflict attorney shall submit bills for the payment of attorney time to the Conflict Coordinator as required by Policy 130, Contract Counsel.

**2.3** Costs, other than attorney fees, expected to be incurred by a conflict attorney, which exceed \$200, will be pre-approved by the Conflict Coordinator in accordance with Policy 125, Pre-Approval of Client Costs.

**2.3.1** In determining the disposition of the pre-approval request, the Conflict Coordinator will not disclose any information about the case to anyone outside of the conflict office.

**2.3.2** For pre-approval of costs that are extraordinary or questionable, the Conflict Coordinator may ask the Public Defender Commission's Contracts Process and Approvals Committee for assistance.

**2.4** The Conflict Coordinator may confer with others about the availability of experts or other options relating to costs in conflict cases without reference to the specifics of any case.

### 3.0 CLOSING

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701

(406) 496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Caseload Management</b>	Policy No.: <b>117</b>
Title: <b>47</b>	Pages: <b>2</b>
Section: <b>1-105</b>	Last Review Date: <b>7/11/12</b>
Effective Date: <b>10-1-07</b>	Revision Date: <b>7/23/12</b>

## 1.0 POLICY

- 1.1 A mission of the Office of the State Public Defender (OPD) is to insure that no attorney doing public defender work, either as an employee or as a contract attorney, has a workload of such an amount that clients are not being adequately represented and/or the wellbeing of the attorney is jeopardized.
- 1.2 The regional deputy public defenders (RDPDs) and the managing attorneys in each public defender office are responsible for managing the workloads of the attorneys they supervise.
- 1.3 The RDPD will follow the below procedures upon receipt of a Notice of Appointment of the Office of the State Public Defender, or receipt of a case in any other fashion.

## 2.0 PROCEDURE

### 2.1 Staff Attorneys

- 2.1.1 The RDPD or the managing attorney in a public defender office will assign the case to an attorney in the office.
- 2.1.2 The RDPD will prepare and file a notice of who will be the attorney of record with the court.
- 2.1.3 The RDPD and managing attorney will discuss the case weighting system and workload at least monthly with each employed public defender they supervise. When a public defender expresses a problem with his/her workload, the supervising attorney shall work with the public defender to alleviate the workload. The supervising attorney shall consider doing any of the following:
  - 2.1.3.1 discontinue assigning cases to the public defender for a specified time;
  - 2.1.3.2 discontinue assigning specific kinds of cases to the public defender for a specified time;
  - 2.1.3.3 assign other public defenders to assist on particular cases;
  - 2.1.3.4 assign extra staff or an investigator to assist on particular cases;
  - 2.1.3.5 reassign particular cases; and/or
  - 2.1.3.6 negotiate time off work for the public defender.
- 2.1.4 The supervising attorney shall consider any other solutions that the public defender suffering excessive caseload may have.
- 2.1.5 The RDPDs and managing attorneys shall keep the Chief Public Defender fully informed about workload problems expressed by the

attorneys they manage. The Chief Public Defender shall report to the Public Defender Commission as workload problems arise.

## **2.2 Contract Attorneys**

- 2.2.1 The RDPD will determine which contract attorneys are willing to be assigned to the case.
- 2.2.2 The RDPD will review the number of open cases that each contract public defender is carrying to ensure effective assistance of counsel, and will, at the time any new case is assigned, ascertain that the contract attorney has a workload that allows sufficient time to be devoted to the new case and client.
- 2.2.3 When a contract attorney's workload will not allow time to adequately represent a client, the client's case shall be assigned to another contract public defender. If another local contract attorney cannot be found, the Contract Manager shall be so advised and assist in locating counsel for the client.
- 2.2.4 The RDPD will prepare and file a notice of who will be the attorney of record with the court.
- 2.2.5 The RDPD will send a copy of the notice to the contract attorney who has agreed to handle the case.

## **3.0 CLOSING**

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080



# Office of the State Public Defender

## Administrative Policies

Subject:	<b>Determining Conflicts of Interest</b>	Policy No.:	<b>119</b>
Title	<b>47</b>	Pages:	<b>3</b>
Section:	<b>1-105(5)</b>	Last Review Date:	<b>05/14/13</b>
Effective Date:	<b>10/25/11</b>	Revision Date:	<b>05/14/13</b>

### 1.0 POLICY

- 1.1 Conflicts of interest are of paramount concern to the Public Defender Commission (PDC) and the Office of the State Public Defender (OPD). Every office within the system must be scrupulous in avoiding conflicts of interest.
- 1.2 This policy specifically recognizes that waivers of conflicts of interest are, occasionally, in the best interest of the client and should be used where appropriate, but only if in the best interest of the client.

### 2.0 PROCEDURES

- 2.1 When a client is qualified for OPD services under Policy 105, Determination of Indigence:
  - 2.1.1 The case information will be entered into the case management system as soon as possible.
  - 2.1.2 If the case management system flags a potential conflict of interest, the Regional Deputy Public Defender will consult with the Conflict Coordinator at the earliest possible opportunity and will do sufficient inquiry into the nature of the conflict.
  - 2.1.3 The Conflict Coordinator will make a written determination as to whether an actual conflict of interest exists.
  - 2.1.4 If a conflict of interest does exist, the Conflict Coordinator shall assign the conflict to a private contract attorney or to a public defender employed outside the region as per Policy 116, Conflict Cases.
  - 2.1.5 The determination by the Conflict Coordinator shall be distributed to the Regional Deputy Public Defender, the public defender assigned to the case if applicable, and the defendant by means appropriate under the circumstances.
- 2.2 When an attorney in a public defender office is assigned a case and, during the course of representation, a conflict of interest issue arises, the public defender shall complete the conflict of interest form (Attachment A) and submit it to the Regional Deputy Public Defender.
  - 2.2.1 The Regional Deputy Public Defender shall follow the procedure described in 2.1.2.
  - 2.2.2 If the public defender assigned to the case or the Regional Deputy Public Defender disagrees with the finding of the Conflict Coordinator, the decision may be appealed to the Public Defender

Commission's Contracts Process and Approvals Committee for assistance.

- 2.2.3** Any appeal taken to the Public Defender Commission's Contracts Process and Approvals Committee shall be in writing and set forth all relevant facts, while preserving confidentiality, related to the conflict of interest question.
- 2.2.4** The Public Defender Commission's Contracts Process and Approvals Committee shall review the materials and determine whether a conflict of interest, in fact, exists. The Public Defender Commission's Contracts Process and Approvals Committee shall make a written finding of the Conflict Coordinator's decision. The Conflict Coordinator, the Regional Deputy Public Defender, the public defender assigned to the case if applicable, and the defendant by means appropriate under the circumstances will be notified of the Committee's finding. If a conflict does exist, the Conflict Coordinator shall assign the conflict as per 2.1.4.
- 2.2.5** The written finding of the Public Defender Commission's Contracts Process and Approvals Committee shall be final.

### **3.0 CLOSING**

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701  
(406) 496-6080

ATTACHMENT A  
OFFICE OF THE STATE PUBLIC DEFENDER  
**CONFLICT REQUEST FORM**

Date Requested: \_\_\_\_\_ Case Number: \_\_\_\_\_

Client Name: \_\_\_\_\_

Judge: \_\_\_\_\_

Attorney: \_\_\_\_\_

Type of Case: \_\_\_\_\_

Describe the Possible Conflict with Specifics: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Requesting Attorney: \_\_\_\_\_

Conflict:  Yes       No

Reasoning: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Is Client Incarcerated? \_\_\_\_\_

Next Court Dates (if scheduled) \_\_\_\_\_

Name of Complaining Witness or Alleged Victim: \_\_\_\_\_

Regional Deputy Public Defender: \_\_\_\_\_

If Conflicted, Date: \_\_\_\_\_

Conflict Attorney called?  Yes       No      Date: \_\_\_\_\_

Notes: \_\_\_\_\_

\_\_\_\_\_

Date Notice of Assignment done: \_\_\_\_\_ Date to Clerk: \_\_\_\_\_

Date entered JustWare: \_\_\_\_\_ Case List: \_\_\_\_\_

Date JustWare updated: \_\_\_\_\_ Date case updated: \_\_\_\_\_

Files were  mailed or  picked up by conflict counsel      Date: \_\_\_\_\_

# Office of the State Public Defender

## Administrative Policies

Subject: <b>Outside Employment</b>	Policy No.: <b>120</b>
Title:	Pages: <b>1</b>
Section:	Last Review Date: <b>4-11-13</b>
Effective Date: <b>8-17-10</b>	Revision Date:

### 1.0 POLICY

- 1.1 In conformance with constitutional and case law, the Office of the State Public Defender (OPD) intends to limit outside employment by full-time employees to prevent conflict of interest situations or the clear appearance thereof.
- 1.2 Any employee engaged in outside employment must advise their regional deputy public defender or supervisor of the nature and details of their outside employment.

### 2.0 PUBLIC DEFENDERS

- 2.1 Full-time public defenders are restricted from the outside practice of law while on state time or with the use of any state property or resources, except as provided for in the Pro Bono Policy (OPD Policy 525).
- 2.2 Full-time public defenders may not take cases in the outside practice of law that would place the public defender in a conflict of interest situation as defined by Rules 1.7 and 1.8 of the Montana Rules of Professional Conduct.
- 2.3 A public defender engaged in the outside practice of law shall not enter into any agreements for representation with persons who have qualified for public defender services.

### 3.0 NON-ATTORNEY STAFF

- 3.1 Other OPD employees shall be restricted from outside employment if the outside employment creates a conflict of interest situation or the clear appearance thereof.

### 4.0 CLOSING

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701

Phone 406-496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Staff Investigators</b>	Policy No.: <b>121</b>
Title:	Pages: <b>3</b>
Section:	Last Review Date: <b>4-11-13</b>
Effective Date: <b>8-10-10</b>	Revision Date: <b>4-25-13</b>

## 1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) has full-time investigators, throughout the state. To insure the best and most effective use of this resource, the following policy is adopted.
- 1.2 The regional deputy public defenders and managing attorneys in each public defender office are responsible for managing the workloads of the investigators they supervise.

## 2.0 PRIORITY CASES

- 2.1 It shall be the priority of every OPD office that its full-time investigators work primarily on felony cases.
- 2.2 Investigators are not, however, prohibited from working on misdemeanor cases or civil cases.

## 3.0 PROCEDURES

The attorney seeking investigative assistance shall do the following:

- 3.1 Submit an Investigation Request form (Attachment A) to the Regional Deputy Public Defender, Managing Attorney, Conflict Coordinator or Investigator Supervisor for approval.
- 3.2 The request must set forth sufficient detail such that the supervisor can make a sufficient determination of the necessity for investigation.
- 3.3 The request does not need to include all available discovery.
- 3.4 The supervisor must discuss the request with the investigator or investigators, to determine if they have the necessary time to do the investigation sought.
- 3.5 An investigator may only begin working on a case, when an approved request, signed by the appropriate individual, has been received.
- 3.6 Each attorney, after obtaining an approved request, shall supply the investigator every piece of discovery received by that attorney from the inception of the case and into the trial. The attorney shall not impede the investigator's ability to do their job thoroughly by deciding what items to provide to the investigator.

**3.7** Exceptions to the prior approval requirement may be made in emergency situations where an attorney needs immediate photographs of an injured client in jail; photos of a crime scene as it is released by law enforcement; or, other such circumstance.

**4.0 CLOSING**

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701

(406) 496-6080







# Office of the State Public Defender

## Administrative Policies

Subject: <b>Pre-Approval of Client Costs</b>	Policy No.: <b>125</b>
Title:	Pages: <b>2</b>
Section:	Last Review Date: <b>4-29-13</b>
Effective Date: <b>5-1-07</b>	Revision Date: <b>5-8-13</b>

### 1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) requires pre-approval of all client costs expected to exceed \$200 per task in all cases.
- 1.2 All cases involving salaried (FTE), contract and conflict attorneys, including appellate and Major Crime Unit cases, are subject to this policy.

### 2.0 DEFINITIONS

- 2.1 Client costs, hereinafter called costs, shall be defined as all monies to be expended in the preparation, investigation and litigation of public defender cases.
- 2.2 A task shall be defined as work performed by a non-attorney in the preparation, investigation and litigation of a public defender case.

### 3.0 PROCEDURE

#### 3.1 All Costs Exceeding \$200

- 3.1.1 The pre-approval process for all costs expected to exceed \$200 per task shall commence with the completion of the appropriate Request for Pre-approval of Costs form by the attorney assigned to the case. There are separate forms and procedures for mental health and investigative services (see below), and for all other services on the OPD website.
- 3.1.2 Requests for pre-approval of costs that include travel must separate travel costs from the task costs.
- 3.1.3 The pre-approval request form must be signed and dated by the requesting attorney and forwarded to one of the following persons for approval:
  - 3.1.3.1 For non-conflict cases assigned to an FTE or contract attorney, submit the request to the Regional Deputy Public Defender (RDPD) assigning the case;
  - 3.1.3.2 For Major Crime Unit cases, submit the request to the Major Crime Unit Manager;
  - 3.1.3.3 For all conflict cases, whether FTE or contract, submit the request to the Conflict Coordinator;
  - 3.1.3.4 For appellate cases, submit the request to the Chief Appellate Defender. Appellate transcript requests are exempt from this policy.
- 3.1.4 Alternative, fiscally responsible options will be explored with the attorney before approving or denying the request.
- 3.1.5 The RDPDs and Major Crime Unit Manager may approve all requests within their expenditure authority. Non-conflict requests exceeding the expenditure authority will be submitted to Central Services for final approval. The Chief Public Defender will review FTE requests. The Contract Manager will review contract attorney requests.
- 3.1.6 The original form is to be retained by the person approving or denying the request and a copy thereof forwarded to the requesting attorney.

**3.2 Pre-approval of Costs for Mental Health Services**

**3.2.1** The requesting attorney will consult with the OPD Mental Health Consultant regarding any proposed mental health service regardless of cost prior to initiating the pre-approval request.

**3.2.2** If the Mental Health Consultant concurs, the attorney will complete the Mental Health pre-approval form and submit it to the appropriate person for approval, as per sections 3.1.3 through 3.1.5 above.

**3.3 Pre-approval of Costs for Investigative Services**

**3.3.1** The requesting attorney will consult with the OPD Investigator Supervisor regarding the proposed service prior to initiating the pre-approval request.

**3.3.2** If the Investigator Supervisor concurs, the attorney will complete the Investigator pre-approval form and submit it to the appropriate person for approval, as per sections 3.1.3 through 3.1.5 above.

**3.4** The requesting attorney is responsible for keeping the pre-approved costs within the pre-approved amount. He or she must be familiar with the task being provided and the cost of the task as funds are being expended. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of the new amount prior to incurring any costs on the appropriate Supplemental Request form.

**3.5** Post-approval of costs will not be granted except in extraordinary circumstances.

**3.6** The original pre-approval forms are to be used to track the pre-approved costs, and are to be attached to the claim form when they are forwarded to Central Services or the Conflict Office for final payment. Tasks that are billed incrementally are to have a copy of the pre-approval attached with a notation indicating the remaining funds available.

**3.7** Costs incurred without pre-approval will not be paid. Costs that exceed the pre-approved amount without a supplemental approval will not be paid.

**4.0 CLOSING**

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

## Office of the State Public Defender Administrative Policies

Subject: <b>Contract Counsel</b>	Policy No.: <b>130</b>
Title: <b>47</b>	Pages: <b>3</b>
Section: <b>1-216</b>	Last Review Date: <b>07-21-14</b>
Effective Date: <b>7-1-06</b>	Revision Date: <b>8-1-14</b>

### 1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) may enter into agreements with outside counsel to provide services pursuant to the Montana Public Defender Act. These attorneys are independent contractors and are referred to herein as contract attorneys.
- 1.2 Contractor services are viewed as a cost-effective manner in which to ensure that public defender/indigent defense services are available in those areas where full time staff public defender services are unavailable, when conflict situations arise, or to alleviate workload issues.
- 1.3 The OPD Contract Manager, working in conjunction with the Conflict Coordinator and Regional Deputy Public Defenders (RDPDs), will determine the maximum number of contract attorneys needed in a desired practice area(s)/region(s).

### 2.0 PROCEDURE

- 2.1 Prospective contract counsel must complete the Attorney's Summary of Education and Experience as provided on the OPD website.
- 2.2 Upon receipt of the Attorney's Summary of Education and Experience information, the OPD Contract Manager will review the information.
- 2.3 If the Contract Manager determines that the applicant meets OPD's qualifications **and** there is a need for services in the practice area(s) and region(s) in which the applicant wishes to practice, the applicant will be provided with a Memorandum of Understanding (MOU).
- 2.4 If the pool of contract attorneys is at maximum capacity in the desired practice area(s)/region(s), qualified applicants will be added to a waiting list and will be provided with an MOU when there is a vacancy.
- 2.5 After returning the signed MOU, prospective contract counsel will be contacted for a meeting to assess competency in the chosen area(s) of practice.
- 2.6 The RDPD will assign non-conflict cases and the Conflict Coordinator will assign conflict cases, ensuring that the attorney has the qualifications to handle the specific type of case being assigned in accordance with Policy 117, Caseload Management.
- 2.7 The RDPD will monitor the performance of the contract counsel, both conflict and non-conflict, and will participate in the biennial proficiency determination of each contract counsel.

### 3.0 STANDARDS COMPLIANCE

- 3.1 Prospective contract counsel acknowledge that they have read and agree to abide by the *Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act*.

- 3.2 Contract counsel are required to verify Standards compliance annually for each area in which they practice using the on-line Computer Based Training and Verification tool.
- 3.3 Contract counsel are required to complete Continuing Legal Education training annually, as determined by the Public Defender Commission.

#### **4.0 MENTORING / TRAINING**

- 4.1 If, after receiving the Attorney Summary of Education and Experience, the Contract Manager determines further training and/or mentoring is advisable prior to providing an MOU, the Contract Manager advises the prospective contract attorney to contact the Training Coordinator who will create a training/mentoring plan in conjunction with the RDPD.
- 4.2 Upon successful completion of the training/mentoring plan, the Training Coordinator will notify the Contract Manager, Conflict Coordinator, and RDPD that he is satisfied that OPD can assign specific types of cases to the attorney. The Contract Manager will then forward the MOU to the new attorney and Sections 2 and 3 will apply.

#### **5.0 DURATION OF REPRESENTATION**

- 5.1 Following sentencing, it is the responsibility of contract counsel to explain appeal options to the client, including the applicable timeframe during which the decision to appeal must be made. It is the client's decision whether or not to appeal.
- 5.2 If the client chooses to appeal, contract counsel will refer the case to the Office of the Appellate Defender (OAD) per the OAD procedure at <http://publicdefender.mt.gov/forms/pdf/AppellateContractorProcedure.pdf>
- 5.3 Contract counsel shall not move to withdraw from representing a client until the case has been referred to the OAD, or until the appeal time on the case has expired.
  - 5.3.1 Client retains the option to change the decision to proceed with an appeal at any time until the appeal time has expired.

#### **6.0 PAYMENTS FOR SERVICES**

- 6.1 OPD shall directly pay contracted counsel for services rendered.
- 6.2 Contract counsel services shall be according to the fee schedule established by the Public Defender Commission, which is subject to change.
- 6.3 Pre-approved travel expenses shall be paid at the state travel rates.
- 6.4 OPD shall offer a stipend per the fee schedule to help defray office costs such as telephone, postage, and copies.
- 6.5 Other expenses shall be paid if pre-approved per OPD Policy 125, Pre-Approval of Client Costs. All third party costs will be paid directly to the vendor and not reimbursed to the contract attorney.

#### **7.0 PAYMENT PROCEDURES**

- 7.1 Contract counsel shall submit an itemized claim on the appropriate payment form for conflict and non-conflict cases by the tenth of the month following the date of service. Submit services for only one calendar month per claim form.
- 7.2 The forms and accompanying instructions are posted on the OPD web site. Each form must contain the case number assigned by OPD.
- 7.3 Hourly time shall be billed in tenths of an hour.
- 7.4 Claims for non-conflict services shall be submitted to the supervising RDPD for review, who shall within five days review and forward the claim to the Central Services office. The OPD Contract Manager will review, approve and pay the claim within 30 days of receipt in the regional office.

- 7.5 Claims for conflict services are to be submitted directly to the Conflict Coordinator, who will review, approve and pay claims within 30 days of receipt.
- 7.6 Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned OPD case number.
- 7.7 Claims submitted more than 45 days from the last day of the month of service will be denied.

**8.0 CLOSING**

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701  
(406) 496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Contract Mental Health Services</b>	Policy No.: <b>131</b>
Title: <b>47</b>	Pages: <b>2</b>
Section: <b>1-216</b>	Last Review Date: <b>5/1/13</b>
Effective Date: <b>11-02-09</b>	Revision Date: <b>5/1/13</b>

## **1.0 POLICY**

**1.1** The Office of the State Public Defender (OPD) may enter into contracts with non-attorney professionals as necessary to deliver public defender services pursuant to the Montana Public Defender Act.

## **2.0 PROCEDURE**

**2.1** Prospective contract mental health providers must complete the Memorandum of Understanding as provided on the OPD website including all required attachments.

**2.2** The OPD Mental Health Consultant will review the information and determine if the provider is qualified to provide services to OPD.

**2.3** Prospective contractors acknowledge that they have read and agree to abide by the ethical and practice Standards of their profession by signing the MOU and returning it to OPD. The MOU also requires that contractors complete required continuing educational units in courses relating to their profession, including training requirements established by OPD's Training Coordinator.

**2.4** Cases will be referred to mental health professionals based on qualifications and experience. OPD is not obligated to assign any specific number of cases to a contractor, nor are contractors obligated to accept any case referred for assignment.

**2.5** All contract mental health services are subject to OPD's pre-approval policy (Policy 125).

## **3.0 PAYMENTS FOR SERVICES**

**3.1** OPD shall pay contractors directly for services rendered.

**3.2** Contract mental health professionals shall be paid according to the rate schedule adopted by the Public Defender Commission.

**3.3** Pre-approved travel expenses shall be paid at the state travel rates.

**3.4** Other expenses shall be paid as pre-approved under OPD Policy 125.

## **4.0 PAYMENT PROCEDURES**

**4.1** Contract mental health providers shall submit an itemized claim on the appropriate payment form for conflict and non-conflict cases by the tenth of the month following the date of service. Submit services for only one calendar month per claim form.

**4.2** The forms and accompanying instructions are posted on the OPD web site. Each form must contain the case number assigned by OPD.

- 4.3 Claims for non-conflict services shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the Central Services office. The OPD Contract Manager will review, approve and pay said claim within thirty (30) days of receipt of the same.
- 4.4 Claims for conflict services are to be submitted directly to the Conflict Coordinator, who will review, approve and pay claims within 30 days of receipt.
- 4.5 Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned OPD case number.
- 4.6 Claims submitted more than 45 days from the last day of the month of service will be denied.

**5.0 CLOSING**

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701

(406) 496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Contract Investigative Services</b>	Policy No.: <b>132</b>
Title: <b>47</b>	Pages: <b>2</b>
Section: <b>1-216</b>	Last Review Date: <b>5-1-13</b>
Effective Date: <b>11-02-09</b>	Revision Date: <b>5-6-13</b>

## 1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) may enter into contracts with non-attorney professionals as necessary to deliver public defender services pursuant to the Montana Public Defender Act.
- 1.2 State contracts are viewed as a cost-effective manner in which to ensure that public defender/indigent defense services are available in those areas where full time staff services are unavailable, when conflict situations arise, or to alleviate workload issues.

## 2.0 PROCEDURE

- 2.1 Prospective contract investigators must complete the Summary of Education and Experience as provided on the OPD website.
- 2.2 Upon receipt of the Summary of Education and Experience information, the OPD Investigator Supervisor will review the information and provide qualified applicants with a Memorandum of Understanding (MOU).
- 2.3 Prospective contractors acknowledge that they have read and agree to abide by the ethical and practice Standards of their profession by signing the MOU and returning it to OPD. The MOU also requires that contractors complete required continuing educational units in courses relating to their profession, including training requirements established by OPD's Training Coordinator.
- 2.4 Cases will be referred to investigators based on qualifications and experience. OPD is not obligated to assign any specific number of cases to a contractor, nor are contractors obligated to accept any case referred for assignment.
- 2.5 All contract investigative services are subject to OPD's pre-approval policy (Policy 125).

## 3.0 PAYMENTS FOR SERVICES

- 3.1 The OPD shall pay contractors directly for services rendered.
- 3.2 Contract investigator services shall be paid according to the fee schedule adopted by the Public Defender Commission.
- 3.3 Pre-approved travel expenses shall be paid at the state travel rates.
- 3.4 Other expenses shall be paid as pre-approved under OPD Policy 125.

## 4.0 PAYMENT PROCEDURES

- 4.1 Contract investigators shall submit an itemized claim on the appropriate payment form for conflict and non-conflict cases by the tenth of the month following the date of service. Submit services for only one calendar month per claim form.



- 4.2 The forms and accompanying instructions are posted on the OPD web site. Each form must contain the case number assigned by OPD.
- 4.3 Hourly time shall be billed in tenths of an hour.
- 4.4 Claims for non-conflict services shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the Central Services office. The OPD Contract Manager will review, approve and pay said claim within 30 days of receipt of the same.
- 4.5 Claims for conflict services are to be submitted directly to the Conflict Coordinator, who will review, approve and pay claims within 30 days of receipt.
- 4.6 Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned OPD case number.
- 4.7 Claims submitted more than 45 days from the last day of the month of service will be denied.

**5.0 CLOSING**

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701  
(406) 496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Proficiency Determination, Contract Counsel</b>	Policy No.: <b>135</b>
Title: <b>47</b>	Pages: <b>3</b>
Section: <b>1-202(9)</b>	Last Review Date: <b>5-30-12</b>
Effective Date: <b>12-6-06</b>	Revision Date: <b>7-23-12</b>

## 1.0 POLICY

1.1 Each contract attorney providing public defender services on behalf of the Office of the State Public Defender (OPD) shall undergo a proficiency determination on a biennial basis (every two years).

## 2.0 PROCEDURE

- 2.1 The proficiency determination shall be conducted by the OPD Contract Manager or Conflict Coordinator and any combination of the following:
- A. Regional Deputy Public Defender from the region(s) within which the contract attorney renders contract services; and / or
  - B. OPD Training Coordinator; and / or
  - C. Chief Public Defender.
- 2.2 In making the proficiency determination, OPD will observe the contract attorney in court and may obtain information from any of the following:
- A. Clients;
  - B. The Regional Deputy Public Defender from the region(s) within which the contract attorney renders contract services;
  - C. Judges and other court personnel;
  - D. Faculty from any training programs which the contract attorney attends during the preceding contract year.
- 2.3 The contract attorney will provide OPD with a copy of the CLE affidavit submitted to the State Bar annually.
- 2.4 A new "experience survey" will be submitted if the contract attorney wishes to provide services in a new practice area.
- 2.5 OPD shall meet with the contract attorney every two years as part of the biennial proficiency determination.

## 3.0 PROFICIENCY DETERMINATION

- 3.1 Upon completion of the proficiency determination, OPD shall certify the contract attorney's proficiency within any area of public defense law in Montana unless OPD determines that the contract attorney is not proficient in one or more areas.
- 3.2 If OPD certifies proficiency, the Contract Manager, Conflict Coordinator or designee will sign the proficiency evaluation, and it will be filed in the contract attorney's file in the Central Office.
- 3.3 If OPD determines that the contract attorney is not proficient:
- A. OPD shall immediately inform the contract attorney of its determination;

- B. OPD shall recommend remedial training or other steps aimed at permitting the contract attorney to attain proficiency;
- C. The contract attorney may request a meeting with the Chief Public Defender and may also submit a written objection.

**4.0 RECORDS**

Originals of all records generated in the course of the proficiency determination process will be placed in the contract attorney's OPD file and maintained throughout the duration of time that the contract attorney is rendering professional services for the OPD, and then for as long as required by the records retention policy.

**5.0 CLOSING**

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

# Annual Proficiency Determination for OPD Contract Counsel

Contract Attorney Name: \_\_\_\_\_ Region(s): \_\_\_\_\_

Regional Deputy Public Defender(s): \_\_\_\_\_

Areas of Practice (check all that apply):  DC  DN  DJ  DG  DI  TK

CLE Affidavit Received and Reviewed: \_\_\_\_\_ by \_\_\_\_\_  
Date Contract Manager or Designee

Court Appearance	Dress / Attitude	Courtroom Presence	Preparedness	Timeliness	Substance of Argument	Grasp of Issues	Type of Case/Hearing/Trial/Initial Appearance/
Excellent/Good							
Satisfactory							
Non-Satisfactory							
Unacceptable							

Please list any comments:

- A. Comments from Client(s), if any:  
\_\_\_\_\_
- B. Comments from Judges and/or Court Personnel, if any:  
\_\_\_\_\_  
\_\_\_\_\_
- C. Comments from Regional office Personnel, RDPD, if any:  
\_\_\_\_\_  
\_\_\_\_\_
- D. Comments from Central Office (billing, claim forms completed properly, claims submitted in timely manner...), if any:  
\_\_\_\_\_  
\_\_\_\_\_

\*\*\*\*\*

The Office of the State Public Defender certifies that the above-named contract attorney is proficient in the following areas of practice:  DC  DN  DJ  DG  DI  TK

\_\_\_\_\_  
Date Contract Manager or Designee

\*\*\*\*\*

The Office of the State Public Defender certifies that the above-named contract attorney is NOT proficient in the following areas of practice:  DC  DN  DJ  DG  DI  TK

\_\_\_\_\_  
Date Contract Manager or Designee

\*\*\*\*\*

OPD recommends the following remedial action be completed within 90 days:

\*\*\*\*\*

I agree  OR I disagree  with the above determination. I understand that if I disagree, I may file a written objection with the Chief Public Defender.

\_\_\_\_\_  
Date Contract Attorney

# Office of the State Public Defender Administrative Policies

Subject: <b>Standards Compliance</b>	Policy No.: <b>136</b>
Title:	Pages: <b>1</b>
Section:	Last Review Date:
Effective Date: <b>7-15-10</b>	Revision Date:

## 1.0 POLICY

The Office of the State Public Defender is committed to ensuring that all public defenders, whether state-employed or independent contract attorney, comply with the *Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act* (hereinafter referred to as "Standards.")

## 2.0 PROCEDURE

**2.1** The Regional Deputy Public Defender is responsible for day to day monitoring of each attorney's compliance with the Standards.

**2.2** The Training Officer or his/her designee will conduct random compliance checks as follows:

**2.2.1** The Training Officer will call or visit with not less than 10 public defenders per month on a random basis.

**2.2.2** Prior to contacting the public defender, the Training Officer will select three of the attorney's recently closed cases for discussion and review of compliance with the Standards.

**2.2.3** If the public defender is not in compliance, the Training Office will discuss the failing with the public defender. The Training Officer will also identify training issues and develop a training plan for the region, to be shared with the Regional Deputy Public Defender and the Chief Public Defender.

**2.2.4** The Training Officer shall keep a record of each contact made and the results of the compliance review.

**2.3** The Chief Appellate Defender shall be responsible for alerting the Training Officer if any appellate attorney notes non-compliance with the Standards during review of a transcript.

## 3.0 CLOSING

Questions about this policy should be directed to the OPD at the following address:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Witness Fees</b>	Policy No.: <b>140</b>
Title <b>26</b>	Pages: <b>5</b>
Section: <b>2-501 through 2-503</b>	Last Review Date: <b>4-11-13</b>
Effective Date: <b>2-20-09</b>	Revision Date: <b>4-23-13</b>

## 1.0 POLICY

- 1.1 The Office of the State Public Defender (OPD) will pay witnesses a fee of \$10 per day plus mileage as required by state law.
- 1.2 OPD will also pay other expenses incurred by witnesses, including lodging, commercial transportation and per diem, in accordance with State of Montana travel policy.
- 1.3 This policy applies to witnesses that testify voluntarily at the request of OPD, and to witnesses that appear to testify because they were issued a subpoena by OPD.

## 2.0 PROCEDURES

- 2.1 A witness is entitled to \$10 per day plus mileage at the current state rate.
- 2.2 The witness must complete the Witness Fee and Travel Information form (Attachment A) for payment to be processed.
- 2.3 The Witness Fee and Travel Information form, along with a completed W-9 form (Attachment B), the subpoena if applicable, and receipts for any additional expenses are to be mailed to the OPD Central Office.
- 2.4 Each individual OPD office is responsible for providing the required forms to each witness testifying at the request of that office, and for verifying the witness's appearance in court.
- 2.5 Contract attorneys are responsible for providing the required forms to each witness testifying at the request of their office, and for verifying the witness's appearance in court.

## 3.0 Cross-Reference Guide

MCA 26-2-501, et seq.  
MOM 1-0300, Travel Policy

## 4.0 CLOSING

This policy shall be followed unless it conflicts with specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park, Butte, MT 59701  
Phone: 406-496-6080

**ATTACHMENT A**

OFFICE OF THE STATE PUBLIC DEFENDER  
 44 West Park Street ▪ Butte, Montana 59701  
 406.496.6080

**Witness Fee and Travel Information**

If you have appeared to testify at the request of the Office of the State Public Defender, the following information is needed to process your \$10/day witness fee and travel claim.

- Please complete this form and the attached W-9 immediately after attending the court proceeding at which you testified. **Please print legibly.**
- Attach your subpoena unless you testified voluntarily.
- Attach *original* receipts for expenses purchased *by you* (motel room, airline or bus ticket, rental car, airport parking, etc.)
- Meal receipts are not required; however, if you are claiming meals, you *must* include departure/return times. You will be reimbursed at the prevailing state rate, not at actual cost.
- Mail both forms and all attachments to:  
 Office of the State Public Defender  
 44 W. Park  
 Butte MT 59701

<b>NAME</b>	<b>MAILING ADDRESS</b>
<b>PHONE NUMBER</b>	<b>DATE(S) OF TESTIMONY (ATTACH SUBPOENA)</b>
<b>DATE OF DEPARTURE</b> (MONTH/DAY/YEAR)	<b>TIME OF DEPARTURE</b> (A.M./P.M.)
<b>DEPARTURE AND DESTINATION CITIES</b>	
<b>DATE OF RETURN</b> (MONTH/DAY/YEAR)	<b>TIME OF RETURN</b> (A.M./P.M.)
<b>MODE OF TRAVEL</b>	
<input type="checkbox"/> Private Car (total number of miles) _____ <input type="checkbox"/> Commercial Transportation (attach receipt) _____ <input type="checkbox"/> Other (please explain) _____ _____ _____	
<input type="checkbox"/> <b>MEALS:</b> Please indicate by date which meals you would like to be reimbursed for (B) Breakfast, (L) Lunch, (D) Dinner, _____ _____ <p align="center"><i>You must indicate departure/return times above so it can be determined whether you are eligible for meal reimbursement.</i></p>	
<b>SIGNATURE (please sign in ink)</b>	<b>DATE</b>

State of Montana  
 Department of Administration  
 SW9 (4/2009)



**Return to**  
 Office of the State Public Defender  
 Central Office  
 44 W. Park Street  
 Butte, MT 59701  
 Phone: 406-496-6080  
 Fax: 406-496-6098

Substitute **W-9**

**DO NOT send to IRS**

**Taxpayer Identification Number (TIN) Verification**

*Print or Type*

Please see attachment or reverse for complete instructions.

<p><b>Legal Name</b>                  (as entered with IRS) If Sole Proprietorship, enter your Last, First, MI</p> <hr/> <p><b>Trade Name</b>                  If doing business as (DBA) or enter business name of Sole Proprietorship</p> <hr/> <p><b>Primary Address</b> (for 1099 form)                  PO Box or Number and Street, City, State, ZIP + 4</p> <hr/> <p><b>Remit Address</b> (where payment should be mailed, if different from Primary Address) PO Box or Number and Street, City, State, ZIP + 4</p>	<p><b>Entity Designation</b> (check only one type)</p> <p><input type="checkbox"/> Corporation                      <input type="checkbox"/> S-Corp <input type="checkbox"/> C-Corp                  Do you provide medical services?                      <input type="checkbox"/> Yes      <input type="checkbox"/> No</p> <p><input type="checkbox"/> Individual</p> <p><input type="checkbox"/> Sole Proprietorship</p> <p><input type="checkbox"/> Partnership                      <input type="checkbox"/> General    <input type="checkbox"/> Limited                      <input type="checkbox"/> LLC (for federal tax purposes taxed as)                          <input type="checkbox"/> S-Corp    <input type="checkbox"/> C-Corp</p> <p><input type="checkbox"/> Estate/Trust</p> <p><input type="checkbox"/> Other Groups of Individuals</p> <p><input type="checkbox"/> Organization Exempt from Tax                  (under Section 501 (a)(b)(c)(d)(e))</p> <p><input type="checkbox"/> Government Entity</p> <p><b>Exempt from Backup Withholding</b>  <input type="checkbox"/> Yes      <input type="checkbox"/> No</p>
--	--

**Taxpayer Identification Number (TIN)** (Provide Only One) (If sole proprietorship provide FEIN, if applicable)

Social Security Number	Federal Employer Identification No
------------------------	------------------------------------

**Certification**  
 Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number, AND
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.
3. I am a U.S. person (including a US resident alien).

Printed Name	Printed Title	Telephone Number
Signature		Date

**Optional Direct Deposit Information (used at agency discretion) (all fields required to receive electronic payments)**  
**(Must Include a Voided Check, No Direct Deposit Slips Accepted)**

Your Bank Account Number	<input type="checkbox"/> Checking <input type="checkbox"/> Savings	Name on Bank Account	Bank Routing No. (ABA)
--------------------------	---	----------------------	------------------------

THIS IS A:

New Direct Deposit       Change of Existing       Additional Direct Deposit       Email Change Only

Email Address (Please make this LEGIBLE)

If you provide bank information and an email address, we will send a message notifying you when an electronic payment is issued. We will **NOT** share your email address with anyone or use it for any other purpose than communicating information about your electronic payments to you. **If you have questions about completing this form, please call the Warrant Writer Unit at 406-444-3092.**



## Instructions for Completing Taxpayer Identification Number Verification (Substitute W-9)

**Legal Name** As entered with IRS

Individuals: Enter Last Name, First Name, MI  
 Sole Proprietorships: Enter Last Name, First Name, MI  
 LLC Single Owner: Enter owner's Last Name, First Name, MI  
 All Others: Enter Legal Name of Business

certain other payments to a payee who does not furnish a TIN to a payer. Certain penalties may also apply.

**Trade Name**

Individuals: Leave Blank  
 Sole Proprietorships: Enter Business Name  
 LLC Single Owner: Enter LLC Business Name  
 All Others: Complete only if doing business as a D/B/A

**Primary Address**

Address where 1099 should be mailed.

**Remit Address**

Address where payment should be mailed. Complete only if different from primary address.

**Entity Designation**

Check *ONE* box which describes the type of business entity.

**Taxpayer Identification Number**

**LIST ONLY ONE:** Social Security Number OR Employer Identification Number. *See "What Name and Number to Give the Requester" at right.*

If you do not have a TIN, apply for one immediately. Individuals use federal form SS-05 which can be obtained from the Social Security Administration. Businesses and all other entities use federal form SS-04 which can be obtained from the Internal Revenue Service.

**Certification**

You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN.

**Privacy Act Notice**

Section 6109 of the Internal Revenue Code requires you to furnish your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an IRA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and

**What Name and Number to Give the Requester**

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual no the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or Single-Owner LLC	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Sole Proprietorship or Single-Owner LLC	The owner <sup>3</sup>
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.  
<sup>2</sup> Circle the minor's name and furnish the minor's SSN.  
<sup>3</sup> **You must show your individual name**, but you may also enter your business or "DBA" name. You may use either your SSN or EIN (if you have one).  
<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

**NOTE:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Taxpayer Identification Request

In order for the State of Montana to comply with the Internal Revenue Service regulations, this letter is to request that you complete the enclosed Substitute Form W-9. Failure to provide this information may result in delayed payments or backup withholding. This request is being made at the direction of the Montana Department of Administration, State Accounting Division, in order that the State may update its vendor file with the most current information.

Please return or FAX the Substitute Form W-9 even if you are exempt from backup withholding within (10) days of receipt. Please make sure that the form is complete and correct. **Failure to respond in a timely manner may subject you to a 28% withholding on each payment, or require the State to withhold payment of outstanding invoices until this information is received per Internal Revenue Code 3406(a).**

We are required to inform you that failure to provide the correct Taxpayer Identification Number (TIN) / Name combination may subject you to a \$50 penalty assessed by the Internal Revenue Service under Section 6723 of the Internal Revenue Code.

Only the individual's name to which the Social Security Number was assigned should be entered on the first line.

The name of a partnership, corporation, club, or other entity, must be entered on the first line exactly as it was registered with the IRS when the Employer Identification Number was assigned.

DO NOT submit your name with a Tax Identification Number that was not assigned to your name. For example, a doctor MUST NOT submit his or her name with the Tax Identification Number of a clinic he or she is associated with.

Thank you for your cooperation in providing us with this information. Please return the completed form to:

Office of the State Public Defender  
Central Office  
44 W. Park Street  
Butte, MT 59701  
Phone: 406-496-6080  
Fax: 406-496-6098

# Office of the State Public Defender Administrative Policies

Subject: <b>Major Crimes Unit</b>	Policy No.: <b>150</b>
Title	Pages: <b>3</b>
Section:	Last Review Date: <b>9-19-11</b>
Effective Date: <b>11/02/09</b>	Revision Date: <b>9-19-11</b>

## 1.0 POLICY

The Office of the State Public Defender (OPD) recognizes the need and benefit of creating an employee unit capable of handling complex and high profile cases. A Major Crimes Unit has been established, consisting of attorneys and support staff in numbers as designated by the Chief Public Defender. One of the attorneys will be designated Supervisor of the unit.

## 2.0 PURPOSE

The purpose of the Major Crimes Unit (MCU) is to:

- 2.1 Create a unit of attorneys and support staff capable of independently trying complex cases, up to and including death penalty cases;
- 2.2 Significantly reduce reliance on Regional Deputy Public Defenders and other top management in defending major crimes;
- 2.3 Reduce workload strain in the regions caused by defending time-intensive major crimes;
- 2.4 Handle difficult cases in remote areas of the state cost-effectively; and
- 2.5 Train less-experienced attorneys on criminal defense in complex cases statewide.
- 2.6 It is not the intent or purpose of the MCU to remove the ability or opportunity to defend individuals accused of committing homicide from the attorneys in local offices.
- 2.7 While conflicts may be considered in determining case assignment, the MCU is not intended for use solely as a conflict office.

## 3.0 MAJOR CRIME CASE ASSIGNMENT

- 3.1 The Regional Deputy Public Defender shall submit the Notice of Major Crime form, found on the OPD intranet home page, and contact the MCU Supervisor within 24 hours of any homicide or attempted homicide. The Regional Deputy Public Defender and the Supervisor shall discuss the case so as to reach a decision as to assignment of counsel. The assignment options are:
  - 3.1.1 Assign the case to the MCU attorneys;
  - 3.1.2 Assign the case to an attorney in the MCU and an attorney in the local area; or
  - 3.1.3 Leave the case with the region for assignment as the region sees fit.
- 3.2 If the case involves a law enforcement officer, or a prominent local political figure, the case shall be referred to the MCU and will not be handled by local counsel.

- 3.3** Other felony cases that possess a high probability to go to trial and which appear to have a high degree of complexity/difficulty may be referred to the MCU. The Supervisor shall review the request and determine whether to accept the case.
  - 3.3.1** In making a decision, the Supervisor shall consider the case load of the unit, the complexity of the case, and whether contract counsel would have to be used to handle the case if the unit declines the referral.
  - 3.3.2** It is anticipated that the MCU will be more actively involved in cases in areas that rely on contract attorneys.
- 3.4** In the event of a complicated case with multiple defendants, death penalty issues, law enforcement, political figures, or other case load/complexity concerns, the Supervisor may request that OPD's most experienced attorneys be assigned as counsel as long as the request is in conformity with the Management Caseload Limitations Policy, #114.
- 3.5** The Regional Deputy Public Defender and the Supervisor shall take into account the following factors in discussing the case assignment:
  - 3.5.1** The complexity of the case;
  - 3.5.2** The assessment, if possible with initial information, as to whether the case will go to trial;
  - 3.5.3** The work load of the MCU;
  - 3.5.4** The work load of the local attorneys;
  - 3.5.5** The qualifications of the available local attorneys;
  - 3.5.6** That both experienced local counsel and attorneys in the MCU need to have the opportunity to represent defendants in homicide cases as lead counsel;
  - 3.5.7** The ability of the MCU to provide training of lesser experienced attorneys by involving them as second chair attorneys in homicide cases;
  - 3.5.8** Whether the case would have to be handled by contract counsel if the case is left with the region; and
  - 3.5.9** Any other considerations specific to each case.
- 3.6** To assist the Regional Deputy Public Defender and the Supervisor in making the decision as to case assignments, the MCU will maintain a list of all homicide cases assigned state-wide to OPD attorneys including the names of the attorneys assigned to those cases. The MCU will also maintain a list of all attorneys qualified to handle homicide cases, including all attorneys listed as homicide attorneys under schedule B of the career pay ladder (as adopted by the state and the union), and any other attorneys whom a Regional Deputy Public Defender has recommended and the Chief Public Defender has certified as homicide attorneys.

#### **4.0 PROCEDURE**

Once the Regional Deputy Public Defender and the Supervisor reach an assignment decision, they shall follow the following process.

- 4.1** If the decision is to assign the case to the MCU, the Supervisor will designate the lead attorney. The Regional Deputy Public Defender shall direct staff to

transfer the case to the MCU in JustWare and send any documentation to the MCU staff immediately, preferably via email or the JustWare filing cabinet.

**4.1.1** The Supervisor may request that the Regional Deputy Public Defender assign a local attorney to work with the MCU for routine court appearances, routine contact with clients who are in jail, and so forth.

**4.2** If the decision is to assign the case to a combination of MCU and local attorneys, the Supervisor will immediately designate the lead attorney. The Regional Deputy Public Defender will designate the local attorney in consultation with the Supervisor. The Regional Deputy Public Defender shall direct staff to transfer the case to the MCU in JustWare and send any documentation to the MCU staff immediately, preferably via email or the JustWare filing cabinet.

**4.2.1** The assignment decision is to be based on the experience of the local attorney, and is given to persons identified as progressing in felony trial work.

**4.2.2** Case assignments will not be based on a rotation system just to provide experience in trial work (general experience shall be acquired with less complicated cases within local offices).

**4.3** If the decision is to assign the case to the regional office, the Regional Deputy Public Defender will designate the lead attorney.

**4.4** If the Regional Deputy Public Defender and the Supervisor cannot reach agreement as to how the case shall be assigned, the Supervisor will make the assignment decision.

**4.5** All major crime case assignments are subject to final approval and/or assignment by the Chief Public Defender.

## **5.0 CONFLICTS OF INTEREST**

The members of the MCU and/or the Regional Deputy Public Defender will identify possible conflicts of interest.

If a conflict is identified, all cases under 3.1 and 3.2 shall be immediately given to the Supervisor. All other cases will be referred to the Conflict Coordinator. The Supervisor shall, in consultation with management and the Conflict Coordinator, take the necessary steps to resolve the conflict with existing internal resources. If the conflict cannot be resolved, the case shall be assigned by the Conflict Coordinator.

## **6.0 CLOSING**

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender, Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Incentive Awards</b>	Policy No.: <b>180</b>
Title:	Pages: <b>6</b>
Section:	Last Review Date:
Effective Date: <b>8-5-10</b>	Revision Date:

## **1.0 POLICY**

This policy establishes uniform guidelines for administering the employee incentive award program in the Office of the State Public Defender.

The incentive award program rewards documented outcomes and achievements approved by agency management for implementation.

## **2.0 PROCEDURE**

### **2.1 Summary**

**2.1.1** An idea, innovation, suggestion, or prototype is submitted to management.

**2.1.2** Management approves the idea, suggestion, innovation, or prototype for implementation after determining it will result in cost savings or improvements to agency operations.

**2.1.3** The new idea, suggestion, innovation, or prototype realizes:

**2.1.3.1** improved effectiveness or improved services without increasing the cost of operations,

**2.1.3.2** measureable cost savings, and/or

**2.1.3.3** achievements or outcomes eliminating or reducing the agency's expenditures.

**2.1.4** The employee, group or team of employees, or non-employee is nominated for an incentive award.

**2.1.5** The Chief Public Defender or designee grants the incentive award and determines its monetary value.

### **2.2 Eligibility**

An employee, a group or team of employees, or a non-employee may receive an incentive award. They do not need to be employed by the agency benefiting from the achievement or outcome or granting the incentive award.

### **2.3 Nomination Submissions**

**2.3.1** After the idea, suggestion, or prototype has been approved and implemented by management, incentive award nominations may be submitted.

- 2.3.2 Nominations may come from current agency employees, employees of other state agencies and from non-employees.
- 2.3.3 Nominations for incentive awards are public information and available for review upon request. Requests should be directed to the Central Office, Human Resource Officer or by calling 406-496-6080.
- 2.3.4 Nominations for incentive awards may be submitted on the incentive award nomination form (Attachment A) or in another written format. Nomination forms are available on the OPD website or from the Office of the State Public Defender Central Office, 44 W. Park, Butte, Montana 59701.
- 2.3.5 The nomination must include:
  - 2.3.5.1 Name, address, email, and telephone number of person(s) submitting the nomination for an incentive award.
  - 2.3.5.2 Name(s) of individual or group or team of employees nominated, if applicable.
  - 2.3.5.3 The date submitted.
  - 2.3.5.4 A description of how the outcome, achievement or savings exceeds normal expectations for the employee, or group or team of employees, or has an impact on the delivery of service to the public or other customer.
  - 2.3.5.5 The dollar value of the documented savings, including the method used to determine the value.
- 2.3.6 Submit nominations to the Central Office, attention Human Resource Officer, 44 W. Park, Butte, Montana 59701.

## **2.4 Incentive Award Committee**

- 2.4.1 The incentive award committee is made up of three employees appointed by the Chief Public Defender.
- 2.4.2 The Chief Public Defender will appoint an incentive award program coordinator. This person serves as the chairperson of the incentive award committee. Other responsibilities include tracking nominations, promoting the program, notifying submitters of the status of proposals, arranging presentation ceremonies, obtaining monetary awards, publicizing awards to the agency and media, and preparing the annual award report listing the type and amount of awards the agency presented.

## **2.5 Nomination Review Process**

- 2.5.1 The committee completes the initial evaluation of the nominations for incentive awards, reviewing each nomination received and

making the following non-binding recommendations to the Chief Public Defender:

**2.5.1.1** Approval or disapproval of a nomination for an award, and

**2.5.1.2** An appropriate value for a monetary or leave award.

**2.5.2** The Chief Public Defender makes the final decision to grant incentive awards, and resolves any and all disputes related to granting incentive awards. If the award is to be divided between two or more people, the Chief Public Defender determines the amount each person is to receive.

## **2.6 Evaluation Criteria**

The incentive award committee uses the following criteria to evaluate and prioritize the award nominations:

**2.6.1** Evaluate the impact of the outcome, accomplishment or savings on delivery of services to the public or other customers.

**2.6.2** Evaluate the outcome, accomplishment or savings in terms of how directly and to what degree they contribute to the agency's objectives, goals and mission.

**2.6.3** Compare the outcome, accomplishment, or savings to what is normally expected from the employee, or group or team of employees, through the duties and responsibilities of their positions.

**2.6.4** Determine if cost savings or cost avoidance results from activities that are highly original or creative involving innovative or novel approaches developed by the employee or by members of the group or team.

**2.6.5** Determine if the results significantly exceed the level of effort or diligence normally expected from the employee's position(s).

**2.6.6** Determine if the results required cooperative work efforts possible only through initiatives of group or team members that go above and beyond what is normally expected through existing work structure or organization.

## **2.7 Presentation of Awards**

**2.7.1** Once awards are approved by the Chief Public Defender, the incentive award program coordinator will process the awards and coordinate the presentation ceremony.

**2.7.2** Incentive awards will be presented at least annually.



### **3.0 CROSS REFERENCE**

Employee Incentive Program, Section 2-18-1101-1103, 1105-1107, MCA  
Incentive Award Program, Section 2.21.6701-6703, 6708-6709 ARM

### **4.0 CLOSING**

The Office of the State Public Defender will make reasonable accommodations for persons with disabilities who wish to participate in the Incentive Award Program. To request an accommodation, or for questions about this policy, contact OPD at the following address:

Office of the State Public Defender  
Human Resource Officer  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

Attachment A

# INCENTIVE AWARD NOMINATION FORM

## Office of the State Public Defender

*The nomination must include the following information. Incomplete submissions will be returned. Questions about this process should be direct the Human Resource Officer at 496-6080 or [DOAOPDHRPayroll@mt.gov](mailto:DOAOPDHRPayroll@mt.gov).*

Please type or print clearly.

The Office of the State Public Defender will make reasonable accommodations for persons with disabilities who wish to participate in the Incentive Award Program. To request an accommodation, contact the Human Resource Officer at 44 W. Park, Butte MT 59701, 496-6080, or fax 496-6098.

All nominations for incentive awards are public information and available for review.

Employee, Group or Team Nominated		
Name(s) of Person(s) Nominated	Location	Telephone Number(s)

Description of outcome, achievement or savings
Attach additional sheets if necessary. Describe the outcome, achievement or savings and how it
1. Exceeds normal expectations for the employee, or group or team of employees, or
2. Has an impact on the delivery of service to the public or other customer, or
3. Directly and to what degree contributes to the agency's objectives, goals and mission.

Documented Savings
1. Dollar value of the documented savings: \$ _____
2. Describe in detail the method used to determine the value:

Signature(s)
Signature of the submitter(s) _____ Date: _____
Address: _____ Phone number: _____
Signature of the submitter(s) _____ Date: _____
Address: _____ Phone number: _____

For Agency Use
Received by: _____ Date: _____

# Office of the State Public Defender Administrative Policies

Subject: <b>Internal Accounting Reports</b>	Policy No.: <b>205</b>
Title: <b>47</b>	Pages: <b>1</b>
Section: <b>1-202(6)</b>	Last Review Date: <b>4-23-13</b>
Effective Date: <b>7/1/06</b>	Revision Date: <b>4-28-13</b>

## 1.0 POLICY

1.1 The Central Services Accounting Department will produce the following reports and provide them to the program managers, department managers and Regional Deputy Public Defenders (RDPDs):

1.1.1 Quarterly Budget Variance Report

1.1.2 Monthly Contractor Expenditure Report

## 2.0 PROCEDURE

2.1 The accounting department will produce and distribute these reports as scheduled.

2.2 Program managers, department managers and RDPDs will review the reports and inform the accounting department of any errors or omissions.

2.3 The Administrative Director will monitor the reports and compare them to individual budgets.

## 3.0 CLOSING

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701  
(406) 496-6080

# Office of the State Public Defender Administrative Policies

Subject: <b>Required Reporting</b>	Policy No.: <b>210</b>
Title: <b>47</b>	Pages: <b>2</b>
Section: <b>1-105(9) and 1-202(1)(d)</b>	Last Review Date: <b>04-11-13</b>
Effective Date: <b>6-20-07</b>	Revision Date: <b>04-25-13</b>

## 1.0 POLICY

The Office of the State Public Defender (OPD) will use information technology and caseload management systems to ensure that detailed expenditure and caseload data are accurately collected, recorded, and reported.

## 2.0 PURPOSE

- 2.1 As an agency of the State of Montana, the Office of the State Public Defender (OPD) is accountable to the legislature for the funds it receives. The agency is statutorily required to report to the legislature annually, and must ensure that reported data is accurate.
- 2.2 The ability of the agency to represent Montanans entitled to counsel at public expense requires that attorneys, staff and investigators accurately keep and record information about individual cases.
- 2.3 Indigent Montanans are required to pay costs of assigned counsel per 46-8-113 MCA. Those costs must be limited to the costs incurred by OPD, so the agency must be able to track and assign individual costs to individual cases.

## 3.0 PROCEDURE

### 3.1 Detailed Case Reporting

Case counts, case duration and other statutorily mandated reports are based on information entered in the case management program.

### 3.2 Detailed Expenditure Data

Detailed expenditure information will be collected for all cases. OPD currently uses the Statewide Accounting, Budgeting and Human Resource System (SABHRS) to record all accounts payable, accounts receivable, general ledger and payroll transactions.

#### 3.2.1 Direct Costs

All cases are assigned a case ID number, and all direct payments associated with a particular case (i.e., contract attorney costs, other professional fees, photocopy charges, travel costs, etc.) are processed through SABHRS using the case ID number.

### **3.2.2 FTE Costs**

Each state-employed public defender is responsible for daily timekeeping in the case management system by case ID number. Detailed expenditure reporting for cases assigned to FTE attorneys is dependent on accurate timekeeping in the case management program.

### **3.3 Data Integrity**

Data will be audited and certified per Policy 215, Case Management Program.

## **4 CROSS REFERENCES**

Policy 215, Case Management Program  
47-1-105(9), MCA  
47-1-202(1)(d), MCA  
46-8-113 MCA

## **5 CLOSING**

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

## Office of the State Public Defender Administrative Policies

Subject: <b>Case Management Program and Data Certification</b>	Policy No.: <b>215</b>
Title: <b>47</b>	Number of Pages: <b>4</b>
Section: <b>1-202 (1)(d)</b>	Last Review Date: <b>4-11-13</b>
Effective Date: <b>10-1-09</b>	Revision Date: <b>4-25-13</b>

### 1.0 POLICY

The case management program is the agency's core application to collect and report data and assist in the representation of Montanans entitled to counsel at public expense. All employees of the agency shall use the case management program as required by their job responsibilities.

### 2.0 PROCEDURE

#### 2.1 Initial Case Information

Regional Deputy Public Defenders (RDPDs) shall ensure that cases are assigned and opened on a daily basis.

2.1.1 Upon receipt of a notice of appointment of OPD to represent a client in need of public defender services, the RDPD determines whether the case will be assigned to a contract attorney, to a state-employed public defender (FTE) or referred to the conflict office.

2.1.2 All case information must be entered into the case management system and a case ID number attached to that case **prior to** the delivery of the case file to the assigned attorney, whether FTE, contract or conflict. If the opening of a case is delayed, the "Receive Date" must accurately reflect the intake date. All opened cases for a particular month must be entered into the database within 10 days of month end.

2.1.3 Certain mandatory information is required by the case management system to ensure accurate reporting.

#### 2.2 Dispositional Information

RDPDs shall ensure that dispositional information is entered into the case management system after the conclusion of a case. Each FTE attorney shall close cases in conformity with OPD Policy 106, and all closures must be entered into the database within 10 days of month end. It is essential that the "Date Closed" entered in the database reflect the actual date of closure, NOT the date of data entry.

#### 2.3 Time Tracking

2.3.1 Attorneys shall keep daily track of time, in increments of one tenth of an hour, on all cases for all courts. Pending time shall be submitted on a weekly basis.

- 2.3.2 Attorneys shall input time into the case management system and not delegate the task to staff, outside of unusual circumstances.
- 2.3.3 It is critical to accurate reporting that attorneys associate time worked to individual cases.
- 2.3.4 Attorneys shall allocate time spent on general court matters not associated with a particular case to the most applicable general court tracking category. Each attorney should have a general time tracking category for each court in which the attorney makes regular appearances.
- 2.3.5 Only non-case related time may be allotted to administrative time tracking.

### **2.3 Time Entry Review**

- 2.4.1 RDPDs will be responsible for reviewing their regional reports to assure that data has been input in a uniform manner pursuant to OPD Policy 210, Required Reporting.
- 2.4.2 Supervisors shall review attorneys' time submissions on a weekly basis to ensure that attorneys are entering required time.
- 2.4.3 When an attorney is not tracking time on a weekly basis, it is the responsibility of the supervisor to work with the attorney to insure the attorney has time available and adequate training to enter time.
- 2.4.4 If, after efforts of the supervisor to assist, an attorney still does not track time, the attorney will be given a formal disciplinary letter with a corrective action plan. The letter of discipline will be maintained in the attorney's personnel file for six months.

### **2.5 Calendars**

- 2.5.1 Attorneys, staff and investigators shall calendar case events, appointments and case deadlines in the case management system.
- 2.5.2 Attorneys are professionally required to maintain an independent back up calendar.
- 2.5.3 Attorneys within a region shall have access to other attorneys' calendars within that region.
- 2.5.4 Staff shall assist attorneys and investigators in maintaining accurate calendars.

### **2.6 Case Notes**

Attorneys, staff and investigators, when possible, are required to enter notes in the case management system detailing case work and contacts with clients. Notes may be entered at the time of timekeeping or separately recorded within the case record.

### **2.7 Client Contact Information**

Attorneys, staff and investigators shall maintain updated and accurate contact information for clients in the case management system.



## **2.9 Electronic Filing Cabinet**

2.9.1 To the extent possible, RDPDs shall ensure that information received electronically is maintained in the case management system filing cabinet.

2.9.2 Offices shall comply with all developing OPD standards for both electronic filing and electronic records management to assure client records are complete and maintained consistently throughout the system.

2.9.3 The use of electronic copies, electronic service on opposing parties, and electronic retention of case materials is encouraged throughout the agency to reduce overhead costs and the impact on the environment.

2.9.4 Offices shall arrange for clients to receive documents electronically if the client consents.

## **2.10 Document Generation**

Central Services shall support regional and local offices in maintaining and developing documents in compliance with local court rules.

## **2.11 Attorney Reports**

Central Services shall support regional and local offices in providing reports required to maintain regional and local operations.

## **2.12 User Rights**

User rights within the case management system are based on each individual employee's duties and responsibilities. Requests for changes in user rights shall be made through the employee's supervisor.

## **2.13 Violation**

Violation of any provision of this policy may result in disciplinary action up to and including termination.

## **3.0 AUDITING AND CERTIFICATION**

The status of each case must be reviewed and certified to Central Services on a regular basis.

### **3.1. Monthly Review**

3.1.1 All FTE attorneys must review their assigned open and inactive cases within the first week of the month using the Open and Inactive Cases by Attorney Report.

3.1.2 Changes to case status must be identified on this report, and provided to an assigned support staff member in the office, so that all changes are updated in the database within 10 days of month end.

3.1.3 Support staff will document each change made to case status, certifying that the database has been updated, and/or that notations

were made to the case status notes on the file and return the report to the attorney.

3.1.4 The monthly Open and Inactive Cases by Attorney reports will be maintained by each attorney for the purpose of the quarterly certification review.

### **3.2. Quarterly Review**

3.2.1 On a quarterly basis, supervisors must meet with each FTE attorney to review their monthly reports. This review is intended to ensure that the status of each case is current in the database.

3.2.2 The reviewing manager will certify that this review process is complete by signing the Open and Inactive Cases by Attorney Reports and returning them to the attorney to be retained in accordance with the retention policy.

3.2.3 RDPDs and program managers will certify the accuracy of their data on a quarterly basis on a form provided by Central Services.

## **4.0 CLOSING**

Questions about this policy should be directed to::

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, Montana 59701  
(406) 496-6080

## Office of the State Public Defender Administrative Policies

<b>Subject:</b> Vehicle Management Policy	<b>Policy No.:</b> 220
<b>Title</b>	<b>Pages:</b> 2
<b>Section:</b>	<b>Last Review Date:</b> 5/09/13
<b>Effective Date:</b> 3/30/10	<b>Revision Date:</b> 5/09/13

### 1. POLICY

The Office of the State Public Defender provides state cars to each office. An Office Fleet Manager will be designated in writing for each office to serve as liaison to Central Services regarding vehicles assigned to the local office.

### 2. PROCEDURE

- 2.1 The Regional Deputy Public Defender or Managing Attorney will designate an Office Fleet Manager and a back-up fleet manager in writing and Central Services will keep this information on file.
- 2.2 All agency vehicles will be assigned confidential license plates, and will have the following in the glove compartment:
  - 2.2.1 A fuel card to be used for fuel, car washes and incidentals such as windshield washer fluid or windshield wipers. All other purchases must be approved by State Motor Pool. All non-fuel receipts must be sent directly to State Motor Pool..
  - 2.2.2 Registration including the confidential plate number. The original motor pool registration and the original motor pool license plates are to be kept in the trunk.
  - 2.2.3 Incident report forms.
  - 2.2.4 Motor pool guidelines.
- 2.3 The Office Fleet Manager will be responsible for:
  - 2.3.1 Scheduling and calendaring the use of all vehicles assigned to the office. Scheduling will not be done on a first-come first-served basis, but to provide the greatest benefit to the agency. In most cases, this means that priority will be given to the user traveling the greatest distance.
  - 2.3.2 Ensuring the security of vehicle keys.
  - 2.3.3 Ensuring that routine maintenance is performed as scheduled.
  - 2.3.4 Reporting the monthly mileage and actual number of days used to Central Services based on the vehicle log.
  - 2.3.5 Notifying vehicle users in writing if a state vehicle is not available for their planned itinerary.
  - 2.3.6 Ensuring that incident reports are completed, photographs taken, and the appropriate signatures are obtained prior to submitting the report to Central Services.

- 2.4** The vehicle user will be responsible for:
- 2.4.1 Maintaining the vehicle log each time the car is used.
  - 2.4.2 Paying for parking, which can be reimbursed by submitting a travel voucher. Parking tickets will not be paid by OPD.
  - 2.4.3 Ensuring that the vehicle has at least half a tank of gas upon return.
  - 2.4.4 Removing trash from the vehicle and leaving it clean for the next user.
  - 2.4.5 Ensuring that the exterior of the vehicle is clean enough for safe driving.
  - 2.4.6 Reporting needed maintenance or repairs to the Office Fleet Manager.
  - 2.4.7 Reporting accidents to the Office Fleet Manager and completing the incident report.

**3. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy can be directed to your supervisor or to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701

(406) 496-6080

# Office of the State Public Defender Administrative Policies

<b>Subject:</b> Cellular Devices and Services	<b>Policy No.:</b> 225
<b>Title</b>	<b>Pages:</b> 9
<b>Section:</b>	<b>Last Review Date:</b> 4/11/13
<b>Effective Date:</b> 11/10/10	<b>Revision Date:</b> 5/31/13

**1. POLICY**

Cellular devices and services are provided to state employees for official State business use, and are issued when their benefits outweigh their costs. State devices are assigned to meet State business needs and are not a part of any State employee benefit program. The Office of the State Public Defender will provide cellular devices to employees who need them to perform their job duties.

**2. DEFINITIONS**

- 2.1 Cellular device: A portable device, including cellular telephones, satellite phones, air cards, smart phones and other Personal Data Assistant (PDA) devices, with cellular communications capability. These devices may be State owned/leased (State device) or private owned/leased (private device).
- 2.2 Essential personal calls: Personal calls of minimal duration that cannot be made at another time or from a different telephone. Examples of essential personal calls are calls to arrange for unscheduled or immediate care of a dependent, a family emergency, or to alert others of an unexpected delay due to a change in work or travel schedule.

**3. REQUIREMENTS FOR ISSUING A STATE DEVICE**

- 3.1 Cellular devices shall be issued when it is more cost effective and efficient than landlines/desk phones, pagers and State contract calling cards. State devices are issued to an individual.
- 3.2 The Chief Public Defender or designee shall review and approve requests for cell equipment and services consistent with these requirements.
- 3.3 An authorization form (Attachment A) must be completed before a cellular device can be issued.
- 3.4 State devices shall be issued based on one or more of the following job requirements:
  - 3.4.1 Employee's job requires field work where landline phones are inaccessible or inefficient
  - 3.4.2 Employee's job requires immediate or on-call availability
  - 3.4.3 Employee's job requires travel and availability via cellular device

#### **4. REQUIREMENTS FOR USING A STATE DEVICE**

- 4.1 Personal use of state devices shall be limited to State business and essential personal calls.
- 4.2. State device numbers may be ported (transferred) from one vendor to another. The following types of number porting are prohibited:
  - 4.2.1 Porting of a state landline business number to any cellular device (state or private device)
  - 4.2.2 Porting of a private device number to a state device account
  - 4.2.3 Porting of a State device number to a private device account
- 4.3 Users of mobile devices that interact with the State of Montana's Microsoft Exchange mobile device connection interface will be required to sign a Managed Mobile Device Email User Agreement (Attachment B).

#### **5. REQUIREMENTS FOR REIMBURSEMENT OF PRIVATE DEVICE COSTS**

If a private device is used for business purposes a reimbursement request may be made (Attachment C):

- 5.1 Any reimbursement shall be for verifiable costs in excess of the employee's plan or other fees and taxes incurred as a direct result of the business use.
- 5.2 Fixed Monthly Rate Option: The agency may reimburse employees approved to use a private device for state business at a fixed monthly rate if they have not been issued a state device and they are required to maintain a cellular device for the performance of their job duties.
  - 5.2.1 The fixed monthly rate shall be no higher than a current State contract plan that would have otherwise been selected based on the number of minutes appropriate for the employees job-related duties.
  - 5.2.2 Employees who receive a monthly fixed reimbursement shall be responsible for all state, local and federal taxes.
  - 5.2.3 Employees who are issued a State device are not eligible to be reimbursed at a fixed monthly rate.

#### **6. RESPONSIBILITIES**

6.1 The agency:

- 6.1.1 Is responsible for the appropriate use of cellular devices and services, including employee eligibility, plan usage and proper billing, and enforcement.
- 6.1.2 Is responsible to determine cost/benefit criteria for requiring their use of cellular devices based upon the requirements of this policy and applicable business requirements.
- 6.1.3 Shall designate one or more Cellular Managers

6.2 Cellular Manager(s) will:

- 6.2.1 Work with employee supervisors to determine best use of cellular devices and plans
- 6.2.2 Review all approved cellular device requests
- 6.2.3 Determine the most efficient use of minutes and cell plan
- 6.2.4 Resolve billing errors applicable to State device contracts
- 6.2.5 Maintain inventory records of authorized use of cellular devices to include:
  - 6.2.5.1 Employee-device assignment
  - 6.2.5.2 Assigned plan
  - 6.2.5.3 Justification

6.3 Employee Supervisors will:

- 6.3.1 Ensure their employees understand this policy and its requirements
- 6.3.2 Review individual cellular device assignments quarterly to determine if there is a continuing need and if the cost is justified

6.4 Employees using cellular devices:

- 6.4.1 Are responsible for State device equipment and proper use of the equipment in their possession
- 6.4.2 Shall notify their supervisor or appropriate management immediately in the event of damage, loss or theft of cellular devices. The employee shall provide written notification within five business days.
- 6.4.3 Are responsible for operating State or private vehicles, or operating other potentially hazardous equipment while in the performance of State business, in a safe and prudent manner while using cellular devices. State employees are strongly encouraged not to use handheld cell phones or other handheld electronic communications devices or objects while operating state vehicles or personal vehicles on state business.
- 6.4.4 May request approval to use their private device for State business if they are required to carry a State device. The employee's supervisor may grant or deny such requests.
- 6.4.5 Shall reimburse the State for all personal calls that result in additional charges to the State
- 6.4.6 Shall return State devices to their supervisor when the employee leaves their position or is no longer an authorized cellular device user.

**7. ENFORCEMENT**

Enforcement actions for violations of this policy include but are not limited to revocation of cellular device privileges and/or possible disciplinary action up to and including termination.

**8. CROSS REFERENCE GUIDE**

8.1 OPD Policy 502, Computer Use

8.2 MOM, Employee Use of Information Technology

8.3 ARM 2.6.210, Cell Phone Use

8.4 ARM, 2.13.102, Use of the State's Telecommunications Systems

**9. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy can be directed to your supervisor or to:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701

(406) 496-6080



Attachment A

Office of the State Public Defender

**CELLULAR DEVICE REQUEST AND AUTHORIZATION FORM**

Request date: \_\_\_\_\_ Request is for  Cell Phone  Smart Phone

Supervisor making the request (print): \_\_\_\_\_

Job responsibilities that justify issuing a cellular device: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Approval Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Supervisor

Approval Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Chief Public Defender

**The employee using the cellular device is responsible for reading the policy and signing below.**

I have read the Policy for Cellular Devices and Services and agree with its terms and conditions. In addition, I agree to follow all employee responsibilities as described in the policy.

Employee name (print): \_\_\_\_\_ Signature: \_\_\_\_\_

Office Location: \_\_\_\_\_

Organization Number: \_\_\_\_\_

**Cellular Manager Use Only**

Device phone number: \_\_\_\_\_ Activation date: \_\_\_\_\_

Telephone model: \_\_\_\_\_ Serial Number: \_\_\_\_\_

Plan/Minutes: \_\_\_\_\_

User Name:  
User ID (CM#):  
Phone #:

## Attachment B

### Office of the State Public Defender **Managed Mobile Device Email User Agreement**

This user agreement covers ONLY the use of a Managed Mobile Device that interacts with the State of Montana's Microsoft Exchange mobile device connection interface.

For a definition of a managed mobile device or to find out more information about the E-MAIL MOBILE service, go to the Service Catalog located on the MINE Portal.

The user acknowledges and agrees:

1. The Department of Administration, Information Technology Services Division (ITSD), may wipe my managed mobile device, **STATE OR PERSONAL**, without any notification, resulting in loss of all data on the managed mobile device and setting the managed mobile device back to factory default settings. ITSD will make a reasonable effort to contact the appropriate agency personnel to inform them of the managed mobile device wipe, and reasons for the wipe, in a timely manner. Some of the common reasons to wipe a managed mobile device are listed below:
  - a. If the managed mobile device is suspected of being compromised and poses a threat to the State.
  - b. If the user of the managed mobile device violates State policies and statutes concerning the use of the mobile device.
  - c. If a technical issue arises that requires the managed mobile device to be wiped to resolve.
  - d. If the mailbox associated with the managed mobile device is disabled.
  - e. If the owner of the managed mobile device resigns, is terminated or suspended with/without pay.
2. During the initial synchronization with the Exchange infrastructure, a default Exchange Security Configuration (ESC) will be pushed to my managed mobile device. For information regarding the ESC read the "Managed Mobile Device Email Security Configuration" document. This ESC is meant to protect and secure the State's information on my managed mobile device. This ESC may change the way my managed mobile device works when I connect it to the Exchange infrastructure and could disable or enable features on my managed mobile device. If I require features that were changed by the ESC, then I may apply for the UNMANAGED Mobile Device policy through my agency or not use the E-MAIL MOBILE service.
3. The ESC may change because it is periodically reviewed. ITSD will attempt to inform customers before any changes, but in the case of an emergency change, this contact may not be possible.
4. If I lose my managed mobile device that is configured to connect to the State of Montana's Exchange Infrastructure, I am required to take the actions listed below as soon as possible, but no later than 24 hours from losing my managed mobile device.
  - a. Contact my Security Officer and report the loss.
  - b. Wipe all data from the managed mobile device via the Outlook Web Access *Options* page.  
<http://mine.mt.gov/it/pro/win2kadmin/exchange/managingmobiledevicethroughowa.mcp>

- c. Contact the cellular company that provides my service and have the managed mobile device deactivated.
  - d. Change my Active Directory password.
  - e. Open an incident with ITSD's Service Desk, either via email to [ServiceDesk@mt.gov](mailto:ServiceDesk@mt.gov) or by calling 444-2000 to notify ITSD's Exchange Infrastructure Administrators of the loss and what actions have been taken. After being notified of a lost managed mobile device, the Exchange Infrastructure Administrators will confirm the data wipe of the managed mobile device.
5. DOA ITSD's responsibility is limited to verification that the mobile device connection interface is up and available and that a DOA ITSD test mobile device can use the mobile device connection interface. DOA ITSD WILL NOT provide troubleshooting or support for managed mobile devices.
  6. Support of the managed mobile device is provided by the mobile device provider or other agency designated staff.
  7. My use of managed mobile device is also governed by the following polices and laws, Electronic Mail ENT-Net-042; User Responsibility ENT-SEC-081; Internet Acceptable Use ENT-INT-011; and 2-15-114 and 2-17-534, MCA.
  8. All network activity conducted while doing State business and being conducted with State resources is the property of the State of Montana; and, the State reserves the right to monitor and log all network activity including email, text messages, Twitter messages, Internet use, and all other social media, with or without notice. Therefore, I have no expectations of privacy in the use of these resources and the content of the messages sent using these resources.

By signing this agreement, I acknowledge that I have been made aware of and understand the appropriate uses of managed mobile devices with the State of Montana Exchange infrastructure and I have reviewed the MANAGED MOBILE DEVICE EMAIL SECURITY CONFIGURATION document associated with this service. I also acknowledge that I have read and understand the policies and laws referenced in this agreement and agree to comply with these policies and laws.

**MANAGED MOBILE EMAIL USER**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ (DD/MM/YYYY)

Print Name: \_\_\_\_\_

**AGENCY SECURITY OFFICER**

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ (DD/MM/YYYY)

Print Name: \_\_\_\_\_

The information above may not be altered in any way. This space may be used for approval information including plan and equipment details.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Mail the signed original of this form to: OPD Central Office, 44 W. Park, Butte MT 59701.**

Attachment C

Office of the State Public Defender

Personal Cellular Device Fixed Monthly Reimbursement Request Form

Use this form to request a fixed monthly reimbursement for use of a personal cellular device for State of Montana business. See section 5.2 of the Office of the State Public Defender (OPD) Cellular Devices and Services policy for eligibility, restrictions and more information.

INSTRUCTIONS: Complete parts 1 thru 4 and submit to the Central Office for approval and processing.

---

PART 1 – WHO - COMPLETE THE FOLLOWING FOR THE EMPLOYEE REQUESTING A MONTHLY REIMBURSEMENT:

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

OFFICE LOCATION/ORG \_\_\_\_\_

EMPLOYEE ID: \_\_\_\_\_

EMPLOYEE CELL PHONE NUMBER: \_\_\_\_\_

---

PART 2 – JUSTIFICATION - WRITE A BRIEF JUSTIFICATION FOR THE REIMBURSEMENT REQUESTED AND **ATTACH SUPPORTING DOCUMENTATION**, INCLUDING A COPY OF YOUR PHONE BILL. **YOU MUST DEMONSTRATE THAT USE OF YOUR PERSONAL DEVICE FOR STATE BUSINESS INCREASES YOUR COST.**

---

PART 3 – AMOUNT - COMPLETE THE FOLLOWING TO DETERMINE THE REIMBURSEMENT AMOUNT:

The amount of the reimbursement can be no more than the amount the state would otherwise pay to provide the service.

ESTIMATED MONTHLY AVERAGE VOICE USAGE FOR STATE BUSINESS: \_\_\_\_\_ MINUTES

Use of a personal device for state business will be reimbursed at \$15 per month for voice/texting.

Requests for reimbursement for data use will be addressed on a case by case basis, and if approved will be reimbursed at \$40 per month for voice, texting and data.

MONTHLY REIMBURSEMENT AMOUNT REQUESTED: \_\_\_\_\_

\$15 **OR** \$40

---

PART 4 – EMPLOYEE/SUPERVISOR RESPONSIBILITIES AND AUTHORIZATION:

YOUR SIGNATURE BELOW AFFIRMS YOU HAVE READ AND UNDERSTAND THE OPD CELLULAR DEVICES AND SERVICES POLICY. This fixed monthly reimbursement shall expire no later than one year from the date of approval of this request by the Central Office.

EMPLOYEE: I am aware that maintaining a personal cellular account and device are my responsibility and necessary as part of my job responsibilities. I am responsible for all state, local and federal taxes related to this reimbursement. I understand that my personal cell phone number may be listed or published as needed for job requirements and my cell phone records must be furnished to the State upon request, and that I have no expectation of privacy in the number or the records.

Requesting Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

SUPERVISOR: I am aware that reviewing personal cellular device reimbursements regularly to determine if there is a continuing need and cost justification are my responsibility.

Supervisor Approval Signature \_\_\_\_\_

Date: \_\_\_\_\_

---

PART 5 – CENTRAL OFFICE APPROVAL AND PROCESSING:

Chief Public Defender Approval Signature: \_\_\_\_\_

Date: \_\_\_\_\_

AMOUNT APPROVED: \_\_\_\_\_ EXPIRATION DATE: \_\_\_\_\_

OPD Cellular Manager Signature (For Tracking and Processing): \_\_\_\_\_ Date: \_\_\_\_\_

OPD CELLULAR MANAGER SHALL RETAIN THE ORIGINAL FOR VERIFICATION AND RETURN AN ELECTRONIC COPY TO THE EMPLOYEE AND CENTRAL OFFICE ACCOUNTING.

# Office of the State Public Defender Administrative Policies

Subject: <b>Media Policy</b>	Policy No.: <b>230</b>
Title	Pages: <b>2</b>
Section:	Last Review Date:
Effective Date: <b>04/23/09</b>	Revision Date:

## 1.0 POLICY

The purpose of this policy is to establish guidelines for the Office of the State Public Defender's (OPD or the agency) response to media inquiries.

The agency will:

- Respond to media inquiries in a timely, appropriate, and professional manner;
- Give all members of the media equal access to public information;
- Do its best to ensure that all information is accurate and up-to-date;
- Uphold the constitutional right of all Montanans to know what their government is doing on their behalf; and
- Take into account the constitutional right of individuals to privacy, and state and federal laws that mandate confidentiality in specific situations.

Any employee who has questions about whether specific information is public or private should contact the Administrative Director at 496-6080.

## 2.0 PROCEDURES/REQUIREMENTS

### 2.1 Media Inquiries

The Chief Public Defender, Administrative Director and Regional Deputy Public Defenders may give interviews to or respond to media requests for information. They may delegate this responsibility to other employees on specific projects, issues or topics as appropriate.

Employees should refer media inquiries to their supervisor, Regional Deputy Public Defender, Administrative Director or the Chief Public Defender. If the employee is unable to reach any of these individuals, the employee should provide the requested information to the media representative or refer them to the best source of the information. All questions concerning OPD policy should be forwarded to the Central Office prior to responding.

Anyone who responds to a media inquiry should notify their supervisor, Regional Deputy Public Defender, Administrative Director **and** the Chief Public Defender by e-mail. The e-mail should include:

- The reporter's name, affiliation, and phone number;
- The date/time of the contact;
- The topic of the reporter's call; and
- A brief synopsis of the employee's response.

### 2.2 News Releases and Press Conferences

All news releases and press conferences must be approved by the Administrative Director or the Chief Public Defender prior to release or scheduling.

### **2.3 Publications**

State agencies are required by law to send a minimum of one electronic copy and up to 17 paper copies of all publications to the State Library Publications Center Coordinator.

All agency publications must include:

- Cost disclosure information as required in Section 18-7-306, MCA (provided by the Department of Administration Print and Mail Services office);
- An accessibility statement: "Alternative accessible formats of this publication will be provided by request. For further information call xxx-xxxx or TTY 711."

### **3.0 CLOSING**

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender, Administrative Services Division  
44 West Park  
Butte, MT 59701  
Phone: 406-496-6080

### **4.0 CROSS-REFERENCE GUIDE**

Montana Constitution Article II, Sections 9 (right to know) & 10 (privacy)  
2-6-101, MCA et seq. Public Records

# Office of the State Public Defender

## Administrative Policies

Subject: <b>Public Participation Guidelines</b>	Policy No.: <b>235</b>
Title <b>2</b>	Pages: <b>1</b>
Section: <b>3-103</b>	Last Review Date: <b>7-30-14</b>
Effective Date: <b>01/09/09</b>	Revision Date: <b>7-31-14</b>

### 1.0 POLICY

These guidelines are intended to insure that the public has a reasonable opportunity to participate in deliberations and decisions that are of significant public interest. Montana's Constitution and statutes guarantee this right.

### 2.0 AGENCY PROCEDURES

- 2.1 Post a meeting or hearing notice at least 72 hours in advance of the meeting or hearing.
- 2.2 Post the meeting or hearing notice on the state's electronic calendar, on the agency website, and personally to those who have previously shown an interest in the matter.
- 2.3 Include adequate details of potential or proposed action items.
- 2.4 Give notice of any closed session. Such sessions will be held and conducted in accordance with 2-3-203, MCA.
- 2.5 Include a full agenda for any meeting or hearing with a time allotted for public comment.
- 2.6 Provide a contact name, address, phone number, mailing and emailing addresses, including where to seek special needs or ADA accommodations.
- 2.7 Record minutes of meetings in accordance with 2-3-212, MCA, and make all minutes available for public inspection.

### 3.0 GUIDELINES FOR PUBLIC COMMENT

- 3.1 Interested persons must be provided a reasonable opportunity to submit their views orally or in writing prior to any action of significant interest to the public.
- 3.2 Oral or written testimony is public information. Oral comments will be summarized in the meeting minutes, and written testimony will be posted on the website.
  - 3.2.1 Provide your name and contact information on the sign-in sheet at the podium if appearing in person, and on any documents that you submit.
  - 3.2.2 Do not use the names of individuals other than your own, including attorneys, offenders, victims, judges or law enforcement personnel.
  - 3.2.3 Remove any private information (health information, addresses, social security numbers, etc.) from any documents that you submit.

### 4.0 CLOSING

This policy shall be followed unless it conflicts with specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be directed to:

Office of the State Public Defender  
Central Services Division  
44 West Park, Butte, MT 59701  
(406) 496-6080

### 5.0 Cross-Reference Guide

Art. II, Sec.8, MT Constitution  
MCA 2-3-101, et seq.  
ARM 1.3.101



# Office of the State Public Defender Administrative Policies

Subject: <b>Management of the Appellate Defender Office</b>	Policy No.: <b>301</b>
Title: <b>47</b>	Pages: <b>2</b>
Section: <b>1-105</b>	Last Review Date: <b>8-29-11</b>
Effective Date: <b>5-5-10</b>	Revision Date: <b>8-29-11</b>

## 1.0 POLICY

1.1 The Office of the Appellate Defender (OAD) is separate and distinct from the Office of the State Public Defender (OPD). Pursuant to 47-1-105, the Chief Appellate Defender reports directly to the Montana Public Defender Commission.

## 2.0 PROCEDURE

### 2.1 Public Defender Commission

- 2.1.1 The Public Defender Commission shall appoint the Chief Appellate Defender who is a state employee exempt from the state classification and pay plan.
- 2.1.2 The Public Defender Commission shall establish the qualifications, duties, and compensation for the Chief Appellate Defender.
- 2.1.3 The Public Defender Commission shall regularly evaluate the performance of the Chief Appellate Defender.

### 2.2 Chief Appellate Defender

- 2.2.1 The Chief Appellate Defender serves at the pleasure of the Public Defender Commission.
- 2.2.2 The Chief Appellate Defender shall have exclusive management authority in the OAD in the following areas:
  - 2.2.2.1 All personnel issues, including hiring, discipline and firing of staff;
  - 2.2.2.2 Day-to-day operation of the office;
  - 2.2.2.3 Assignment of cases, including determining which cases are to be contracted out and to whom (except conflict cases);
  - 2.2.2.4 Review and determine issues to be raised on appeal, including issues of ineffective assistance of counsel;
  - 2.2.2.5 Determine whether an extraordinary writ should be filed; and
  - 2.2.2.6 Approval of all invoices, contractor bills (excluding conflict contractor bills), and special costs.
- 2.2.3 The Chief Appellate Defender shall be responsible for budgeting, reporting, and related administrative functions for the OAD. The Central Office shall provide assistance with budgeting, reporting

and related administrative functions for the Chief Appellate Defender.

**2.2.4** The Chief Appellate Defender shall confer with the Chief Public Defender regarding budgetary issues.

**2.2.5** The Chief Appellate Defender shall submit budgetary requests and reports through the Public Defender Commission.

### **3.0 CLOSING**

Questions about this policy should be directed to the OAD at the following address:

Office of the Appellate Defender  
139 N. Last Chance Gulch  
P.O. Box 200145  
Helena, MT 59620-0145

Phone: 406-444-9505

**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> Montana State Telephone Network Use	<b>Policy No.:</b> 501
<b>Title</b>	<b>Pages:</b> 2
<b>Section:</b>	<b>Last Review Date:</b> 4-1-07
<b>Effective Date:</b> 7-1-06	<b>Revision Date:</b>

**1. POLICY**

The state's telecommunications facilities are provided for the conduct of state business. The use of the state's telecommunications facilities for essential personal business must be kept to a minimum and not interfere with the conduct of state business. All Office of the State Public Defender employees are required to acknowledge that they understand and will adhere to this policy by signing the Telephone Use Acknowledgement Form (attachment A).

**2. PERMITTED USE**

In addition to state business, the state's telecommunications facilities may be used by state employees and officials for local and long distance calls to latch-key children, teachers, doctors, day care centers, baby sitters, and family members to inform them of unexpected schedule changes and other essential personal business. All in-state and out-of-state calls made on the State Telecommunications Network are billed to the originating state telephone number. Essential personal long distance calls must be collect, charged to a personal third-party number, or charged to a personal credit card.

**3. COVERED FACILITIES**

The state's telecommunications facilities include any state-owned, leased, contracted for, operated, or maintained telecommunications equipment, services, or facilities, including private branch exchanges, telephone key systems, teleconferencing systems, local and long distance telecommunications circuits, cellular telephones, data communications equipment, video capabilities, land mobile radio equipment, telephone credit cards, facsimile equipment, and voice mail.

**4. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

*Violation of any provision of this policy may result in disciplinary action up to and including termination.*

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender  
Administrative Service Division  
44 West Park, Butte, MT 59701  
(406) 496-6091

**ATTACHMENT A**  
**TELEPHONE USE**  
**ACKNOWLEDGEMENT FORM**

By signing this form I acknowledge that I have read the “Montana State Telephone Network Use” policy and I understand that I am bound by the requirements in that policy.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATED: \_\_\_\_\_

This form must be signed and returned to:  
Office of the State Public Defender  
Human Resource Office  
44 West Park  
Butte, MT 59701  
  
(406) 496-6091

**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> Computer Use	<b>Policy No.:</b> 502
<b>Title</b>	<b>Pages:</b> 4
<b>Section:</b>	<b>Last Review Date:</b> 4-1-13
<b>Effective Date:</b> 11-01-06	<b>Revision Date:</b> 4-25-13

**1. POLICY**

The state's computer system and all programs on it belong to the State of Montana and are provided for the conduct of state business. The use of the state's computer facilities for essential personal business must be kept to a minimum and not interfere with the conduct of state business. All Office of the State Public Defender employees are required to acknowledge that they understand and will adhere to this policy by signing the Employee Use of Information Technology Acknowledgement Form (Attachment A).

**2. PROCEDURES**

**2.1** By using the state computer system, including but not limited to the Internet and e-mail system, employees understand that management may monitor, read and review any and all information accessed or stored in the system and/or on your assigned state computer.

**2.2** The State of Montana has a business requirement to monitor or retrieve information on its computer system for a variety of reasons that include, but are not limited to, trouble shooting software problems, retrieval of work files, preventing system misuse and assuring compliance with software distribution policies.

Employees do not have a right to privacy in any materials created, accessed, sent or received on state computer equipment whether password protected or not. Passwords may be overridden by the State.

**2.3** Very limited, reasonable personal use of the state's e-mail system may occur to send a personal e-mail that does not contain foul, offensive, defamatory or pornographic information. Just like the use of the state telephone system, personal use of e-mail should be limited and brief. E-mail sent over the state system, whether personal or state work related, should be proper in its content. Personal use of information technology must not create cost to the state, interfere with the employee's duties, disrupt state business, or compromise the security or integrity of state government systems.

**2.4** An employee may access a non-obscene, non-offensive Web site on break time only. *Use common sense and good judgment.* Misuse of the state computer system by falsifying time sheets and recording non-work time as work time can lead to disciplinary action up to and including termination.

- 2.5 To insure that the above guidelines are being met the state reserves the right to filter out or block inappropriate Internet sites and will from time to time conduct unannounced surveillance of any and all computer use by state employees. While the State will take steps to block offensive material and delete it when discovered, that does not mean that all accessible material is appropriate.
- 2.6 Documents deleted from any of your directories, including Outlook, may continue to exist and can be retrieved off of the system. A list of all Internet sites accessed by employees is available to management when management requests it or computer security personnel observe and report inappropriate use to management.
- 2.7 Logon IDs and passwords (e.g., CM numbers) are assigned to individuals for access to the Office of the State Public Defender data. The individual assigned an ID and password is responsible for the security of this ID. Passwords must be kept confidential. Under no circumstances should you share your Logon ID or password. You may be liable for unauthorized access of information using your ID and password.
- 2.8 Employees shall:
  - 2.8.1 Abide by all copyright laws;
  - 2.8.2 Protect data in their custody, including knowing if data is confidential;
  - 2.8.3 Ensure that critical data is saved to an appropriate location;
  - 2.8.4 Maintain a secure, virus-free environment including checking CD's and USB sticks for viruses before using them on a state computer;
  - 2.8.5 Seek a system administrator before installing any software;
  - 2.8.6 Protect equipment from theft and report any loss of equipment or information to their supervisor immediately;
  - 2.8.7 Lock systems before leaving them unattended;
  - 2.8.8 Notify managers or system administrators of anything unusual or if a computer may have a virus.

### 3. PROHIBITED USE

- 3.1 No one may use the state computer system or any of its programs for non-job related purposes to access or send foul, offensive, defamatory or pornographic information.
- 3.2 The state has a zero tolerance policy for sexual harassment. Accessing or sending harassing or derogatory information such as comments demeaning a person's sex, race, religion, disabilities and sexual orientation will not be tolerated.
- 3.3 Do not use a personal e-mail account such as Hotmail outside of the of the state e-mail system unless you have been granted an exception by the State Information Security Officer. Downloading an outside system on to the state system can open the door to viruses and other serious problems.

**3.4** Prohibited activities include but are not limited to:

**3.4.1** Chain letters;

**3.4.2** Unauthorized use of copyrighted materials including software;

**3.4.2** Communications to solicit voluntary participation in athletic betting pools, political causes, religious causes or personal organizations.

**3.5** The state computer system may not be used to conduct or operate a personal commercial business or “for-profit” or “non-profit” activities.

#### **4.0 ITSD POLICIES**

The following policies are also incorporated in the OPD policy by reference:

**4.1 Employee Use of Information Technology:**

<https://montana.policytech.com/docview/?docid=221&public=true>

**4.2 Social Media:**

<https://montana.policytech.com/docview/?docid=228&public=true>

#### **5. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

If you have a question about a particular use ask your supervisor before you use the state computer system for that purpose and potentially expose yourself to disciplinary action.

*Violation of any provision of this policy may result in disciplinary action up to and including termination.*

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender  
Central Services Division  
44 West Park  
Butte, MT 59701

(406) 496-6080

## Employee Use of Information Technology

Information technology is essential to the State of Montana and each employee is responsible for the safe keeping of these resources. This policy outlines important areas of responsibility. Violations of this policy may result in disciplinary action up to and including termination. All employees shall read and sign this policy every year. Return to the Central Services Division.

### Acceptable Use

The State of Montana uses information technology for conducting state business. Employees must not use technology for purposes other than those that would further their job duties. Incidental personal use is permitted. "Incidental" is defined as use that does not create cost to the state, interfere with the employee's duties, disrupt state business, or compromise the security or integrity of state government systems. Employees may not violate law, rules, regulations, or policies using information technology while in the course of their duties, including copyright laws. This includes the duplication, transmission, or use of intellectual property without the proper agreements.

### Security Responsibility

Employees shall:

- Protect data in their custody, including knowing if data is confidential;
- Ensure that critical data is saved to an appropriate location;
- Maintain a secure, virus-free environment;
- Seek a system administrator before installing any software;
- Protect equipment and report any loss of equipment or information immediately;
- Protect passwords and lock systems before leaving them unattended;
- Notify their manager or system administrator of anything unusual or if they think a computer may have a virus.

### Privacy

Employees have no expectation of privacy when using state-controlled equipment. State officials may access, read, copy, use or disclose information on state-controlled equipment without prior notification.

### Employee Signature

I have read the State of Montana's computer use policies and agree to comply with the conditions within this document. I understand that all activity using state information technology resources may be monitored including monitoring of my communications, with or without notice; therefore, I have no expectation of privacy when using these resources.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

Print Name: \_\_\_\_\_

Signed \_\_\_\_\_

Date \_\_\_\_\_



Office of the State Public Defender

VEHICLE USE  
ACKNOWLEDGEMENT FORM

I have received and read a copy of the State of Montana Vehicle Use Policy (also found in the Administrative Rules of Montana, ARM, 2.6.201 through 2.6.214).

I truthfully state that I have a valid, non-conditional driver's license and that my license is not currently under suspension.

My signature below indicates that I have received and read a copy of the Office of the Public Defender Vehicle Use Policy, I understand the penalties for particular driving offenses (Attachment B), and the requirements of notice to my employer should the status of my driving record change.

I have also read and understand the Office of the State Public Defender Fuel Conservation Strategy, and I agree to abide by the Vehicle User/Operator Guidelines.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATED: \_\_\_\_\_

This form must be signed and returned to:

Office of the State Public Defender  
Human Resource Office  
44 West Park  
Butte, MT 59701

(406) 496-6091

**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> <b>Vehicle Use</b>	<b>Policy No.:</b> <b>503</b>
<b>Title</b>	<b>Pages:</b> <b>7</b>
<b>Section:</b>	<b>Last Review Date:</b> <b>1-29-08</b>
<b>Effective Date:</b> <b>03-27-06</b>	<b>Revision Date:</b>

**1.     POLICY**

The Office of the State Public Defender (OPD) has adopted the State of Montana Vehicle Use Policy (Attachment A), found in the Administrative Rules of Montana, ARM 2.6.201-2.6.214. All OPD employees are required to acknowledge that they understand and will adhere to this policy, and that they understand the penalties for particular driving offenses (Attachment B), by signing the Vehicle Use Acknowledgement Form (Attachment C).

**2.     CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

*Violation of any provision of this policy may result in disciplinary action up to and including termination.*

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701

(406) 496-6091

# ATTACHMENT A

## ADMINISTRATIVE RULES OF MONTANA

### CHAPTER 6

#### RISK MANAGEMENT AND TORT DEFENSE

##### Sub-Chapter 2

##### State Vehicle Use

###### 2.6.201 INTRODUCTION

(1) The following rules define acceptable uses for state-owned or leased motor pool vehicles as provided in 2-17-424, MCA. State employees or authorized individuals may be subject to additional guidelines, policies, insurance coverage exclusions, or regulations for vehicle/equipment fleet operations, provided that they do not conflict with these rules.

(2) Drivers and passengers must use installed seat belts at all times.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.202 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "State" as defined in 2-9-101, MCA.

(2) "State employee" as defined in 2-9-101, MCA.

(3) "State vehicle" means a motor vehicle, semi-trailer, snowplow, or other vehicle designed for travel on public roads that is subject to motor vehicle registration, including any machinery or apparatus attached to the vehicle. The term includes the following:

(a) a "leased vehicle" obtained by the state through an open-ended lease or lease with an option to buy contract;

(b) a "loaned vehicle" provided to the state as a gratuity;

(c) an "owned vehicle" to which the state has title; and

(d) a "rented vehicle" rented by the state for a fee, typically for short-term use in Montana or for out-of-state travel.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

###### 2.6.203 AUTHORIZED DRIVERS AND USES

(1) Except as otherwise provided in this rule, the following individuals may operate a state vehicle if the driver possesses a valid driver's license appropriate to the type of vehicle to be driven, meets driver requirements set out in ARM 2.6.205, and the uses are as provided below:

(a) a state employee to conduct business on behalf of the state;

(b) a state employee in travel status to obtain food and lodging and to respond to medical emergency situations;

(c) a state employee required to conduct state business to obtain items needed while in travel status;

(d) a state employee may park a state vehicle overnight at the employee's residence if the employee must begin travel the next day or if the employee is

subject to emergency response, on-call, or other off-shift duty associated with state employment;

- (e) a state employee required to stay overnight at a location other than the employee's established work location during nonwork time to drive to a cultural, recreational, or leisure activity or to conduct other personal business, if the activity is within 30 miles of the employee's lodging;
- (f) a non-state employee enrolled and registered as a student at a university of the state to conduct university business;
- (g) a non-state employee to aid or assist a disabled state employee if the aide has completed the risk management and tort defense division's (RMTD) vehicle use agreement and obtained authorization from the agency head or designee prior to the use;
- (h) a non-state employee to assist a state employee or other individual during a medical emergency for transportation and related purposes. Prior approval is not required;
- (i) a non-state employee who is an independent contractor or an employee of a temporary employment agency contracting with the state with prior approval from the agency head when a state employee is not available to operate the vehicle. The contractor must complete the RMTD's vehicle use agreement. The agreement must be signed by the agency head and presented to the motor pool or affected state agency prior to the use; and
- (j) a non-state employee accompanying a state employee on official state business where the state employee becomes ill, fatigued, or is otherwise rendered physically or mentally incapable of driving and/or a compelling state interest is served by allowing the non-state employee to drive. Prior approval is not required.

(2) Any exception to the authorized drivers and uses requires the prior written approval of the risk management and tort defense division.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

#### 2.6.204 AUTHORIZED PASSENGERS AND USES

(1) Except as otherwise provided in this rule, the following individuals may ride as passengers in a state vehicle:

- (a) a state employee conducting business on behalf of the state; or
- (b) a non-state employee who is:
  - (i) an independent contractor conducting business on behalf of the state;
  - (ii) an aide rendering assistance to a disabled state employee;
  - (iii) a guest or client of the state, including a public employee, if conducting, participating in, or providing a benefit to the conduct of state business;
  - (iv) rendering assistance during an emergency situation; or
  - (v) a nursing infant if the parent is an authorized driver or passenger.

(2) Any exception to the authorized passengers and uses requires the prior written approval of the risk management and tort defense division.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

### 2.6.205 DRIVER REQUIREMENTS

- (1) Non-probationary employees required to drive as part of their job who have accumulated 12 or more conviction points according to the schedule specified in 61-11-203, MCA, over the most recent 36 months may not drive a state vehicle or personal vehicle for state business until having successfully completed a certified safe driver course approved by the RMTD and received authorization to drive from their agency head and RMTD. State employee drivers who have accumulated 15 or more conviction points according to the schedule specified in 61-11-203, MCA, may not drive a state vehicle or a personal vehicle for state business until the accumulated point total is less than 12 within the past 36 months.
- (2) Non-probationary employees who have accumulated 18 or more points in the immediately preceding 36 months may not drive a state vehicle or a personal vehicle for state business until two years have passed during which they have not accumulated any conviction points according to the schedule specified in 61-11-203, MCA, have successfully completed a certified safe driver course approved by RMTD, and received authorization to drive from their agency head and RMTD.
- (3) A state employee required to drive as part of the employee's job shall report any single driving infraction of five or more conviction points according to the schedule in 61-11-203, MCA, accumulated while driving a state vehicle or a personal vehicle for state business to the employee's supervisor within 10 days of conviction.
- (4) A state employee required to drive as part of the employee's job shall report an accumulation of conviction points of 12 or more according to the schedule in 61-11-203, MCA, for the past 36 months immediately preceding the infraction, whether accumulated while driving a state vehicle, a personal vehicle for state business or accumulated while driving a motor vehicle for any purpose within 10 days of the accumulation of 12 or more points to the employee's supervisor.
- (5) Authorized drivers are responsible for promptly paying all penalties following the court procedures established for contesting citations.
- (6) The above requirements also apply to those individuals authorized to drive under the conditions listed in ARM 2.6.205.
- (7) The requirements specified in this rule apply to conviction points received after October 12, 2001.
- (8) An agency has the authority to restrict employees otherwise authorized as drivers from using state vehicles when it knows they are unsafe drivers from means other than the accumulation of conviction points.  
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

Rules 06 through 08 reserved

### 2.6.209 ALCOHOL AND DRUGS

- (1) No person under the influence of alcohol, illegal drugs, or improperly used prescription drugs may drive a vehicle for state business.
- (2) No person may drive a vehicle for state business under the influence of any legally prescribed drug if that drug affects the person's ability to safely operate the vehicle.

(3) No person may have an alcoholic beverage container in the passenger compartment of a state-owned, leased, or loaned vehicle.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

#### 2.6.210 CELL PHONE USE

(1) State employees shall drive in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property, or rights of a person entitled to use a street or highway.

(2) State employees are strongly encouraged not to use handheld cell phones or other handheld electronic communications devices or objects while operating state vehicles or personal vehicles on state business. Exceptions to this rule are law enforcement and emergency response personnel.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

Rules 11 through 13 reserved

#### 2.6.214 DISCIPLINE

(1) Failure to comply with the requirements of these rules may result in disciplinary action, including suspension or termination. Any supervisor who becomes aware of any violation of these rules by an employee they supervise shall take appropriate disciplinary action, according to the state discipline policy set forth in ARM 2.21.6501 through 2.21.6509, 2.21.6515, and 2.21.6522.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

## ATTACHMENT B

### Definition of “points” against a driving license (61-11-203 MCA)

- 15 points —deliberate homicide resulting from the operation of a motor vehicle.
- 12 points —mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault; or  
—any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used.
- 10 points —driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more.
- 8 points —failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance.
- 6 points —operating a motor vehicle while the license to do so has been suspended or revoked.
- 5 points —reckless driving, or  
—illegal drag racing or engaging in a speed contest in violation of the law, or  
—any of the mandatory motor vehicle liability protection offenses.
- 4 points —willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law.
- 3 points —speeding, except as provided in 61-8-725 MCA, “A violation of a speed limit imposed pursuant to [61-8-303](#) is not a criminal offense within the meaning of [3-1-317](#), [45-2-101](#), [46-18-236](#), [61-8-104](#), and [61-8-711](#) and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than: 10 miles an hour during the daytime; or 5 miles an hour during the nighttime.”
- 2 points —operating a motor vehicle without a license to do so, (this does not apply to operating a motor vehicle within a period of 180 days from the date the license expired); or  
—all other moving violations.

**ATTACHMENT C**  
**VEHICLE USE**  
**ACKNOWLEDGEMENT FORM**

I have received and read a copy of the State of Montana Vehicle Use Policy (also found in the Administrative Rules of Montana, ARM, 2.6.201 through 2.6.214).

I truthfully state that I have a valid, non-conditional driver's license and that my license is not currently under suspension.

My signature below indicates that I have received and read a copy of the Office of the Public Defender Vehicle Use Policy, I understand the penalties for particular driving offenses (Attachment B), and the requirements of notice to my employer should the status of my driving record change.

I have also read and understand the Office of the State Public Defender Fuel Conservation Strategy, and I agree to abide by the Vehicle User/Operator Guidelines.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATED: \_\_\_\_\_

This form must be signed and returned to:

Office of the State Public Defender  
Human Resource Office  
44 West Park  
Butte, MT 59701

(406) 496-6091



**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> Reimbursement for Personal Vehicle Use	<b>Policy No.:</b> 504
<b>Title</b>	<b>Pages:</b> 1
<b>Section:</b>	<b>Last Review Date:</b> 11/18/13
<b>Effective Date:</b> 9/1/09	<b>Revision Date:</b> Approved 8/6/14

**1. POLICY**

The Office of the State Public Defender has made considerable effort and financial investment in making state cars available in each office. Because of budget constraints as well as the need to maximize the use of the state vehicles, the following policy is adopted.

**2. PROCEDURE**

- 2.1** An employee must use a state car when traveling on state business in any instance when a state car is available or when carpooling in a state car is an option.
- 2.2** If an employee chooses to drive their own vehicle *for any reason* when a state car is available, the employee will not be reimbursed for mileage.
- 2.3** An employee seeking mileage reimbursement when a state car is unavailable must attach written documentation from the Office Fleet Manager stating the travel date, destination, and that a state car is unavailable on that date. For Helena employees, notification from the State Motor Pool stating that a state car is unavailable is also required. The travel voucher itself does not constitute appropriate documentation that a vehicle is unavailable.
- 2.4** Any exceptions to employee reimbursement under this policy must be pre-approved prior to travel by the Chief Public Defender, Chief Appellate Defender, Conflict Coordinator or their designee.

**3. CROSS-REFERENCES**

OPD Policy 220, Vehicle Management Policy  
MOM 1-310, State Travel Policy

**4. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701

(406) 496-6080

**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> Overtime and Compensatory Time for Non-Exempt Employees	<b>Policy No.:</b> 510
<b>Title</b>	<b>Pages:</b> 4
<b>Section:</b>	<b>Last Review Date:</b> 4-1-07
<b>Effective Date:</b> 5-1-06	<b>Revision Date:</b>

**1. BACKGROUND**

On April 17, 1989, the Attorney General, of the State of Montana issued an opinion that state and local government employees who are covered by the Federal Fair Labor Standards Act (FLSA), are not subject to the provisions of the Montana Minimum Wage and Hour Act. This opinion allows agencies flexibility in administering overtime provisions for non-exempt employees.

**2. POLICY**

It is the policy of the Office of State Public Defender (OPD) to comply with the FLSA, its regulations (29 CFR 553), state rules (Montana Operations Manual, Volume III, Policy 3-0211), and this policy in the administration of overtime compensation and non-exempt compensatory time. Compensatory time for employees exempt from the FLSA will be administered consistent with the provisions found in the state's Exempt Compensatory Time Policy (MOM, Volume III, Policy 3-0210).

**3. DEFINITIONS**

- A. "Non-exempt compensatory time" means time accrued at a rate of one and one-half hours for each hour of employment for which overtime compensation is required pursuant to the FLSA, its regulations, and this policy. Accrued time may be taken as approved time off at a later date.
- B. "Non-exempt or covered employee" means an employee subject to the overtime provisions of the FLSA and its regulations. It does not mean certain employees exempt from the overtime provisions of the FLSA in a position designated as executive, administrative, professional, or outside salesmen, as these terms are defined in 29 CFR 541.
- C. "Overtime" means time worked by a non-exempt employee in excess of 40 hours in a workweek. The rate of overtime pay will be one and one-half times the employee's regular hourly wage, with the exception of on-call

reimbursement, which will be reimbursed at the regular rate of pay unless the employee is called in to work.

- D. "Workweek" means a regular recurring period of 168 hours in the form of seven consecutive 24-hour periods. The workweek need not be the same as the calendar week. The workweek may begin on any day of the week and at any hour of the day. Once established, a workweek may not be changed unless the change is intended to be permanent.

#### **4. PROCEDURE**

- A. The Office of State Public Defender may grant non-exempt employees who work overtime either cash overtime pay or non-exempt compensatory time off.
- B. If a covered employee would like to accrue and use non-exempt compensatory time, the covered employee must request this option by completing the "Overtime/Compensatory Time Selection" agreement (Attachment A) and returning it to the appropriate supervisor and the OPD Human Resource Office. Covered employees will be paid cash for overtime hours worked unless they complete the agreement. A new employee will make their request at the time of hire. Employees electing to receive non-exempt compensatory time may change their selection to receive overtime on a quarterly basis, such change to be effective with the pay periods of January 1, April 1, July 1 and October 1 unless approved by the immediate supervisor.
- C. The Office of State Public Defender may, at any time, pay cash for all or any portion of a covered employee's accrued non-exempt compensatory time balance.
- D. All hours worked in a pay status, with the exception of on-call hours, are counted as hours worked for the purpose of calculating a workweek for overtime pay requirements. A supervisor may adjust a covered employee's work schedule in a workweek or require the employee to take time off without pay so that the employee does not become eligible for the payment of overtime or the accrual of nonexempt compensatory time.
- E. Overtime and non-exempt compensatory time is earned and recorded on the time and attendance form in no smaller than one-half hour increments.
- F. Non-exempt compensatory time must be taken off in no less than one-half hour increments. The employee's immediate supervisor must approve requests for use of compensatory time off in advance.
- G. A non-exempt employee may accrue a maximum balance of 120 hours of

non-exempt compensatory time. When the non-exempt compensatory time balance exceeds 120 hours, the covered employee will be paid cash overtime compensation.

- H. If a non-exempt employee changes from non-exempt to exempt status through a personnel action such as a promotion, or the employee terminates employment with OPD, the office will cash out any unused non-exempt compensatory time.

**5. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable

Questions about the administration of overtime compensation or non-exempt compensatory time in lieu of overtime compensation should be discussed with your immediate supervisor or with the Human Resource Officer at:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6091

## ATTACHMENT A

### OVERTIME/COMPENSATORY TIME SELECTION

For completion by employees in non-exempt status.

NAME: \_\_\_\_\_

JOB TITLE: \_\_\_\_\_

FISCAL YEAR: \_\_\_\_\_

Select one of the following options for your preferred compensation of overtime worked for the fiscal year, or until a new form is submitted.

1. Overtime Pay: \_\_\_\_\_  
(Pay at one and one-half times your hourly rate.)
2. Compensatory Time: \_\_\_\_\_  
(Time off at one and one-half hours for every overtime hour worked.)

I understand that the Office of the State Public Defender management reserves the right to approve the granting of FLSA compensatory time in lieu of overtime pay. The Office of the State Public Defender may at any time pay cash for all or any portion of a covered employee's accrued FLSA compensatory time. I may submit a selection form reversing my previous selection on a quarterly basis, effective with the pay periods of January 1, April 1, July 1, and October 1.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

APPROVED BY:

\_\_\_\_\_  
Supervisor's Signature

\_\_\_\_\_  
Date

This form must be signed and returned to:  
Office of the State Public Defender  
Human Resource Office  
44 West Park  
Butte, MT 59701

**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> <b>Alternate Work Schedules</b>	<b>Policy No.:</b> <b>511</b>
<b>Title</b>	<b>Pages:</b> <b>4</b>
<b>Section:</b>	<b>Last Review Date:</b> <b>11-18-13</b>
<b>Effective Date:</b> <b>02-05-09</b>	<b>Revision Date:</b> <b>Approved 8-6-14</b>

**1. POLICY**

It is the policy of the Office of the State Public Defender (OPD) that alternate work schedules may be implemented provided that they do not interfere with mandatory office hours or the business goals of the agency.

This policy applies to employees in all OPD offices. Provisions of this policy apply only to alternate work schedules requested by the employee, and not to work schedules established by management. Nothing in this policy limits the authority of the agency to establish or change work schedules as necessary for the successful operation of the Office of the State Public Defender (OPD).

**2. OBJECTIVE**

OPD recognizes that alternate work schedules can sometimes benefit both employees and the agency. Management may extend the privilege of alternate work schedules at the request of employees in accordance with the guidelines, procedures and standards detailed in this policy.

Alternate work schedules may be approved only when the needs of the individual office can be met. Before approving or denying employee requests for alternate work schedules, management must ensure that such schedules:

- a. Provide for adequate staff coverage of the office;
- b. Ensure that client needs will be met;
- c. Ensure that court schedules will be adhered to;
- d. Do not impede the overall productivity of the individual office.

Alternate work schedules may not be granted where they would result in an office not maintaining adequate staffing coverage during the statutorily required office hours of 8:00 a.m. to 5:00 p.m. on business days (Sec. 2-16-117, MCA).

**3. DEFINITIONS**

- 3.1. CORE WORK HOURS:** Core work hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday. Other work schedules may be established by Management to effectively operate programs and meet objectives.
- 3.2. ALTERNATE WORK SCHEDULE:** A schedule that allows an employee's workday to start and/or end at an earlier or later time than the core work hours.
- 3.3. MANAGEMENT:** For the purposes of this policy, "management" refers specifically to a Regional Deputy Public Defender, Training Coordinator, Contract Manager, Administrative Director, the Chief Appellate Defender or the Conflict Coordinator. It does *not* include Managing Attorneys or Office Managers.

## 4. PROCEDURES

### 4.1. HOURS

- 4.1.1 Because Montana law requires all state offices to be open from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for state holidays, all offices must provide adequate staff coverage during those hours.
- 4.1.2 A non-paid break period (meal break) may be a minimum of half an hour and a maximum of two hours long. All employees are encouraged to take at least a half-hour non-paid break period. Requests to skip a meal break must be approved by management.
- 4.1.3 An employee's request regarding the time at which to take a non-paid break period must be approved by management. Management must also approve exceptions.
- 4.1.4 Employees may, with the approval of their immediate supervisor, make temporary deviations from their established work schedule provided hours worked comply with this policy.
- 4.1.5 Alternate work hours or non-paid break periods may occasionally be changed beyond the limits of this policy to accommodate unusual circumstances such as external training course schedule requirements. Approval by management is required.
- 4.1.6 Employees may take one paid 15-minute duty-free break for every four hours worked, as long as this break does not interfere with the successful operation of the office.
- 4.1.7 Employees may not delay the beginning of their workday, extend their non-paid break period or terminate the end of their workday early to compensate for the paid duty-free breaks not taken.
- 4.1.8 No overtime or compensatory time is earned as a result of working an alternate work schedule unless it results in the employee working more than 40 hours in a workweek.
- 4.1.9 Holiday benefits will be paid according to the State Holiday Policy MOM 3-0325. No employee may receive more than 8 hours of pay for the holiday benefit. Employees who are scheduled **by management** to work more than an 8 hour workday may be required to take appropriate leave or, with management approval, make up time during the same workweek. If an employee is required to work on a holiday the employee will receive the holiday benefit as a banked benefit to use in the future in addition to reimbursement for the actual hours worked.

### 4.2. APPLICATION PROCEDURE

- 4.2.1 Any employee working in an office where alternate work schedules have been implemented may request an alternate schedule from management. The request should specify the hours of work desired, the desired time for a non-paid break period (meal break) the proposed effective date and the approximate desired duration of the schedule.
- 4.2.2 Employees must submit requests for alternate work schedules in writing to management.
- 4.2.3 Any Program 1 (trial division) employee who has been denied a requested alternate work schedule may request a review by the Chief Public Defender. The decision of the Chief Public Defender, Chief Appellate Defender or Conflict Coordinator shall be final. Denial of an alternate work schedule is not grievable under the State Grievance Procedure, MOM 3-0125.

- 4.2.4 The employee shall be notified in writing of approval or denial of the request for an alternate work schedule.
- 4.2.5 Each employee will be responsible for maintaining and posting a schedule of the employee's alternative work schedule hours and making sure that there is a current version on file with the front desk, and management.
- 4.2.6 Employees beginning or ending their work day before or after the core hours of 8:00 a.m. and 5:00 p.m. Monday through Friday are required to notify office staff of their alternate office hours. Employees using voice mail or electronic (Outlook) calendars will reflect the alternate work schedule as appropriate.

#### **4.3. CRITERIA FOR APPROVAL**

- 4.3.1 Management may approve alternate work schedules on a trial basis to determine if the needs of the agency are met.
- 4.3.2 When establishing alternate work schedules, management must assure coverage of essential functions during the core work hours or at such other times as the accommodation of the public or the proper transaction of business requires.
- 4.3.3 If two or more employees desire the same alternate work schedule hours, management will review the request and will resolve the issue in the best interest of the mandatory office hours and or the business goals of the agency. Rotating hours may be allowed to resolve conflicts if they do not place an undue burden on office operations.
- 4.3.4 Approval of alternate work schedules shall be made with regard to the best interests of the state as well as the desires of the requesting employee. Where the interests of the state require the presence of the employee during core business hours, the interests of the state override the employee's interest.

#### **4.4. CHANGING ALTERNATE WORK SCHEDULES**

- 4.4.1 Temporary deviations from an employee's established alternate work schedule need only verbal approval as specified in section 4.1.4 of this policy. Employees are required to notify office staff of their alternate office hours. Employees using voice mail or electronic (Outlook) calendars will reflect the alternate work schedule as appropriate.
- 4.4.2 Employees wishing to change established alternate work schedules must notify management at least 10 days before the proposed date of change. Approval or denial of the request must be made in writing no later than five days from the date of the request.
- 4.4.3 Management may change any employee's working hours as deemed necessary for the successful operation of OPD programs, or if they inhibit maximum efficiency of office operations. An employee's hours may not change without 10 working days notice. If the employee agrees, the change in hours may take place immediately.
- 4.4.4 The Chief Public Defender, Chief Appellate Defender or Conflict Coordinator may withdraw approval for an alternate work schedule.

#### **4.5. SUPERVISION**

- 4.5.1 Management in each office is to maintain a staffing schedule for their area of responsibility. It should be reviewed, at a minimum, when



changes are requested to ensure both adequate coverage and supervision.

- 4.5.2 Management is responsible for ensuring that the office's productivity is satisfactory and that established alternate work schedules are implemented and followed according to this policy.
- 4.5.3 In the event that alternate work schedules have an impact on the individual's ability to meet performance standards or have an impact on overall agency operations, management will use standard disciplinary procedures on an individual basis.

## 5. CROSS REFERENCE GUIDE

The following laws, rules or policies may contain provisions that might modify a decision relating to Alternate Work Schedules. The list should not be considered exhaustive—other policies may apply.

### State Laws

2-16-117, MCA Mandatory Office Hours

### State Personnel Policies

MOM 3-0210	Overtime and Nonexempt Compensatory Time
MOM 3-0211	Exempt Compensatory Time
MOM 3-0305	Annual Leave
MOM 3-0310	Sick Leave
MOM 3-0125	Grievances
MOM 3-0320	Disaster and Emergency Leave
MOM 3-0325	Holidays

## 6. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions concerning this policy can be directed to the Human Resource Officer at:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> Performance Evaluations	<b>Policy No.:</b> 515
<b>Title</b> 47	<b>Pages:</b> 2
<b>Section:</b> 1-202(9)	<b>Last Review Date:</b> 10/28/09
<b>Effective Date:</b> 3/14/07	<b>Revision Date:</b> 11/10/09

**1. POLICY**

Each employee of the Office of the State Public Defender shall have their work performance evaluated on a yearly basis.

**2. PROCEDURE**

- 2.1 Performance evaluations shall be conducted by the following on a form approved by the Chief Public Defender:
  - 2.1.1 Regional Deputy Public Defenders shall be evaluated by the Chief Public Defender.
  - 2.1.2 Managing Attorneys shall be evaluated by the Regional Deputy Public Defender. The Chief Public Defender will review the evaluation before it is discussed with the employee.
  - 2.1.3 Assistant Public Defenders shall be evaluated by the Managing Attorney. The Regional Deputy Public Defender will review the evaluation before it is discussed with the employee.
  - 2.1.4 Support staff will be evaluated by the supervising attorney (Regional Deputy Public Defender or Managing Attorney). The Regional Deputy Public Defender will review the evaluation before it is discussed with the employee if the Managing Attorney conducted the evaluation.
  - 2.1.5 Investigators will be evaluated by the Regional Deputy Public Defender in conjunction with the Investigator Supervisor(s). The Investigator Supervisor(s) will be evaluated by the Chief Public Defender.
  
- 2.2 In conducting the evaluation, the evaluator may obtain information from any of the following:
  - 2.2.1 Clients;
  - 2.2.2 Co-workers (attorneys, investigators, office staff);
  - 2.2.3 Judicial personnel;
  - 2.2.4 Faculty from any training the employee attends.
  
- 2.3 In addition, attorneys will be observed in court by the evaluator.

- 2.4 The employee shall be interviewed pursuant to the performance evaluation.
- 2.5 The person conducting the performance evaluation shall meet with the employee to review and discuss the evaluation. If the employee disagrees with the appraisal, s/he has the right to submit, within 10 working days of receipt of the appraisal, a written rebuttal to be attached to the document.
- 2.6 A permanent employee may file a grievance under the state grievance procedure outlined in MOM 3-0115 Performance Management and Evaluation.
- 2.7 Once all parties have signed the performance evaluation, a copy will be given to the employee. If the employee refuses to sign the form, the supervisor will document on the form that the employee refused to sign the document. The original will be placed in the employee's personnel file along with any written comments received from the employee. The performance evaluation will be maintained throughout the term of employment and retained in compliance with the State Records Retention Schedule.

### **3. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be address to the OPD Human Resource Officer at:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6091

**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> Pro Bono Legal Services	<b>Policy No.:</b> 525
<b>Title</b>	<b>Pages:</b> 6
<b>Section:</b>	<b>Last Review Date:</b>
<b>Effective Date:</b> 3-14-07	<b>Revision Date:</b>

**1. PURPOSE AND SCOPE**

This policy addresses the performance of pro bono legal services by attorneys employed by the Office of the State Public Defender (OPD).

**2. DEFINITIONS**

2.1 "Pro bono legal services" means legal services described in Mont.R.Prof.Conduct 6.1, which are performed without the expectation of compensation for:

- a. low income individuals who otherwise lack the ability to retain attorneys to provide legal services for them;
- b. charitable, civic, community, governmental, health and education organizations in matters which are designed to assist person of limited means;
- c. individuals, groups or organizations seeking to secure or protect civil rights; or
- d. improve the law, legal system or the legal profession.

**3. GENERAL POLICY**

Approximately 190,000 low income Montanans are eligible for free legal assistance from the Montana Legal Services Association (MLSA) based on applicable income eligibility guidelines. Currently MSLA is staffed at a level of one attorney for each 17,270 eligible recipients. This compares with a ratio of one Montana attorney for every 330 residents. The Helena MLSA office has one full-time lawyer devoted to more than four counties. By any standard, there is a large unmet need for legal services for low income persons in Montana. The Montana Supreme Court has adopted a Rule of Professional Conduct that "[e]very lawyer has a professional responsibility to provide legal services to those unable to pay" and that "[a] lawyer should render at least 50 hours of pro bono public legal services per year." Mont.R.Prof. Conduct 6.1. It is the policy of the Public Defender's Office to encourage attorneys to volunteer to provide pro bono legal services in compliance with this policy and other applicable provisions of Montana law and the Montana Rules of Professional Conduct for lawyers.

#### **4. USE OF AGENCY RESOURCES**

##### **4.1 Hours of Work**

Public defender attorneys are encouraged to seek pro bono opportunities that can be accomplished outside of scheduled working hours.

However, pro bono legal services activities may sometimes occur during work hours. Supervisors are encouraged to be flexible and to accommodate, where feasible, the efforts of the attorneys they supervise to perform pro bono services. Employees seeking to participate in pro bono activities during regularly scheduled work hours may be granted annual leave, compensatory time off, or leave without pay, consistent with policies governing the use of such leave by state employees generally. Supervisor's decisions as to the authorization of leave may not be influenced by a supervisor's personal views regarding the substance of the pro bono activity.

##### **4.2 Use of Office Equipment**

Pro bono legal services are services provided in the public interest and in satisfaction of an ethical obligation of all attorneys to ensure that legal services are made available to persons of limited economic means. The Congress of the United States has recognized that this is not a private matter by authorizing the expenditure of tax dollars for the support of the national Legal Services program. Pro bono legal services therefore do not constitute the "private business" of the attorney for purposes of Mont. Code Ann. § 2-2-121(2)(a).

Nevertheless, respect for the public trust requires that public agency attorneys refrain from inappropriate use of state resources for purposes not connected to the agency's mission. Use of law books or on-line resources for which there is no usage-based charge in the performance of pro bono services involves only a negligible additional expense, if any, and is therefore permissible. When office computers, printers, and telephones are used in moderation for pro bono legal services, there is only negligible additional expense to the State for electricity, ink, and wear and tear, and such use therefore is permissible as long as the agency is reimbursed for supplies in accordance with Section 8, below.

This policy does not authorize the use for pro bono services of commercial electronic services for which there is a usage-based charge to the State.

Consistent with this policy, executive branch attorneys may use office telephone and facsimile machines for essential pro bono-related communication as long as no long distance or other additional usage-based charges to the State are incurred, the agency is reimbursed for any

fax paper used in connection with the pro bono services, and the usage does not interfere with official business.

This policy does not supersede agency policies designed to protect the safety or security of computer or local area network operations. Any use of agency-provided equipment for pro bono activities must be consistent with such policies.

This policy is also subject to any restrictions arising from law or contract on the use of agency equipment or supplies.

Public defender attorneys should contact their supervisors if there is any question as to whether an activity involves “negligible additional expense,” interferes or threatens to interfere with official business, and is consistent with agency computer security policies or legal or contract restrictions on use of equipment or supplies.

#### 4.3 Clerical Support

An attorney may not assign or otherwise require pro bono legal services of clerical or administrative support personnel. Office support personnel who are willing to volunteer to assist with the provision of pro bono legal services by agency attorneys may do so as long as the volunteer work does not interfere with the performance of the primary responsibilities to official duties. Professional support staff who serve as volunteers in pro bono services shall take leave or compensatory time for time used during the work day or develop a flexible work schedule with their supervisor in accordance with office policy.

#### 4.4 Letterhead

A public defender attorney may not use office letterhead or agency or office business cards in the performance of pro bono legal services.

### 5. **CONFLICT OF INTEREST**

#### 5.1 General

Public defender attorneys are bound by the Rules of Professional Conduct for attorneys and the ethical rules governing state employees to avoid conflicts of interest. These attorneys may not accept pro bono clients in matters which create or appear to create a conflict of interest with their work for the State. Such a conflict exists, among other situations, if a pro bono representation would require the attorney’s recusal in a matter involved in the attorney’s official duties.

#### 5.2 Prohibited actions

Given the public defender’s role in criminal cases and in cases involving the State of Montana, public defender attorneys may not undertake pro bono representation in any case involving: (a) actual or suspected abuse

against a partner or family member, or any other criminal conduct by one or both parties: or (b) an administrative or judicial proceeding in which the State of Montana or any political subdivision thereof is a party, or in which state interests are likely to be involved, *except* that a public defender attorney may participate in a case in which the State of Montana.

Department of Public Health and Human Services (“DPHHS”) is providing child support enforcement services under Title IV-D of the Social Security Act to one or more of the parties. [See Mont. Code Ann. § 40-5-202(5)].

In any such case, the public defender attorney must make it clear to both the client and DPHHS that the attorney is acting in his or her individual capacity and that the attorney will not continue to represent the client should there be an appeal to the Montana Supreme Court.

## **6. FORMALITIES OF REPRESENTATION**

### **6.1 Retainer Agreement**

Public defender attorneys subject to this policy shall use the model retainer agreement attached (Attachment A) to this policy, making explicit to a pro bono client that the attorney is acting in his or her individual capacity and not as a representative of the State of Montana. The client must sign the agreement acknowledging that fact.

### **6.2 Malpractice Insurance**

The State of Montana does not provide malpractice insurance coverage for the pro bono activities of its attorneys, since such activities are outside the course and scope of the attorney’s official duties. See Mont. Code Ann. § 2-9-305.

## **7. USE OF OFFICIAL POSITION OR PUBLIC OFFICE**

Public defender attorneys subject to this policy who provide pro bono legal services may not indicate or represent in any way that they are acting on behalf of the State or any agency or office of the State, or in their official capacity. The incidental identification of the public defender attorney as a State agency employee - for example, when an office post office box address or telephone number is used - is not prohibited. The public defender attorney is responsible for making it clear to the client, any opposing parties, or others involved in the pro bono case, that the attorney is acting in his or her individual capacity as a volunteer and not as a representative of the State or any of its agencies. Generally, state offices may not be used for meetings with clients or opposing counsel in a pro bono case unless the office space is a common area in a building not associated only with the public defender’s office.

**8. REIMBURSEMENT**

Public defender attorneys subject to this policy must reimburse their agencies for costs associated with printing, photocopying, long distance telephone charges, or faxing. When a public defender attorney accepts a pro bono case, the attorney shall keep a log of the number of pages printed on office printers, the number of pages copied on office photocopiers, and the number of pages received over an office facsimile machine. The attorney shall reimburse the state at the rate of fifteen cents per page, payable in one lump sum by May 31 of each fiscal year. Public defender attorneys should use their personal credit cards for any long distance phone charges; however, if a long distance telephone call must be made that results in a charge to the state, the attorney shall report the call on the case log and reimburse the office for the actual amount of the call. The attorney shall request prior permission from his or her supervisor if the anticipated costs exceed \$50 per case.

**9. DISCLAIMER**

This policy is intended only to encourage increased pro bono activities by public defender attorneys and is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party, against the State of Montana, its agencies, officers, or any person.

**10. PERSONAL FAMILY LEGAL MATTERS**

Notwithstanding any other provision of this policy, a public defender attorney may perform personal and family legal services including counseling family members in matters involving criminal law, provided the activity does not interfere with the proper and effective performance of the attorney's official duties.

**11. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be address to the OPD Human Resource Officer at:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6091



**ATTACHMENT A**

**RETAINER AGREEMENT**

The undersigned client (CLIENT) engages the undersigned attorney (ATTORNEY) for legal representation in the following matter:

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ATTORNEY will make no charge to the client for attorney fees in the matter. CLIENT acknowledges that ATTORNEY is acting in ATTORNEY'S individual capacity and is not acting as a representative of the State of Montana, Office of the State Public Defender, or any other state agency.

CLIENT will cooperate fully with ATTORNEY and will provide all information known by or available to CLIENT which may aid ATTORNEY in representing CLIENT.

CLIENT authorizes and directs ATTORNEY to take all actions which ATTORNEY deems advisable on CLIENT's behalf. ATTORNEY agrees to notify CLIENT promptly of all significant developments and to consult with CLIENT in advance as to any significant decisions concerning those developments.

ATTORNEY will represent CLIENT diligently but makes no promises or representations as to the success of those efforts. ATTORNEY may terminate representation of CLIENT: (1) if ATTORNEY believes further action is not justified on behalf of CLIENT, or (2) if CLIENT does not cooperate with ATTORNEY.

CLIENT is responsible for any costs incurred other than attorney's fees. Efforts shall be made to waive costs whenever possible.

This Retainer does not cover an appeal. In the event an appeal becomes possible, ATTORNEY will decide at that time whether or not to further represent CLIENT.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CLIENT

\_\_\_\_\_  
ATTORNEY

**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> Workplace Safety	<b>Policy No.:</b> 530
<b>Title</b> 39	<b>Pages:</b> 5
<b>Section:</b> 71	<b>Last Review Date:</b> 11-18-13
<b>Effective Date:</b> 09-01-07	<b>Revision Date:</b> Approved 8-7-14

**1.0 POLICY**

- 1.1 It is the purpose of this policy to promote employee health and safety and to establish and administer a safety program pursuant to the Workers' Compensation provisions of MCA 39-71 and the Montana Safety Culture act, MCA 39-71-1501. The Montana Safety Culture act requires each public or private employer to establish and administer a safety program in accordance with rules adopted by the Department of Labor pursuant to 39-71-1505.
  
- 1.2 The frequency and severity of workplace accidents and injuries will be minimized by:
  - A. Creating an Office of the State Public Defender (OPD) Safety Committee; and
  - B. Assigning authority, responsibility and accountability to OPD employees and supervisors for implementing the OPD Safety Program.

**2.0 RESPONSIBILITIES/REQUIREMENTS**

- 2.1 **Chief Public Defender, Chief Appellate Defender and Conflict Coordinator**  
The Chief Public Defender, Chief Appellate Defender, and Conflict Coordinator are ultimately responsible for minimizing work-related losses and accidents by encouraging and supporting an agency-specific safety program. To accomplish this, they will:
  - A. Ensure this safety policy is followed by all public defender offices statewide.
  - B. Appoint a Safety Committee Chairperson (SCC) to work with supervisors in implementing the safety program.
  - C. Require that all supervisors be responsible for providing new employees an orientation which includes a safety component.
  - D. Require that all employee job profiles and performance appraisals include safety-related requirements.
  
- 2.2 **Safety Committee**  
It is the responsibility of the Safety Committee to:
  - A. Recommend to supervisors safety training and awareness programs or topics that could be made available to OPD employees.
  - B. Recommend to supervisors safety policies, practices and procedures.
  - C. Assist supervisors in training OPD employees on safety-related topics.
  - D. Assist supervisors in monitoring the workplace for safe practices.
  - E. Develop incentive programs to promote safety.
  - F. Gather and review safety checklists created by safety professionals and others that relate to work environments within the OPD. These checklists will be available to assist supervisors with monitoring and addressing work place issues for obvious safety hazards within their work area.

- G. Assist supervisors in finding new members for building Employee Safety Units (ESU). ESU's are groups of employees designated to take responsibility for various roles in the event of an emergency evacuation of a building.
- H. Assist the SCC in creating and maintaining a Safety Committee website where safety guidelines and prepared safety information is available.
- I. Suggest replacements for Committee members who can no longer serve.

### **2.3 Safety Committee Chairperson**

The SCC will:

- A. Organize and chair meetings of the Safety Committee.
- B. Meet at least quarterly with supervisors to give updates on Committee activity and other safety issues.
- C. Serve as the OPD liaison to the Department of Administration Safety Committee.

### **2.4 Human Resource Officer**

The OPD Human Resource Officer will:

- A. Work with the Safety Committee to make sure that appropriate safety information is provided during new employee orientation and other appropriate times. New employees are required to sign a statement that they have received the OPD Workplace Safety Policy.
- B. Make sure all new employees receive Return to Work orientation.
- C. Work with supervisors:
  1. To ensure that any documented special needs of employees regarding safety are met.
  2. To ensure documented special needs of injured workers are met.
  3. To assist supervisors in including safety performance standards in performance appraisals by providing model language.
  4. To ensure that the enforcement of safety standards and requirements are included in job profiles.
  5. To promote consistency in Return to Work implementation.
  6. To provide resource information to supervisors for office inspections by seeking assistance and training services from the Department of Labor and Industry's Employment Relations Division, the State Fund, the Risk Management and Tort Defense Division and Workers' Compensation Management Bureau.
  7. To provide training to supervisors on how to report workplace accidents.
- D. Serve as the main point of contact for reporting accidents to the State Fund and report all accidents to the State Fund within 48 hours.
- E. Serve as the coordinator for workers' compensation claim management.

### **2.5 Department of Administration**

#### **2.5.1 Risk Management and Tort Defense Division**

The Risk management and Tort Defense Division will assist the agency with risk management advice and training related to auto, property and other general liability risks.

#### **2.5.2 Workers' Compensation Management Bureau**

The Workers' Compensation Management Bureau will:

- A. Provide guidance and oversight with respect to management of the workers; compensation programs, including safety and return to work.

- B. Provide suggestions and advice regarding safety, return to work, and workers' compensation management practices, training, policies and procedures as requested.

## **2.6 Office of the State Public Defender Supervisors**

OPD Supervisors will:

- A. Report workplace accidents and injuries to the Human Resource Officer within 24 hours on the [First Report of Injury Form](#). Additional forms may also be required.
- B. Actively participate in safety training and keep abreast of safety initiatives. Work with Safety Committee members concerning the Emergency Action Plan. Conduct safety inspections of the work area. Monitor and address work place issues for obvious safety hazards.
- C. Encourage employees to feel free to report any potential safety problems or change in process that would make the job or work space safer.
- D. Ensure employees receive, and discuss with them, prepared workplace safety information.
- E. Ensure that new employees or employees new to a specific job receive safety orientation on how to conduct their jobs safely.
- F. Ensure that personal protective equipment is used by employees and that it is available, maintained, and replaced when necessary.
- G. Work with the Human Resources Officer to ensure that safety performance is part of each employee's written performance appraisal and job profile.
- H. Perform safety inspections, at least quarterly, of offices.
- I. Participate in transitional duty team meetings as needed.
- J. Work to instill a positive, cooperative culture for Return to Work within the agency.

## **2.7 Office of the State Public Defender Employees**

Every employee of the Office of the State Public Defender is responsible to maintain an awareness of safety concerns, use common sense and comply with all state and federal safety and health regulations and policies.

OPD Employees will:

- A. Participate in new employee orientation at time-of-hire.
- B. Participate in safety training.
- C. Participate in on the job Return to Work training.
- D. Report incidents and accidents to their supervisor or designee, regardless if medical attention is required. The [First Report of Injury Form](#) must be completed by the employee and supervisor within 24 hours of the incident or accident.
- E. Assist in accident investigations and early-return-to-work programs.
- F. Participate in Safety Committee meetings when requested.
- G. Use required personal protective equipment.
- H. Report safety hazards to supervisor and/or safety representative.
- I. Support co-workers participating in Return to Work activities.

## **3.0 PROCEDURES**

Employees and Supervisors must regularly check for and take appropriate action to provide for a safe work environment:

- A. Obstruction of fire exits
- B. Misuse of heating appliances
- C. Overloading of electrical circuits and plug-ins

- D. Electrical hazards
- E. Proper illumination for exit signs
- F. Excessive flammables stored in offices
- G. Excessive clutter in offices or storage spaces
- H. Blocked hallways

#### **4.0 APPENDICES**

All appendices listed in this policy can be found on the Office of the State Public Defender [Intranet](#) site. For assistance in locating this site, please contact your supervisor, network support personnel or the Human Resource Officer.

#### **5.0 CROSS-REFERENCE GUIDE**

The following laws, rules or policies may contain provisions that might modify a decision relating to this policy. The list should not be considered exhaustive; other policies may apply.

##### **5.1 Federal Laws**

- Family Medical Leave Act
- Americans with Disabilities Act

##### **5.2 State Laws**

Section 39-71-101 – 39-71-123, MCA	Compensation Act
Section 39-71-1505, MCA	Safety Culture Act
Section 49-10101 – 49-4-501, MCA	Montana Human Rights Act

##### **5.3 State Policies (Montana Operations Manual)**

- Annual Vacation Leave
- Sick Leave
- Sick Leave Fund
- Disability and Maternity
- Disaster and Emergency Leave
- Leave of Absence Without Pay
- Discipline Handling Policy

##### **5.4 Return to Work Resources**

<http://benefits.mt.gov/pages/wcmb.return.to.work.html>

##### **5.5 State of Montana Disaster and Emergency Plan**

#### **6.0 CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

*Violation of any provision of this policy may result in disciplinary action up to and including termination.* Any violations of this policy should be reported to your supervisor or the Human Resource Officer.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

- Office of the State Public Defender
- Administrative Service Division
- 44 West Park, Butte, MT 59701
- (406) 496-6080

**ATTACHMENT A**

**WORKPLACE SAFETY  
ACKNOWLEDGEMENT FORM**

By signing this form I acknowledge that I have read the "Workplace Safety" policy and I understand that I am bound by the requirements in that policy.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

DATED: \_\_\_\_\_

This form must be signed and returned to:

Office of the State Public Defender  
Human Resource Office  
44 West Park  
Butte, MT 59701

(406) 496-6091

# Office of the State Public Defender

## Human Resource Policies

Subject: <b>Drug-Free Workplace</b>	Policy No.: <b>531</b>
Title:	Pages: <b>2</b>
Section:	Last Review Date:
Effective Date: <b>7-15-10</b>	Revision Date:

### 1.0 POLICY

The Office of the State Public Defender (OPD) is committed to a drug-free workplace. It is the policy of OPD and the State of Montana that the unlawful manufacture, distribution, dispensing, possession, use or solicitation of a controlled substance by any employee in the workplace is prohibited.

### 2.0 PROCEDURE

**2.1** In compliance with the Drug-Free Workplace Act, an employee who is performing work under a covered federal grant will:

**2.1.1** Abide by the terms of the state's policy statement requiring a drug-free workplace; and

**2.1.2** Notify the agency of any conviction of a criminal drug statute which is the result of a violation which occurred in the workplace. The agency must be notified no later than five days after the conviction.

**2.2** OPD shall take one of the following actions within 30 days of receiving notice of a conviction from an employee:

**2.2.1** Take appropriate action against the employee, up to and including discharge; or

**2.2.2** Require such employee to participate satisfactorily in an approved drug abuse assistance or rehabilitation program. Drug counseling and rehabilitation may be covered by the Employee Group Benefits Plan. The State Health Care and Benefits Division should be contacted for further information on specific coverage. The State benefits plan also provides an employee assistance program.

**2.3** An employee who violates this prohibition is subject to disciplinary action, up to and including discharge, as provided in the Discipline Handling Policy, ARM 2.21.6505 et seq.

**2.4** Each employee working under a federal grant, as defined in the Drug-Free Workplace Act of 1988, must receive a copy of this policy.

### 3.0 CLOSING

This policy statement is adopted in compliance with the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D).

Questions about this policy should be directed to the OPD Human Resource Officer at the following address:

Office of the State Public Defender, Administrative Service Division  
44 West Park  
Butte, MT 59701  
Phone 406-496-6080

**ATTACHMENT A**

**DRUG-FREE WORKPLACE  
ACKNOWLEDGEMENT FORM**

My signature below indicates that I have received a copy of the Drug-Free Workplace Policy and memorandum addressed to Office of the State Public Defender employees explaining the requirements of the act.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: \_\_\_\_\_

Employment Location: indicate below the office street address, city, state, zip code, and county.

\_\_\_\_\_  
Office

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
County

SIGNATURE: \_\_\_\_\_

DATED: \_\_\_\_\_

This form must be signed and returned to:  
Office of the State Public Defender  
Human Resource Office  
44 West Park  
Butte, MT 59701



**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject:</b> Release of Information	<b>Policy No.:</b> 535
<b>Title</b>	<b>Pages:</b> 5
<b>Section:</b>	<b>Revision Date:</b> 11-17-08
<b>Effective Date:</b> 9-1-07	<b>Effective Date:</b> 11-17-08

**1. POLICY**

**1.1** It is the purpose of this policy to establish guidelines for the release of accurate and timely information of concern to clients; judges; attorneys; co-workers; city, county, and state agency personnel; and the public, which balances the right to know and an individual's right to privacy.

**1.1.1** Right to Know: No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. (*Article II, section 9 of the Montana Constitution*)

**1.1.2** Right to Privacy: The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest. (*Article II, section 10 of the Montana Constitution*)

**1.2** Employees must be careful not to disseminate confidential information. Employees are to refer questions relating to a specific client and/or case to the attorney representing the client. Release of information relating to employees is to be referred to the supervisor or the Human Resource Officer.

**1.3** All Office of the State Public Defender (OPD) employees are required to acknowledge that they understand and will adhere to this policy by signing the Confidentiality Agreement (Attachment A).

**2. DEFINITIONS**

**2.1** "Public Information" is defined as information that is not designated as confidential by State or Federal law.

**2.2** "Confidential Information" includes verbal, written or computerized information and may include, but is not limited to, client records, notes of discussions with clients, attorney-client privileged information, medical records, case strategy, addresses, social security numbers, birth dates, financial information, billing statements, personnel records, verbal conversations concerning clients or co-workers where confidential information is discussed. Confidential information does not include information authorized to be disclosed by attorneys, or employees disclosing information based on the direction of an attorney, in

compliance with the Montana Rules of Professional Conduct.

- 2.3** “Employee” is defined as a volunteer, temporary, short term, student intern or permanent employee of the state.

### **3. PROCEDURES**

#### **3.1 General**

Employees may be asked to respond to information requests from clients; judges; attorneys; co-workers; city, county and state agency personnel; or the public. Requests received, processed and maintained by the Office of the State Public Defender must be treated as confidential. OPD clients and employees are entitled to a high degree of confidence that information furnished to the agency is protected against unauthorized use, inspection or disclosure. Thus, employees handling confidential or sensitive information must always exercise caution.

Information which is of public record is to be disseminated in a timely and polite manner. Questions are to be referred to your supervisor.

Confidential information requests must be referred to the supervisor or to the attorney familiar with the specific client or case.

#### **3.2 Client Information**

Employees can not disclose confidential information regarding clients to *anyone except the client*, unless the client has completed a signed Release, the Release is on file with the Office of the State Public Defender, and the employee has obtained approval from either the supervisor or the client’s assigned attorney. This includes, but is not limited to, family members, current or former spouses, significant others, individuals claiming to have power of attorney, and friends.

Employees other than attorneys shall not provide the public or any individual with legal advice.

Employees, except for attorneys or employees acting at the direction of an attorney, shall refrain from making public comment when asked about specific clients or cases, pursuant to the Montana Rules of Professional Conduct.

#### **3.3 Employee Information**

##### **3.3.1 CONFIDENTIAL EMPLOYEE INFORMATION**

Information requested by other State agencies, State employees, co-workers or the general public concerning issues relating to an employee (including, but not limited to, information relating to payroll, benefit payments, recruitment and selection, performance appraisal, disciplinary action, grievances, reduction in work force, disabled person's employment preference, veteran's employment preference, or medical information) must be treated as confidential information which may require authorization from the employee, a constitutionally valid legal order, or specific statutory authority to release the information. Questions regarding these requests are to be referred to the Human Resource Officer prior to the release of any information.

### **3.3.2 PUBLIC EMPLOYEE INFORMATION**

An employee's position title, dates and duration of employment, salary, and claims for vacation, holiday or sick leave pay are public information and must be released on request. The Office of the State Public Defender may require that the request be in writing but may not require justification for the request.

### **3.3.3 REFERENCE CHECKS**

Employees or supervisors contacted by other employers regarding current or former employee references are to refer the inquiry to the Human Resource Officer.

## **3.4 Media**

Employees contacted by the media regarding issues specific to a client or case are to refer the inquiry to the supervisor or the attorney handling the case.

Questions regarding policy issues are to be forwarded to the Managing Attorney, the Regional Deputy Public Defender, or to the Chief Public Defender prior to responding to the request.

All contacts with the media are to be reported to the Chief Public Defender or the Administrative Director in the Central Office (496-6080).

## **3.5 Legislative Activities**

### **3.5.1 REQUESTS FROM LEGISLATORS**

To help ensure that requests from legislators or legislative staff are fulfilled promptly, thoroughly and accurately, an employee receiving a request from a legislator or legislative staff must notify their immediate supervisor as soon as possible. Supervisors must notify the Central Office of all such requests as soon as possible. It may be necessary for the Central Office to contact the Governor's office for policy guidance before responding to a request.

### **3.5.2 LOBBYING**

Employees who are not registered as lobbyists are not to attend committee hearings or floor sessions on State time unless requested or approved by the Chief Public Defender.

An employee who lobbies on his or her own behalf during regular working hours must take annual leave, compensatory time or leave without pay to do so. An employee involved in personal lobbying or attending hearings who identifies him or herself as a state employee must state that they are not representing the agency and that they are on approved leave. An employee lobbying on their own behalf may not release information obtained as an employee of the Office of the State Public Defender.

A bargaining unit employee who attends committee hearings or floor sessions at the request of the union must notify the Chief Public Defender

that they will be in attendance. An employee who attends on behalf of the union during regular working hours must take annual leave, compensatory time or leave without pay to do so. An employee involved in lobbying or attending hearings who identifies him or herself as a state employee must state that they are not representing the agency and that they are on approved leave.

### **3.6 Requests Related to Electronic Information**

Employees are liable for any misuse of information obtained using their computer user ID (CM number) or password. Passwords are confidential and are not to be shared with anyone, including IT staff.

### **3.7 Regional and Local Offices**

Procedures for individual Regional or Public Defender Offices may exist to define specific guidelines for requests for information. This policy does not change those procedures, but is meant to cover areas that do not have more specific procedures.

## **4. CROSS-REFERENCE GUIDE**

The following laws, rules or policies may contain provisions that might pertain to a decision relating to public information. The list should not be considered exhaustive; other policies may apply.

### **4.1 State Laws**

[Montana Constitution Article II, Sections 8, 9, and 10.](#)  
[Montana Criminal Justice Information Act, MCA 44-5-101 to 311](#)

### **4.2 State Policies (Montana Operations Manual)**

[MOM 3-0165 Recruitment & Selection](#)  
[MOM 3-0110 Employee Record Keeping](#)

## **5. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable

Questions regarding this policy can be directed to your supervisor or the Human Resource Officer at:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701

Phone (406) 496-6091

## ATTACHMENT A

### Confidentiality Agreement

As an employee of the Office of the State Public Defender (OPD) you may have access to confidential information regarding clients and co-workers. It is critical for OPD employees to maintain confidentiality at all times. Confidential information regarding clients and co-workers includes, but is not limited to, written or computerized client records, notes of discussions with clients, attorney-client privileged information, medical records, case strategy, addresses, social security numbers, birth dates, financial information, billing statements, personnel records, or verbal conversations concerning clients or co-workers where confidential information is discussed.

The Office of the State Public Defender is committed to complying with the Constitution of the State of Montana, specifically Article II, Section 8, Right of Participation; Article II, Section 9, Right to Know; Article II, Section 10, Right of Privacy; Montana Criminal Justice Information Act, MCA 44-5-101 to 311; Health Insurance Portability and Accountability Act (HIPAA), Rules of Professional Conduct, and other State and Federal laws protecting clients' or co-workers' privacy.

Violation of the provisions of State and/or Federal Law can result in civil and/or criminal penalties as well as disciplinary action up to and including termination of employment.

Guidelines for maintaining confidentiality:

1. Access only those records you need to perform your duties or as authorized by your supervisor.
2. Do not share or discuss confidential information you access or become aware of regarding clients or co-workers, except for work-related reasons and with the appropriate individuals.
3. Do not repeat conversations regarding clients or co-workers to anyone, whether internal or external to the Office of the State Public Defender, except for work-related reasons.
4. Do not provide any confidential information to the general public when asked about specific clients or cases.
5. Provide confidential information only to those persons who are authorized to receive it.
6. If you have questions about whether specific information is public or private, contact your supervisor, the attorney assigned to a case, or the Human Resource Officer (496-6091).

#### **Acknowledgement:**

I understand that if I am volunteer, temporary, short term or student intern worker in the Office of the State Public Defender I am bound by the same laws on confidentiality as if I were a permanent employee.

My signature indicates that I have read and understand the Office of the State Public Defender employee guidelines regarding confidentiality, and I agree to abide by these guidelines. I understand that unauthorized use or disclosure of confidential information concerning clients, or personal information regarding co-workers, to any unauthorized person internal or external to the Office of the State Public Defender, violates confidentiality and or legal ethics. I also understand the penalties for non-compliance.

\_\_\_\_\_  
Printed Employee name

\_\_\_\_\_  
Date

This form must be signed and returned to:

Office of the State Public Defender, Human Resource Office  
44 West Park  
Butte, MT 59701  
(406) 496-6091

**Office of the State Public Defender  
Administrative Policies  
Human Resources**

<b>Subject: Broadband Pay Plan</b>	<b>Policy No.: 540</b>
<b>Title</b>	<b>Pages: 4</b>
<b>Section:</b>	<b>Last Review Date: 11-18-13</b>
<b>Effective Date: 5-21-09</b>	<b>Revision Date: 5-26-16</b>

**1. PURPOSE**

The purpose of this policy is to establish consistent application of the Broadband Pay Plan in accordance with 2-18-301 through 2-18-303, MCA.

**2. SCOPE**

This policy applies to all Office of the State Public Defender (OPD) employees excluding positions listed under 2-18-103 MCA: the chief public defender and the chief appellate defender appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed by the chief public defender.

If this policy conflicts with collective bargaining agreements, the collective bargaining agreements take precedence.

**3. OBJECTIVE**

OPD believes that competent employees are a critical component in the agency's ability to fulfill its mission and goals, and that the Broadband Pay Plan will enhance employees' opportunities for rewards and recognition. Relevant market factors, employee competence and contributions should be important considerations in determining compensation that is fair and equitable. The main objectives of the OPD Broadband Pay Plan are to be internally equitable, externally competitive and sufficiently motivating to more closely reflect an employee's true value to the organization; to provide a closer relationship to the marketplace; and recognize knowledge and performance levels that contribute to the agency mission while remaining fiscally responsible.

This pay plan is not a contract between the department and its employees but is intended to provide direction to employees and managers.

**4. OCCUPATIONS AND MARKET SALARY INFORMATION**

OPD will use the occupations and market salary information established by the State Human Resources Division and union contract. OPD will be proactive in working with the State Human Resources Division and Labor Relations to ensure that markets are appropriate for occupations employed by OPD.

**5. ESTABLISHING BASE PAY**

**5.1 BASE PAY**

The agency will utilize the State Human Resource Division's established pay ranges unless exceptional circumstances dictate otherwise. Pay ranges must fit within the state broad pay bands. The ability to pay will be a primary factor when establishing base pay ranges.

5.2 MINIMUM SALARY

An employee's base pay may be no less than the salary of the pay band for the employee's assigned classification, except as provided in section 5.5, "Training Assignment."

5.3 NEW HIRE

The base pay will be set at a rate commensurate with similar positions taking into consideration internal equity, incumbent education and experience.

5.4 PROBATIONARY PAY RATE

A probationary pay rate may be set at a rate lower than the rate commensurate with similar positions until the employee has successfully completed the probationary period.

5.5 TRAINING ASSIGNMENT

Training assignments will be administered in accordance with the MOM Broadband Pay Plan Policy. At the end of the training assignment, the base pay will be set as detailed in the training assignment agreement. Training assignments may be set for up to one year with the possibility of a one year extension.

5.6 PROMOTIONS AND DEMOTIONS

The base pay of an employee who is promoted or demoted shall be set in the same manner as new hires. Except for temporary promotions, a promotion into a different position must be as a result of a competitive, internal or external, hiring process.

5.7 DEMOTIONS

The base salary for an employee moving to a lower occupation or lower pay band will normally be set by considering the employee's relative job-related qualifications (experience, knowledge, skills and abilities). The salary of an employee who is demoted will be determined by the Chief Public Defender, Chief Appellate Defender or Conflict Coordinator up to the maximum salary for the occupation, based on existing salary relationships within the agency, the agency's ability to pay, and internal equity. OPD may at its discretion protect the employee's current base salary for a period not to exceed 180 calendar days. At the end of the protected period, if applicable, the agency must set the employee's base salary between the entry of the pay band up to the maximum of the new pay band.

The employee must be notified in writing of the wage rate prior to the change.

This rule does not apply to disciplinary and/or voluntary demotions.

5.8 RECLASSIFICATION

The base pay for an employee whose position has been reclassified to a different pay band or occupation shall be set in the same manner as new hires, dependent on funding availability and taking into consideration internal equity, and when possible, external equity.

## 6. WAGE ADJUSTMENTS

Wage adjustments must be approved by the Chief Public Defender, Chief Appellate Defender or Conflict Coordinator; the Human Resource Officer; and the Administrative Director and properly recorded in SABHRS. All wage adjustments must be documented and maintained in the employee's permanent personnel record and in the State HR system.

The following wage adjustments may be given based upon the availability of agency funds:

### 6.1 COMPETENCY PAY

Employees may be eligible to receive additional pay based on their competency. Competencies must be identifiable, observable, and measurable and compared to like positions for internal equity. Competency pay may be given as a bonus or as an increase to the base salary.

### 6.2 MARKET ADJUSTMENT

Employees whose base salary is below their occupation's competitive pay zone may be eligible for a market adjustment. Market pay adjustments may be used to address recruitment and retention issues. Market pay must be given as an increase to base pay.

### 6.3 RESULTS ADJUSTMENT

Employees may be eligible to receive a pay adjustment based on the results of their individual efforts or team efforts that can be measured by comparing accomplishments to established goals. Results pay must be given as a lump-sum.

### 6.4 SITUATIONAL ADJUSTMENT

Employees may be eligible to receive additional pay based on atypical situations or working conditions. OPD may use situational pay to address recruitment or retention issues related to certain requirements of the position such as location, extensive travel, unusual work hours, or unusual physical demands. Situational pay may be given as a lump-sum or as an increase to the base salary.

### 6.5 SUPERVISORY ADJUSTMENT

Employees may be eligible to receive a pay adjustment when performing supervisory duties if:

6.5.1 An employee occupying a position in a non-supervisory classification may be eligible for a pay adjustment when the position includes supervisory duties.

6.5.2 When an employee who is performing supervisory duties is classified in the same occupation and band as their subordinates an agency may recognize these additional duties with a pay adjustment.

The level of supervisory duties performed (i.e. lead worker, supervisor or manager), internal equity and the agency's ability to pay will determine the percentage increase that will be granted. This percentage will be between 4 percent for a lead worker up 12 percent for a manager.



**6.6 STRATEGIC PAY**

Additional pay may be awarded to attract and retain a key employee with competencies critical or vital to the achievement of the agency's mission or strategic goals. Strategic pay adjustments may be given as a one-time only, lump sum payment, or as an increase to base pay.

**6.7 TEMPORARY PROMOTION**

An employee may be temporarily assigned to a position that is higher in the agency's hierarchical structure for a period of up to two years. Pay will be set within the competitive pay zone of the higher position taking into consideration the percentage of the higher duties the employee will be performing and the duration of the temporary promotion.

**7. EFFECTIVE DATES**

The effective date for pay actions will be the first day of the pay period in which the request for a reclassification or wage adjustment has been approved per Section 6.

**8. CROSS REFERENCE GUIDE**

The following laws, rules or policies may contain provisions that might modify a decision relating to the Broadband Pay Plan. The list should not be considered exhaustive; other policies may apply.

State Laws

2-18-303 MCA    Procedures for administering broadband pay plan.  
39-31-305 MCA    Duty to bargain collectively -- good faith.

State Personnel Policies

State Performance Management and Evaluation Policy  
Broadband Pay Plan Policy

**9. CLOSING**

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions concerning this policy can be directed to your immediate supervisor or the Human Resource Office at:

Office of the State Public Defender  
Administrative Service Division  
44 West Park  
Butte, MT 59701

Phone 406-496-6080