



OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

February 12, 2018

Governor Steve Bullock
P.O. Box 200801
Helena, MT 59620-0801

The Montana Supreme Court
P.O. Box 203001
Helena, MT 59620-3001

The Montana Legislature
c/o Molly Petersen, Publications/Communications Officer
Legislative Services Division
P.O. Box 201706
Helena, MT 59620-1706

Dear Governor Bullock, Supreme Court Justices, and Legislators:

RE: Office of the State Public Defender Report
to the Governor, Supreme Court and Legislature

The 2017 Legislature passed HB 77, restructuring the Office of the State Public Defender effective July 1, 2017. This report covers the period July 1, 2016-June 30, 2017, during which the Public Defender Commission supervised agency operations. Pursuant to 47-1-105 (9), MCA (laws of 2015), the Montana Public Defender Commission was required to provide a biennial report to the Governor, Supreme Court and Legislature. Each interim, the Commission was also required to specifically report to the Law and Justice Interim Committee. Now that the Commission no longer exists, I am providing this report on behalf of the agency as the Interim Director. The report reflects agency operations as of June 30, 2017, prior to implementation of the legislation restructuring the agency.

Description of Report

1. All policies and procedures in effect for the operation and administration of the statewide public defender system and all practice standards established or being considered by the agency.
2. The number of deputy public defenders and the region supervised by each; and the number of attorney and non-attorney staff employed or contracted within the system, identified by region and office.
3. The number of new cases in which counsel was assigned to represent a party, identified by region, court and case type; and the total number of persons represented by the office, identified by region, court and case type.
4. The annual caseload and workload of each public defender, identified by region, court and case type.

Governor Bullock
Supreme Court Justices
Legislators
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5. The training programs conducted by the office and the number of attorney and non-attorney staff who attended each program; and the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted within the system.
6. Detailed expenditure data by court and case type.

This report is also available at <http://publicdefender.mt.gov/Resources/Reports>.

Please feel free to contact me at 496-6084 or hfreebourn@mt.gov if you have any questions regarding the information in this report.

Sincerely,

Handwritten signature in blue ink, appearing to read "H27-6-".

Harry Freebourn
Interim Director

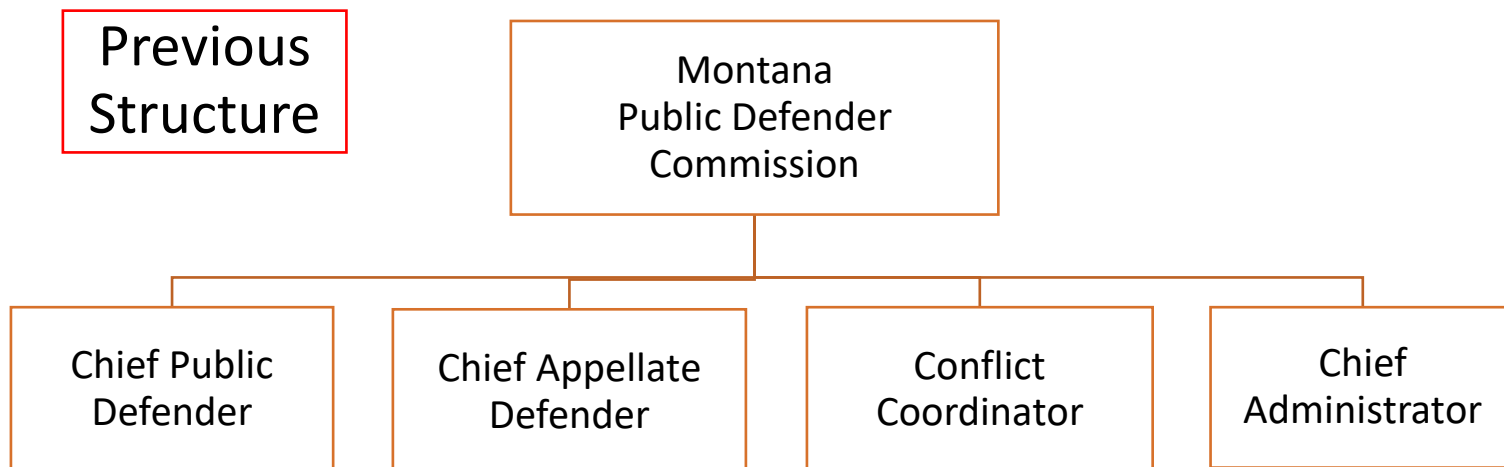
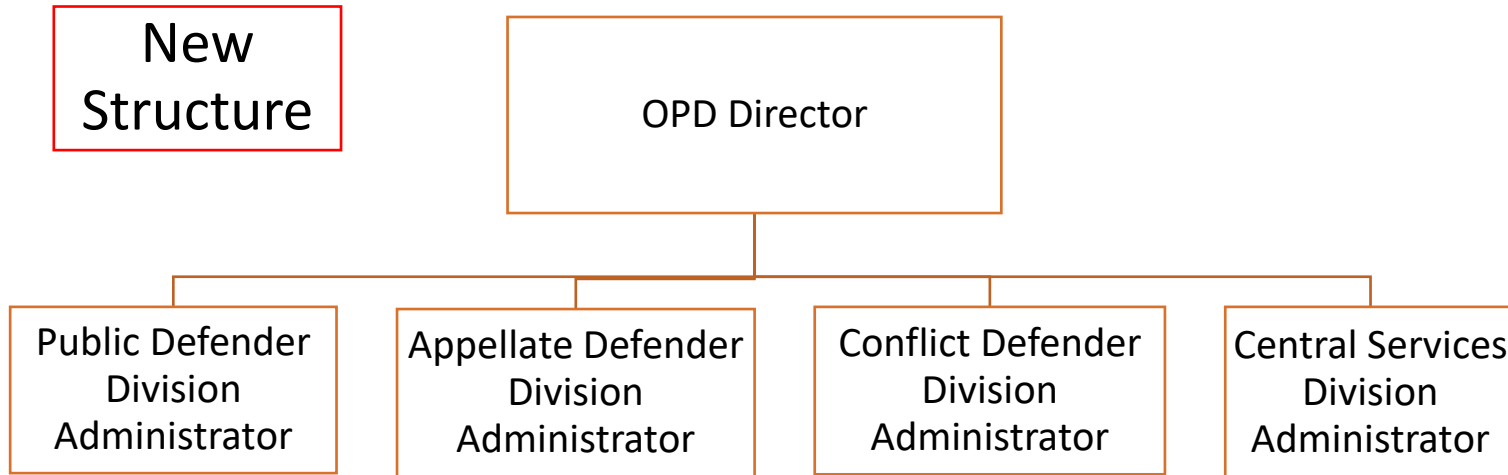
Public Defender Commission Membership

as of June 30, 2017

<p>Mark Parker, Chair P.O. Box 7212 Billings, MT 59102 (406) 245-9991 markdavidparker@gmail.com</p>	<p>Term ends July 1, 2017 <i>Qualification: attorney nominated by the Montana Supreme Court</i></p>
<p>Ann Sherwood, Vice-Chair P.O. Box 278 Pablo, MT 59855 (406) 675-2700 ext. 1125 annsherwood@hotmail.com</p>	<p>Term ends July 1, 2017 <i>Qualification: attorney nominated by State Bar, experienced in defense of juvenile delinquency and federal Indian Child Welfare Act</i></p>
<p>Roy Brown 1810 Poly Dr. Billings, MT 59102 (406) 591-1072 Brown.roy1651@gmail.com</p>	<p>Term ends July 1, 2018 <i>Qualification: public representative nominated by Senate President</i></p>
<p>Brian Gallik P.O. Box 658070 Bozeman, MT 59771 brian@galliklawfirm.com</p>	<p>Term ends July 1, 2019 <i>Qualification: attorney nominated by the Supreme Court</i></p>
<p>Larry Mansch P.O. Box 7607 Missoula, MT 59807 (406) 243-6698 larry@mtinnocenceproject.org</p>	<p>Term ends July 1, 2018 <i>Qualification: attorney nominated by State Bar, experienced in felony defense with one year as full-time public defender</i></p>
<p>Dr. Michael Metzger 2203 West Hollow Brook Drive Billings, MT 59106 (406) 855-1262 mmetzger@rimrock.org</p>	<p>Term ends July 1, 2019 <i>Qualification: employee of organization providing addictive behavior counseling</i></p>
<p>Margaret Novak P.O. Box 720 Chester, MT 59522 margaretmnovak@gmail.com</p>	<p>Term ends July 1, 2019 <i>Qualification: member of organization advocating on behalf of indigent persons</i></p>
<p>Maylinn Smith Director Margery Hunter Brown Indian Law Clinic University of Montana Missoula, MT 59812 (406) 243-5351 maylinnsmith@umontana.edu</p>	<p>Term ends July 1, 2018 <i>Qualification: member of organization advocating on behalf of racial minorities</i></p>
<p>Vacant</p>	<p>Term ends July 1, 2019 <i>Qualification: attorney nominated by State Bar, who represents criminal defense lawyers</i></p>
<p>Vacant</p>	<p>Term ends: July 1, 2018 <i>Qualification: public representative nominated by House Speaker</i></p>
<p>Vacant</p>	<p>Term ends July 1, 2017 <i>Qualification: member of organization advocating on behalf of people with mental illness and developmental disabilities</i></p>

OFFICE OF THE STATE PUBLIC DEFENDER

For more information, contact Harry Freebourn, Interim Director, at hfreebourn@mt.gov, or 496-6084.





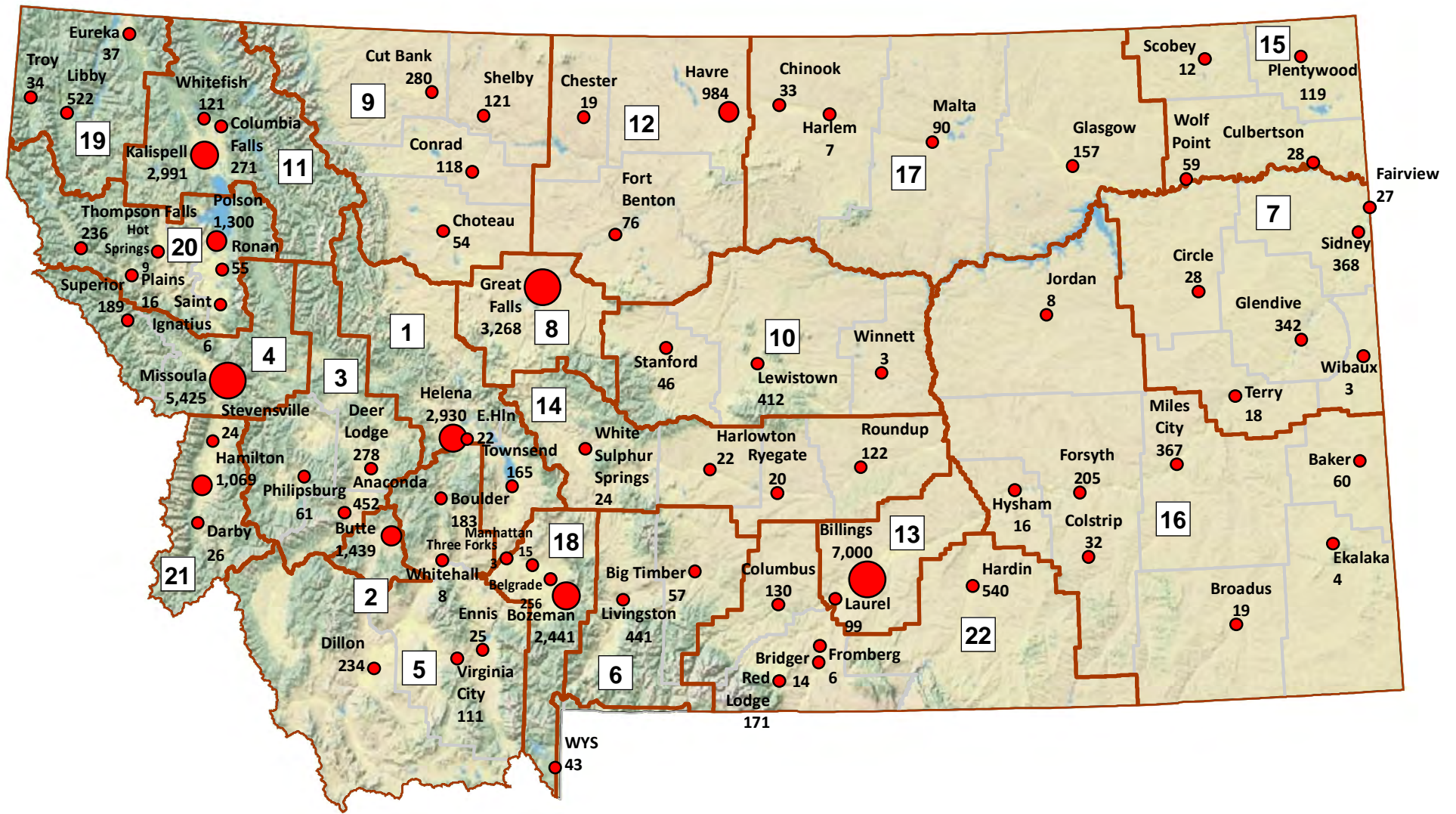
OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

Mission

We provide effective assistance of counsel and equal access to justice to eligible individuals.

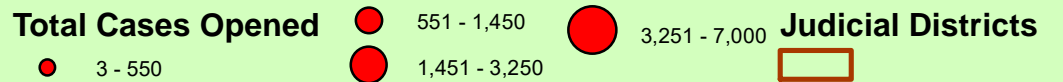
OPD Mission 2017

44 West Park Street Butte, Montana 59701
406.496.6080 (fax) 406.496.6098
publicdefender.mt.gov



Total New Cases Opened - Fiscal Year 2017 by Judicial Districts

Total Cases Opened in FY17: 37,126



REGION 1 KALISPELL

Attorneys: 22
 Contract Attorneys: 42
 Support Staff: 8
 Investigators: 3
 Social Worker: 0

FYE 2017 Cases Opened: 5,597
 District Court Cases: 2,219
 Cases in Courts of Limited Jurisdiction: 3,378
 District Courts: 4
 Courts of Limited Jurisdiction: 16

Sq. Miles: 13,365
 Region Population (2010 Census): 150,774
 Region Poverty Pop. (2010 Census): 25,219

Total Opened Cases

- 3 - 200
- 201 - 550
- 551 - 1,450
- 1,451 - 3,250



OPD Total New Cases Opened in Fiscal Year 2017






REGION 2 MISSOULA

Attorneys: 30
 Contract Attorneys: 61
 Support Staff: 11
 Investigators: 4
 Social Worker: 1

FYE 2017 Cases Opened: 6,715
 District Court Cases: 2,232
 Cases in Courts of Limited Jurisdiction: 4,483
 District Courts: 3
 Courts of Limited Jurisdiction: 10

Sq. Miles: 6,235
 Region Population (2010 Census): 153,734
 Region Poverty Pop. (2010 Census): 23,620

Total Opened Cases

	3 - 200		551 - 1,450
	3,251 - 7,000		



OPD Total New Cases Opened in Fiscal Year 2017



REGION 3 GREAT FALLS

Attorneys: 15.5
 Contract Attorneys: 47
 Support Staff: 7
 Investigators: 2
 Social Worker: 0

FYE 2017 Cases Opened: 3,841
 District Court Cases: 2,025
 Cases in Courts of Limited Jurisdiction: 1,816
 District Courts: 5
 Courts of Limited Jurisdiction: 16

Sq. Miles: 11,619
 Region Population (2010 Census): 112,276
 Region Poverty Pop. (2010 Census): 17,237

Total Opened Cases

- 3 - 200
- 201 - 550
- 3,251 - 7,000



OPD Total New Cases Opened in Fiscal Year 2017



REGION 4 HELENA

Attorneys: 16.5
Contract Attorneys: 51
Support Staff: 5
Investigators: 1
Social Worker: 1

FYE 2017 Cases Opened: 3,308
District Court Cases: 1,316
Cases in Courts of Limited Jurisdiction: 1,992
District Courts: 3
Courts of Limited Jurisdiction: 8

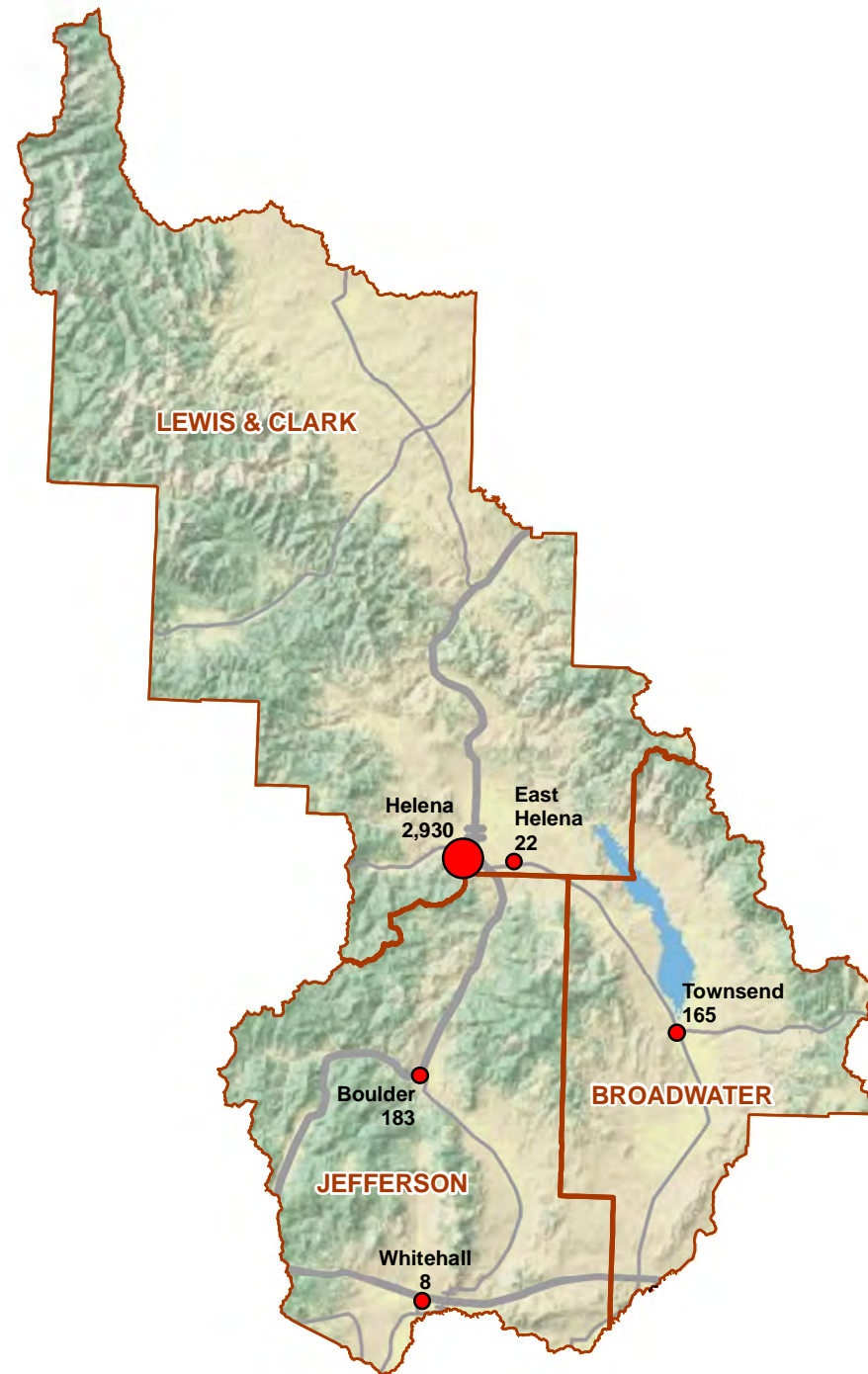
Sq. Miles: 6,388
Region Population (2010 Census): 80,413
Region Poverty Pop. (2010 Census): 8,813

Total Opened Cases

- 1,451 - 3,250
- 3 - 200



OPD Total New Cases Opened in Fiscal Year 2017



REGION 5 BUTTE

Attorneys: 10
 Contract Attorneys: 54
 Support Staff: 4
 Investigators: 1
 Social Worker: 0

FYE 2017 Cases Opened: 2,600
 District Court Cases: 1,004
 Cases in Courts of Limited Jurisdiction: 1,596
 District Courts: 6
 Courts of Limited Jurisdiction: 14

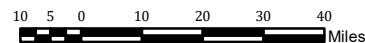
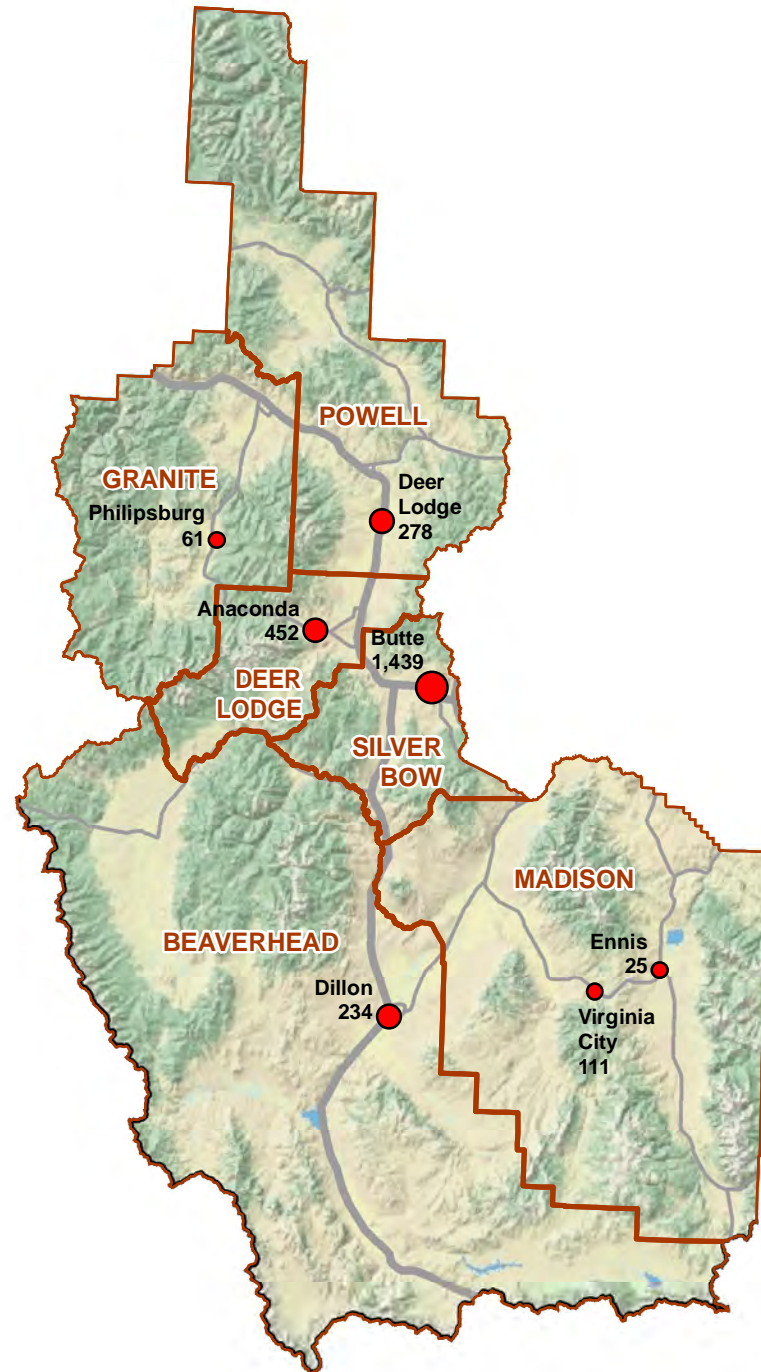
Sq. Miles: 14,693
 Region Population (2010 Census): 70,541
 Region Poverty Pop. (2010 Census): 11,524

Total Opened Cases

- 3 - 200
- 201 - 550
- 551 - 1,450



OPD Total New Cases Opened in Fiscal Year 2017



REGION 6 HAVRE

Attorneys: 5

Contract Attorneys: 26

Support Staff: 3

Investigators: 1

Social Worker: 0

FYE 2017 Cases Opened: 1,485

District Court Cases: 765

Cases in Courts of Limited Jurisdiction: 720

District Courts: 6

Courts of Limited Jurisdiction: 16

Sq. Miles: 22,858

Region Population (2010 Census): 42,361

Region Poverty Pop. (2010 Census): 7,809

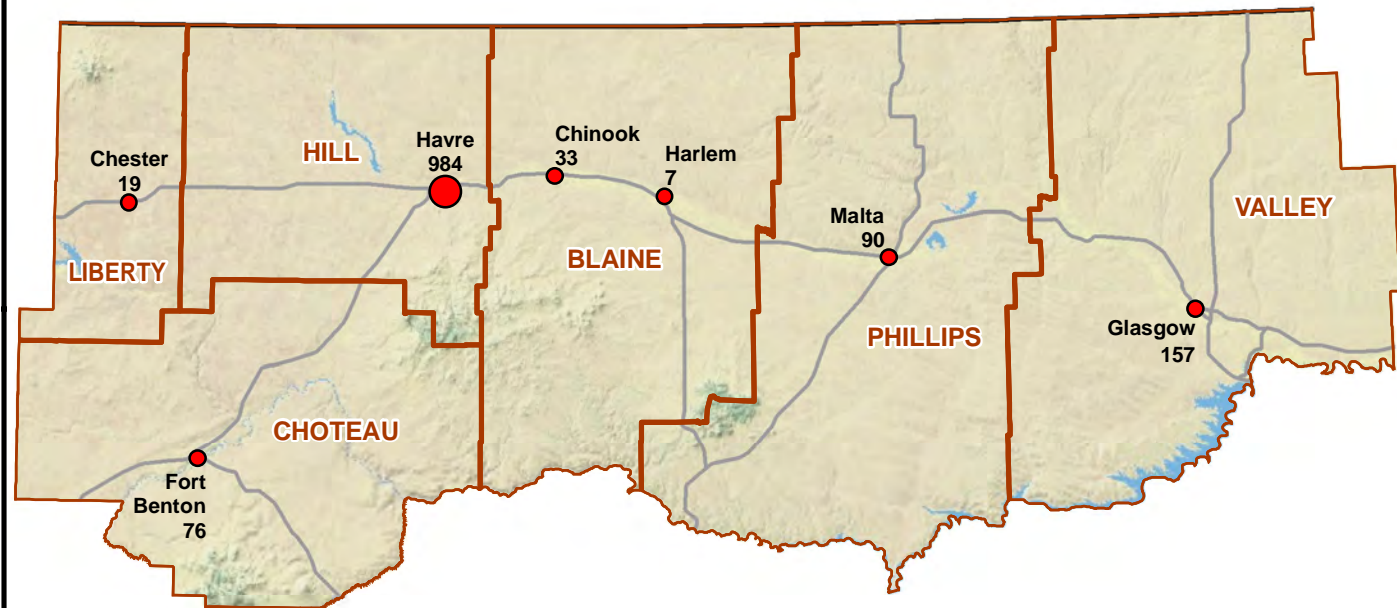
Total Opened Cases ● 551 - 1,450

● 3 - 200



Office of the State
Public Defender

OPD Total New Cases Opened in Fiscal Year 2017



10 5 0 10 20 30 40
Miles

REGION 7 LEWISTOWN

Attorneys: 2.5

Contract Attorneys: 39

Support Staff: 2

Investigators: 0

Social Worker: 0

FYE 2017 Cases Opened: 649

District Court Cases: 411

Cases in Courts of Limited Jurisdiction: 238

District Courts: 7

Courts of Limited Jurisdiction: 17

Sq. Miles: 14,748

Region Population (2010 Census): 23,633

Region Poverty Pop. (2010 Census): 3,655

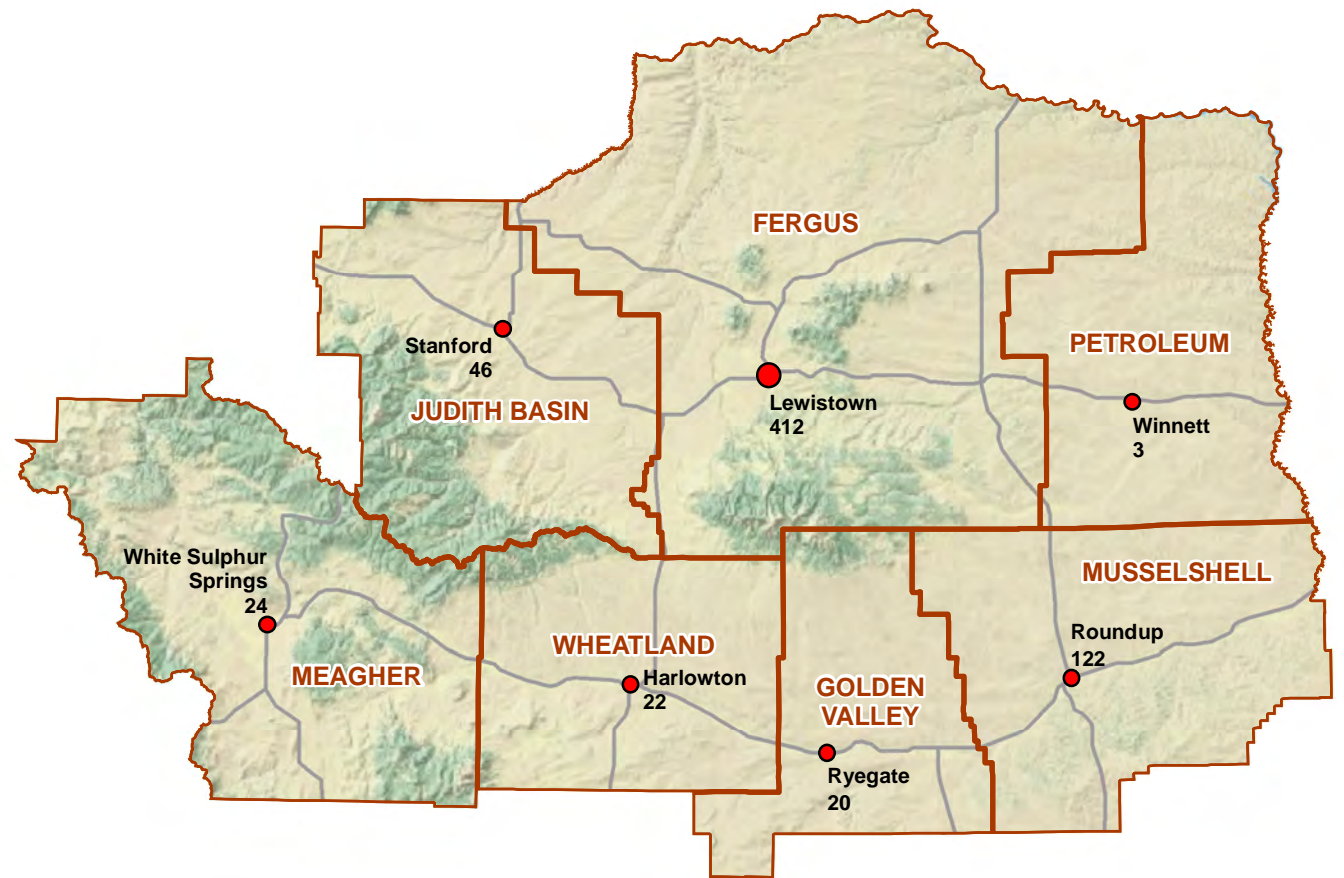
Total Opened Cases ● 201 - 550

● 3 - 200



Office of the State
Public Defender

OPD Total New Cases Opened in Fiscal Year 2017



10 5 0 10 20 30 40 Miles

REGION 8 BOZEMAN

Attorneys: 12
 Contract Attorneys: 34
 Support Staff: 6
 Investigators: 2
 Social Worker: 0

FYE 2017 Cases Opened: 3,256
 District Court Cases: 922
 Cases in Courts of Limited Jurisdiction: 2,334
 District Courts: 3
 Courts of Limited Jurisdiction: 10

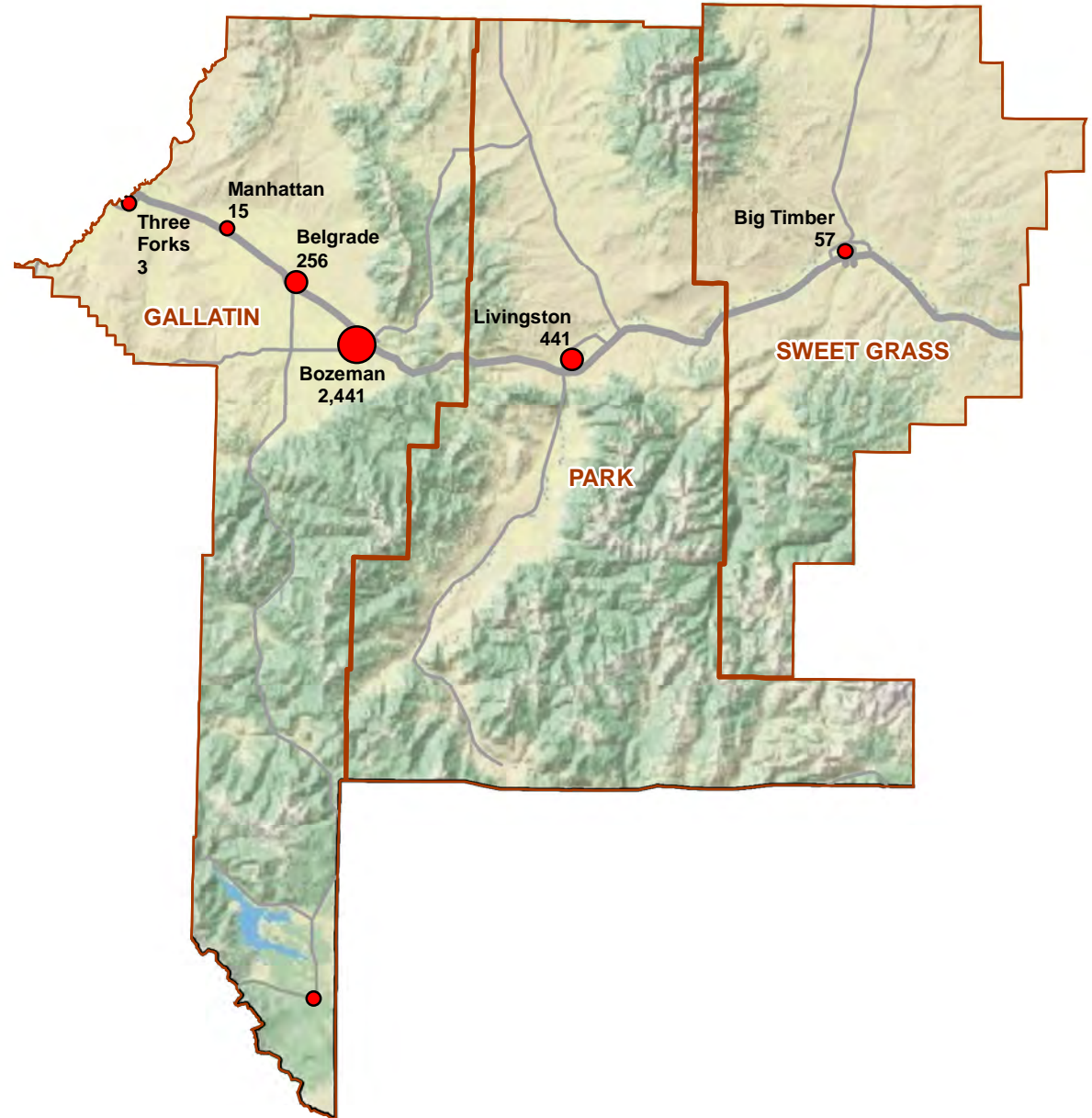
Sq. Miles: 7,303
 Region Population (2010 Census): 108,800
 Region Poverty Pop. (2010 Census): 13,632

Total Opened Cases

- 3 - 200
- 201 - 550
- 1,451 - 3,250



OPD Total New Cases Opened in Fiscal Year 2017



REGION 9 BILLINGS

Attorneys: 34
 Contract Attorneys: 53
 Support Staff: 12.5
 Investigators: 4
 Social Worker: 1

FYE 2017 Cases Opened: 7,960
 District Court Cases: 3,623
 Cases in Courts of Limited Jurisdiction: 4,337
 District Courts: 4
 Courts of Limited Jurisdiction: 13

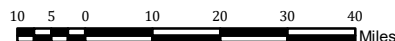
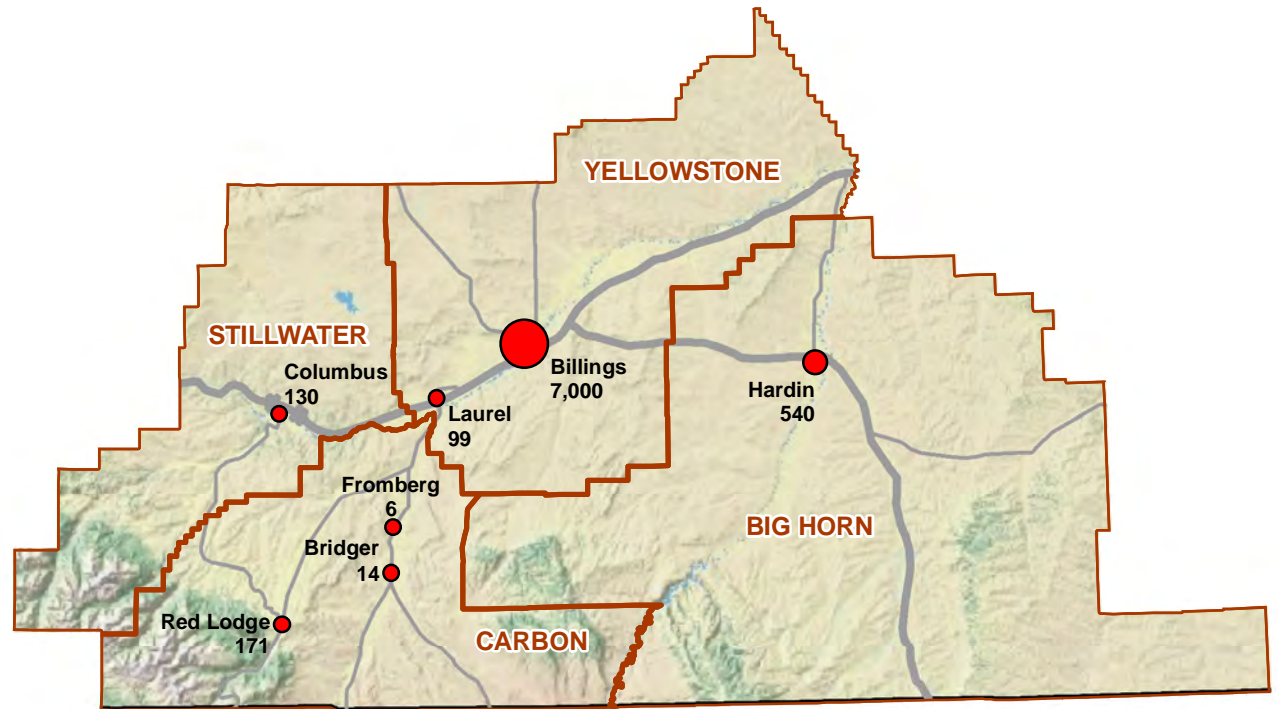
Sq. Miles: 11,524
 Region Population (2010 Census): 180,032
 Region Poverty Pop. (2010 Census): 24,207

Total Opened Cases

- 3 - 200
- 201 - 550
- 3,251 - 7,000



OPD Total New Cases Opened in Fiscal Year 2017



REGION 10 GLENDIVE

Attorneys: 3.5

Contract Attorneys: 24

Support Staff: 1

Investigators: 1

Social Worker: 0

FYE 2017 Cases Opened: 1,004

District Court Cases: 588

Cases in Courts of Limited Jurisdiction: 416

District Courts: 8

Courts of Limited Jurisdiction: 19

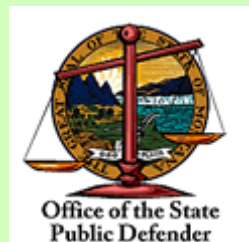
Sq. Miles: 15,290

Region Population (2010 Census): 38,202

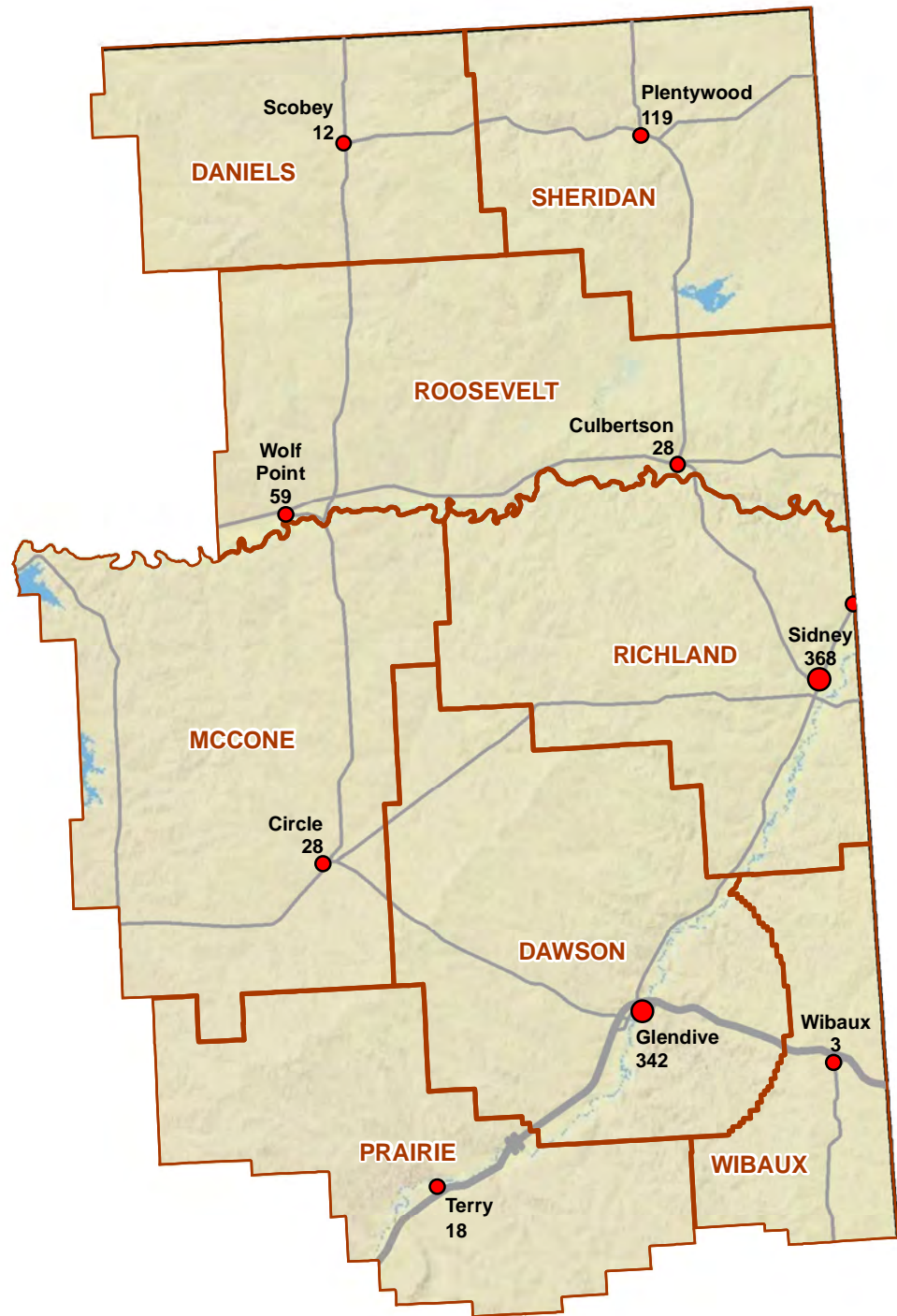
Region Poverty Pop. (2010 Census): 6,116

Total Opened Cases ● 201 - 550

● 3 - 200



OPD Total New Cases Opened in Fiscal Year 2017



REGION 11 MILES CITY

Attorneys: 3
 Contract Attorneys: 26
 Support Staff: 1
 Investigators: 1
 Social Worker: 0

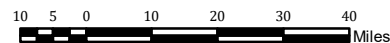
FYE 2017 Cases Opened: 711
 District Court Cases: 416
 Cases in Courts of Limited Jurisdiction: 295
 District Courts: 7
 Courts of Limited Jurisdiction: 16

Sq. Miles: 22,900
 Region Population (2010 Census): 28,649
 Region Poverty Pop. (2010 Census): 4,427

Total Opened Cases ● 201 - 550
 ● 3 - 200



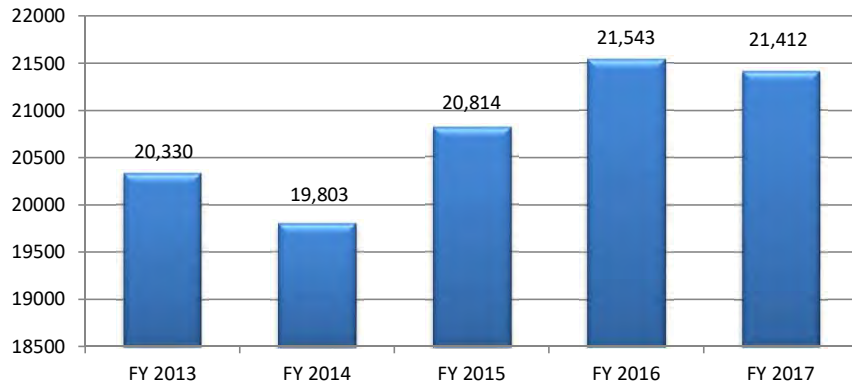
OPD Total New Cases Opened in Fiscal Year 2017



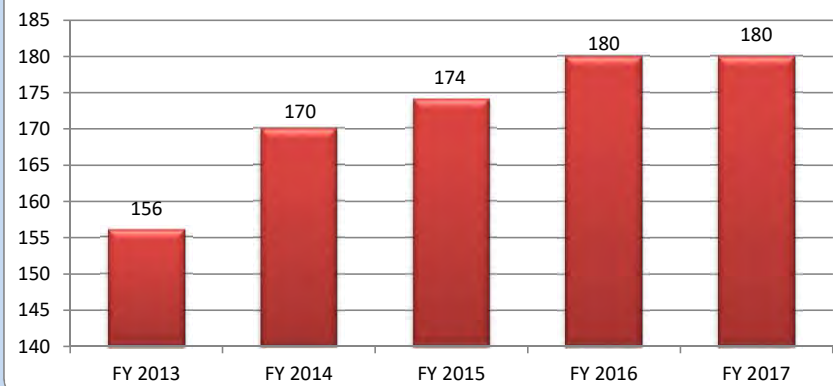


OFFICE OF THE STATE PUBLIC DEFENDER CASETYPE SNAPSHOT: LC (ALL LOWER COURT CASES)

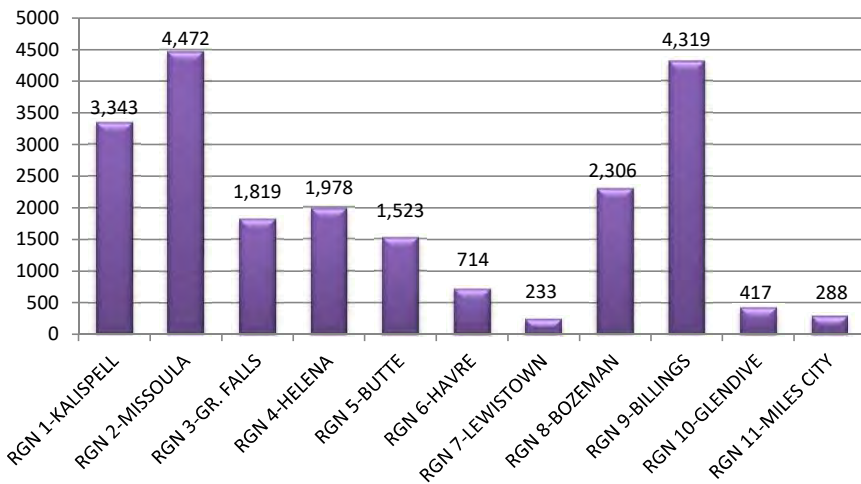
Lower Courts - Case Counts by Year



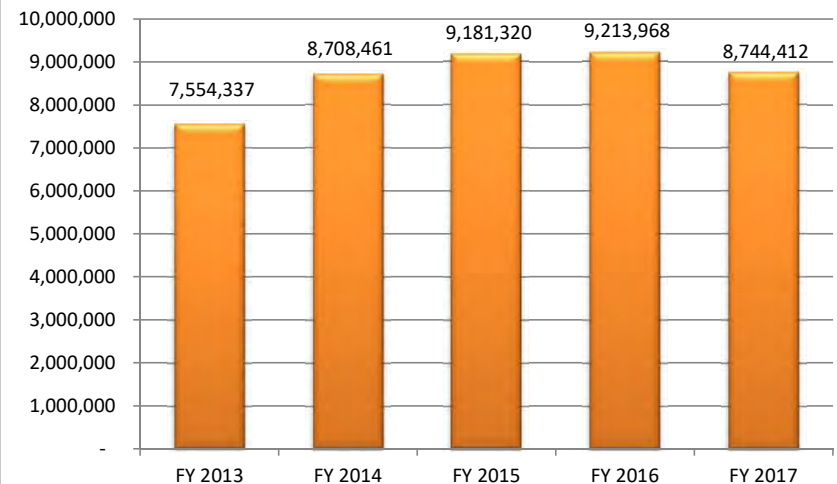
Lower Courts - Case Duration by Year



Lower Courts - FY 2017 Cases by Region



Lower Courts - Costs by Year

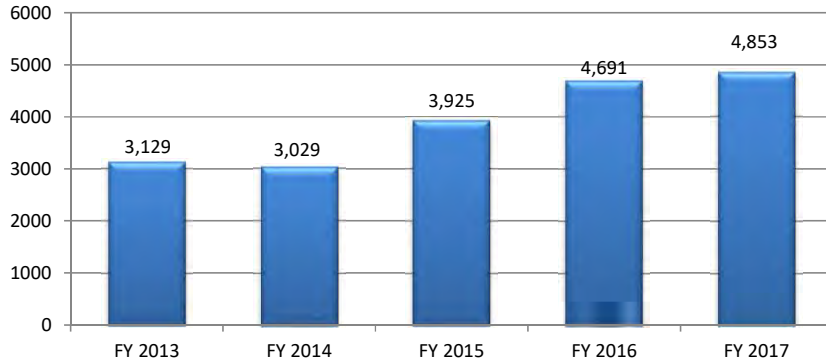


FY 2017 Avg. Cost Per Case = \$408
5 year Avg. Cost Per Case = \$418

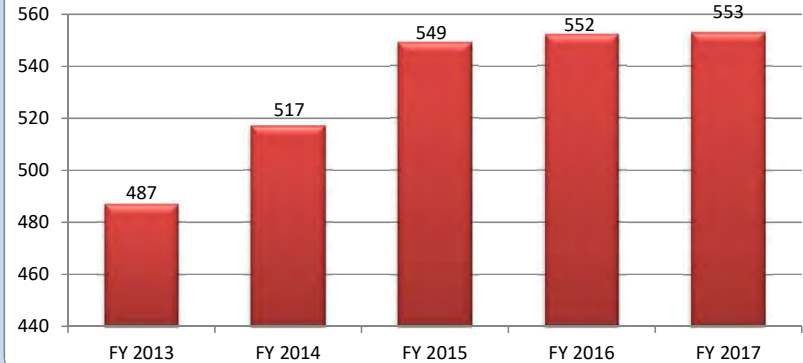


OFFICE OF THE STATE PUBLIC DEFENDER CASE TYPE SNAPSHOT: DN (DEPENDENT NEGLECT)

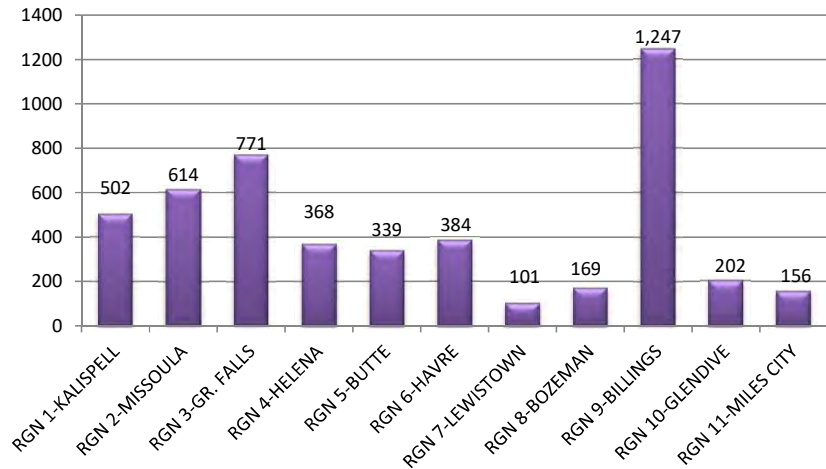
DN - Case Counts by Year



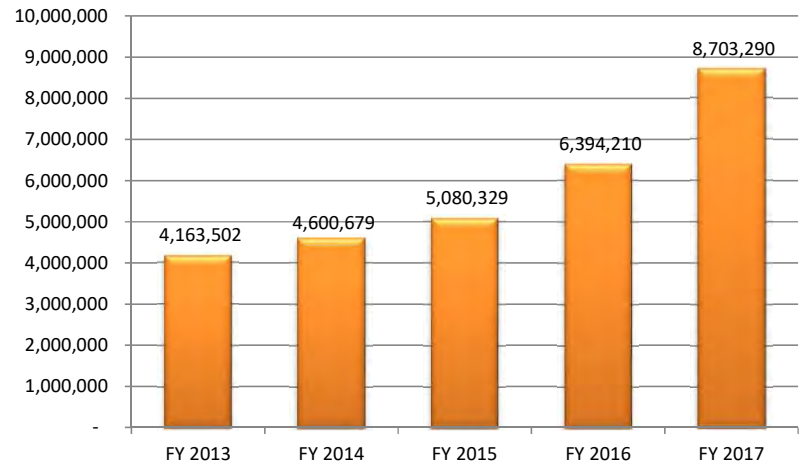
DN - Case Duration by Year



DN - FY 2017 Cases by Region



DN - Costs by Year

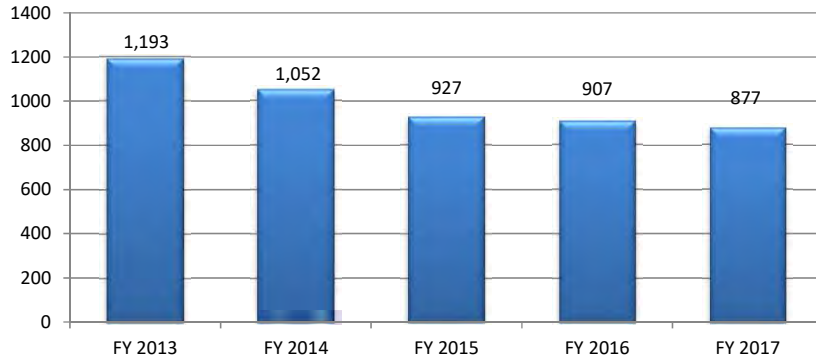


FY 2017 Avg. Cost Per Case = \$1,793
5 year Avg. Cost Per Case = \$1,460

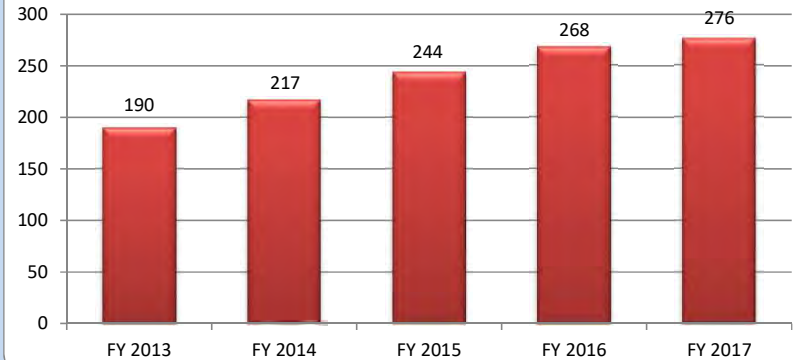


OFFICE OF THE STATE PUBLIC DEFENDER
CASE TYPE SNAPSHOT: DJ (JUVENILE)

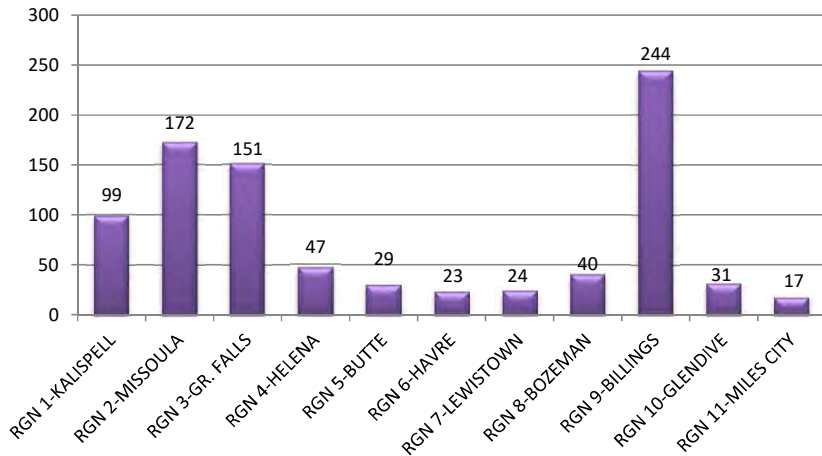
DJ - Case Counts by Year



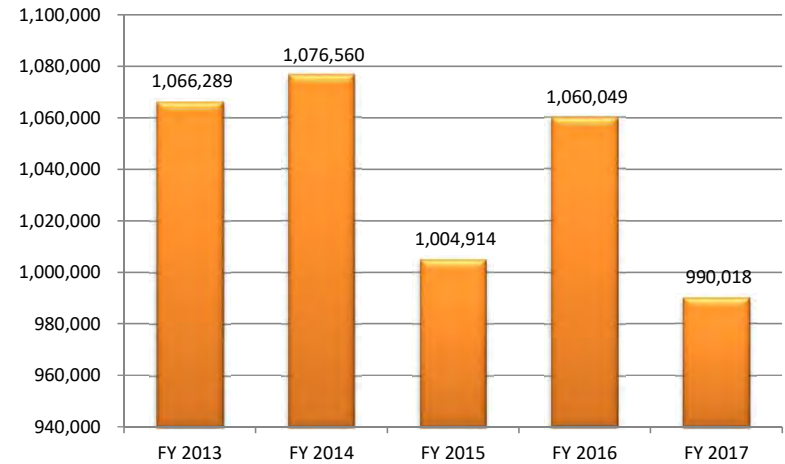
DJ - Case Duration by Year



DJ - FY 2017 Cases by Region



DJ - Costs by Year

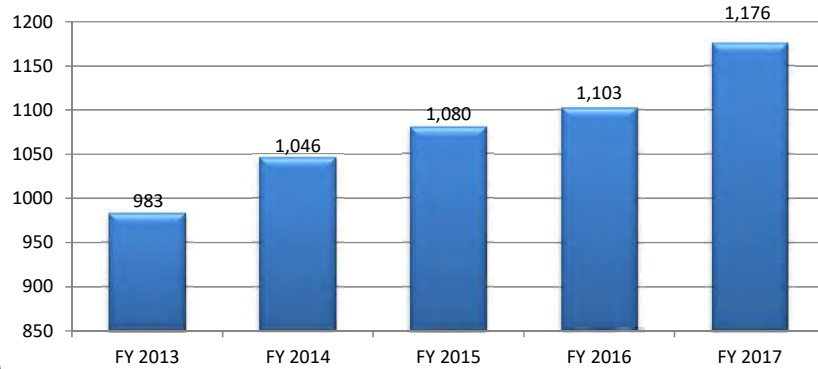


FY 2017 Avg. Cost Per Case = \$1,129
5 year Avg. Cost Per Case = \$1,060

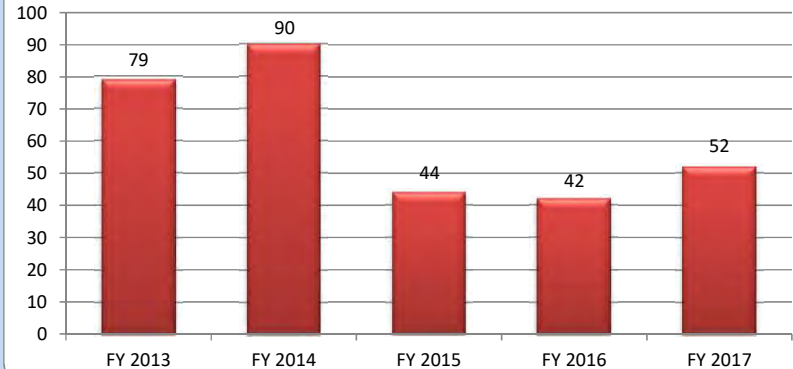


OFFICE OF THE STATE PUBLIC DEFENDER CASE TYPE SNAPSHOT: DI (INVOLUNTARY COMMITMENT)

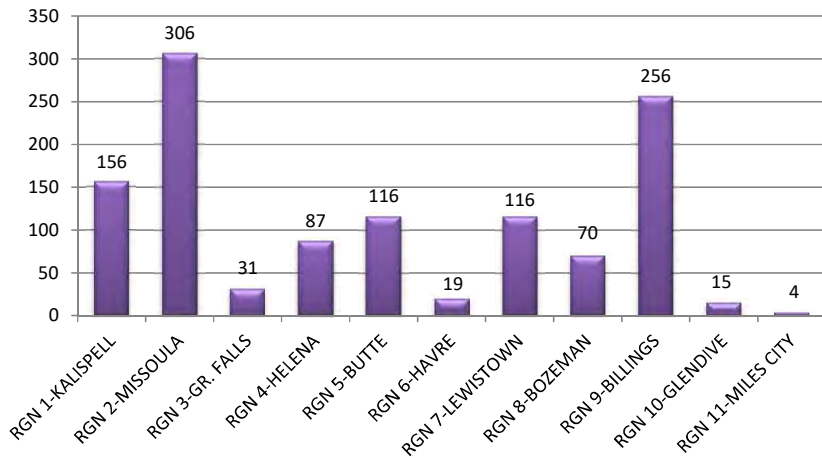
DI - Case Counts by Year



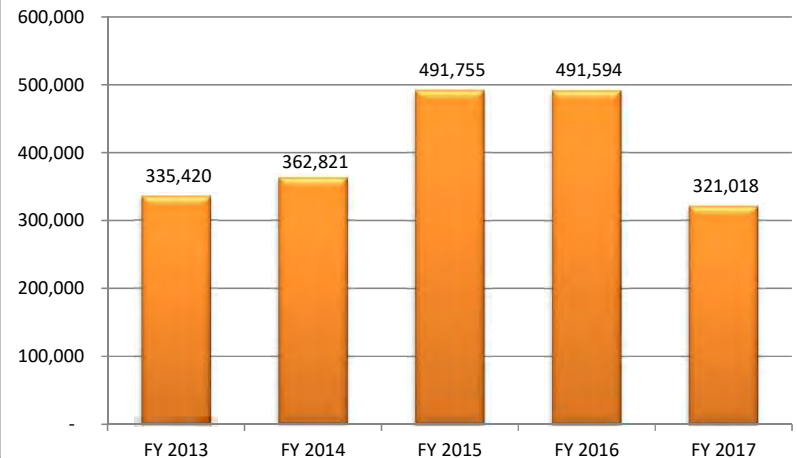
DI - Case Duration by Year



DI - FY 2017 Cases by Region



DI - Costs by Year

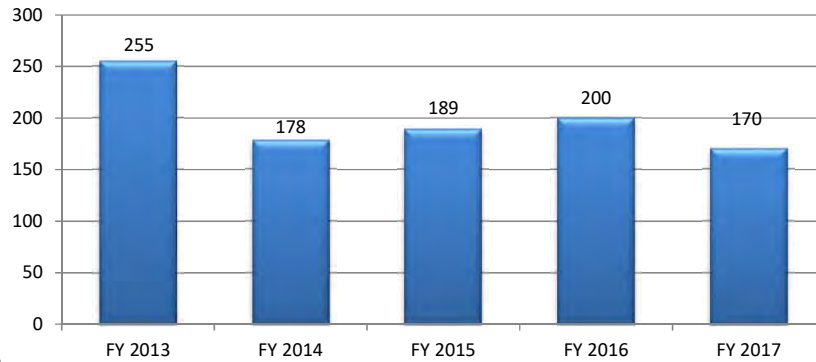


FY 2017 Avg. Cost Per Case = \$273
5 year Avg. Cost Per Case = \$372

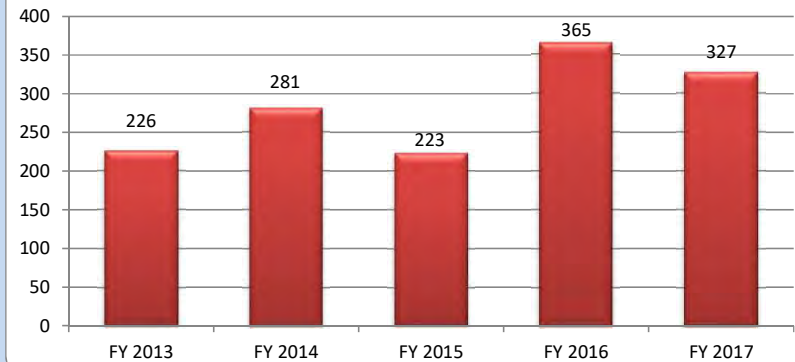


OFFICE OF THE STATE PUBLIC DEFENDER CASE TYPE SNAPSHOT: DG (GUARDIANSHIP)

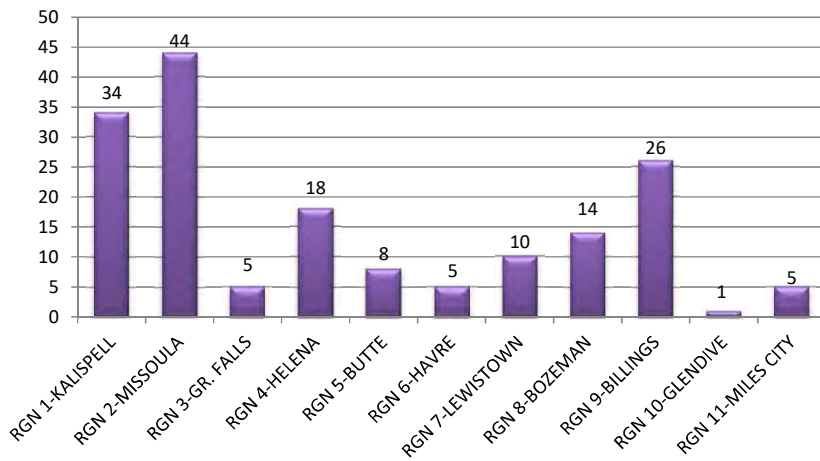
DG - Case Counts by Year



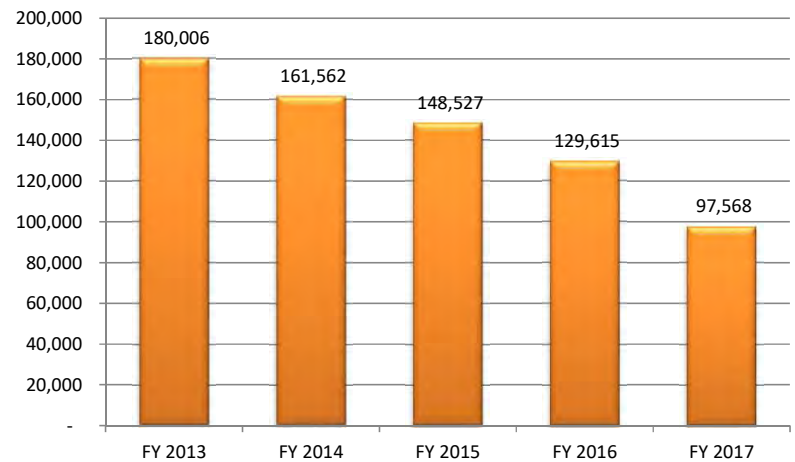
DG - Case Duration by Year



DG - FY 2017 Cases by Region



DG - Costs by Year

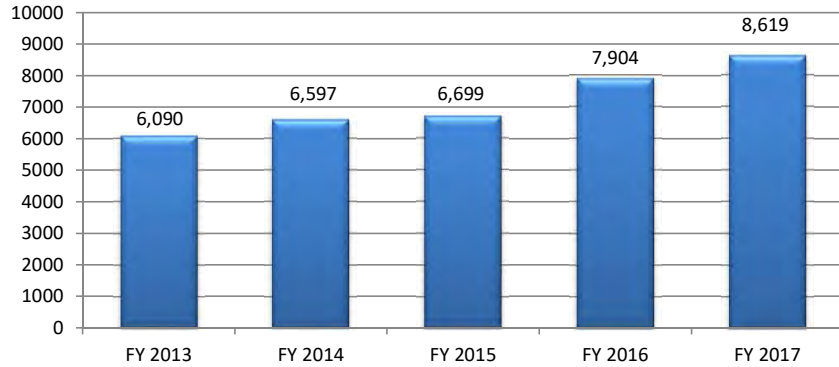


FY 2017 Avg. Cost Per Case = \$574
5 year Avg. Cost Per Case = \$724

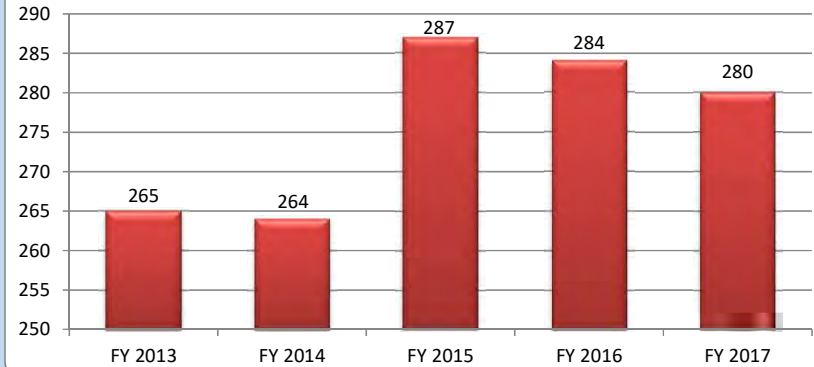


OFFICE OF THE STATE PUBLIC DEFENDER CASE TYPE SNAPSHOT: DC (CRIMINAL)

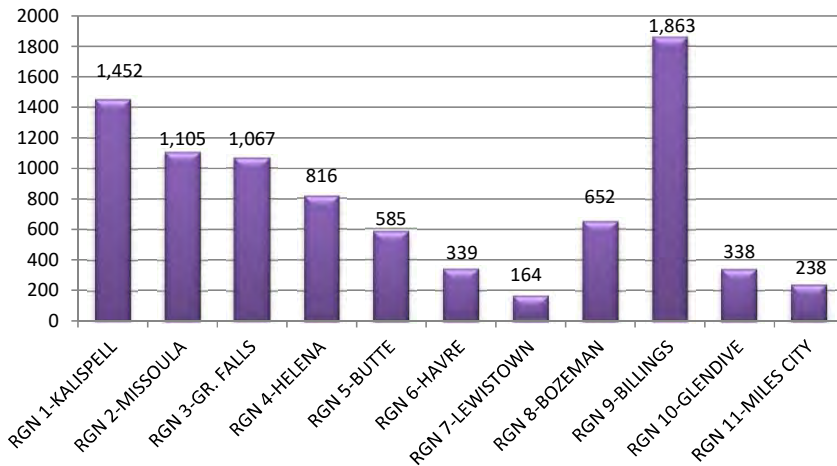
DC - Case Counts by Year



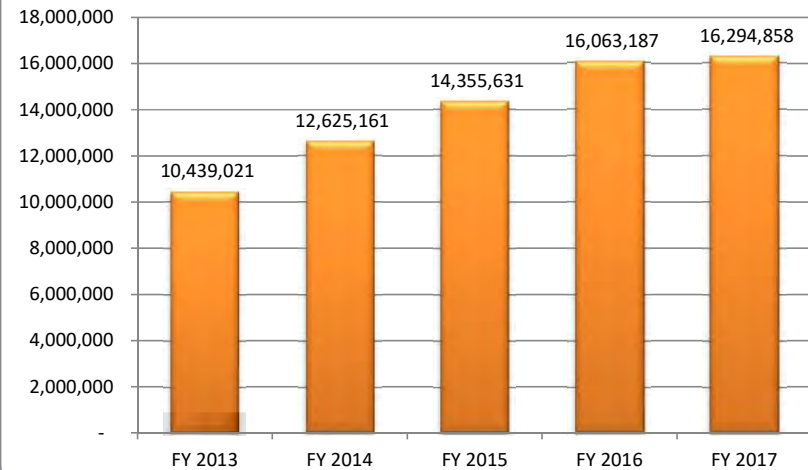
DC - Case Duration by Year



DC - FY 2017 Cases by Region



DC - Costs by Year



FY 2017 Avg. Cost Per Case = \$1,891
5 year Avg. Cost Per Case = \$1,939

Office of State Public Defender
 Director's Report to the Governor, Supreme Court and Legislature
 New Cases Assigned - Division 1 and 3
 [47-1-125 (vi) (xi)]

	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total
Region 1 - Kalispell	1,420	34	156	99	510	3,378	5,597
Region 2 - Missoula	1,095	44	305	171	617	4,483	6,715
Region 3 - Great Falls	1,074	5	31	149	766	1,816	3,841
Region 4 - Helena	805	18	87	46	360	1,992	3,308
Region 5 - Butte	512	8	116	29	339	1,596	2,600
Region 6 - Havre	334	5	19	23	384	720	1,485
Region 7 - Lewistown	159	10	117	24	101	238	649
Region 8 - Bozeman	627	14	70	40	171	2,334	3,256
Region 9 - Billings	1,855	26	256	239	1,247	4,337	7,960
Region 10 - Glendive	339	1	15	31	202	416	1,004
Region 11 - Miles City	234	5	4	17	156	295	711
Grand Total	8,454	170	1,176	868	4,853	21,605	37,126

Office of State Public Defender
 Director's Report to the Governor, Supreme Court and Legislature
 New Cases Assigned - Division 1 and 3
 [47-1-125 (vi) (xi)]

Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 1 - Kalispell	Flathead	Columbia Falls	City						271	271	
		Kalispell	District	766	27	128	69	270		1,260	
			Justice						926	926	
			City						805	805	
		Whitefish	City						121	121	
	Lake	Polson	District	455	7	12	20	145		639	
			Justice						560	560	
			City						101	101	
		Ronan	City						55	55	
		Saint Ignatius	City						6	6	
	Lincoln	Eureka	City							37	37
		Libby	District	124		11	7	81		223	
			Justice						182	182	
			City						116	116	
		Troy	City						34	34	
	Sanders	Hot Springs	City						9	9	
		Plains	City						16	16	
		Thompson Falls	District	75		5	3	14		97	
			Justice						112	112	
			City					27	27		
Grand Total				1,420	34	156	99	510	3,378	5,597	

Office of State Public Defender
 Director's Report to the Governor, Supreme Court and Legislature
 New Cases Assigned - Division 1 and 3
 [47-1-125 (vi) (xi)]

Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 2 - Missoula	Mineral	Superior	District	50		3	1	37		91	
			Justice						93	93	
			City						5	5	
	Missoula	Missoula	District	799	36	264	113	501		1,713	
			Justice						967	967	
			City						2,727	2,727	
	Ravalli	Darby	Hamilton	District	246	8	38	57	79	2	430
				Justice						473	473
		Stevensville	City	City						166	166
				City						24	24
Grand Total				1,095	44	305	171	617	4,483	6,715	

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 [47-1-125 (vi) (xi)]

Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total
Region 3 - Great Falls	Cascade	Great Falls	District	911	2	25	134	641		1,713
			Justice						489	489
			City						1,066	1,066
	Glacier	Cut Bank	District	80	1	3	2	66		152
			Justice						40	40
			City						88	88
	Pondera	Conrad	District	21	1	2	5	33		62
			Justice						36	36
			City						20	20
	Teton	Choteau	District	24			3	10		37
			Justice						8	8
			City						9	9
	Toole	Shelby	District	38	1	1	5	16		61
			Justice						40	40
			City						20	20
Grand Total				1,074	5	31	149	766	1,816	3,841

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Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 4 - Helena	Broadwater	Townsend	District	36	1	5	1	27		70	
			Justice						51	51	
			City						44	44	
	Jefferson	Boulder	District	59	4	4	1	23		91	
			Justice						69	69	
			City						23	23	
			Whitehall	City						8	8
	Lewis & Clark	East Helena	City							22	22
			Helena	District	710	13	78	44	310		1,155
				Justice							711
		City						1,064	1,064		
Grand Total				805	18	87	46	360	1,992	3,308	

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Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 5 - Butte	Beaverhead	Dillon	District	40	1	7	5	51		104	
			Justice						75	75	
			City						55	55	
	Deer Lodge	Anaconda	District	107	1	26	9	48		191	
			Justice						261	261	
	Granite	Philipsburg	District	14	1	1	2	3		21	
			Justice						40	40	
	Madison	Ennis	City							25	25
		Virginia City	District	16	1	5	1	3			26
	Justice								85	85	
	Powell	Deer Lodge	District	108	2	11			22		143
			Justice						44	44	
			City						91	91	
	Silver Bow	Butte	District	227	2	66	12	212			519
			Justice						233	233	
City								687	687		
Grand Total				512	8	116	29	339	1,596	2,600	

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Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 6 - Havre	Blaine	Chinook	Justice						26	26	
			City						7	7	
		Harlem	City						7	7	
		Malta	District	44		3	3	69		119	
	Chouteau	Fort Benton	District	31	1				3		35
			Justice						35		35
			City						6		6
	Hill	Havre	District	187	1	9	17	258			472
			Justice						225		225
			City						287		287
	Liberty	Chester	District	3	1		1	9			14
			Justice						5		5
	Phillips	Malta	District	24	2		1	21			48
			Justice						10		10
			City						32		32
	Valley	Glasgow	District	45		7	1	24			77
			Justice						48		48
			City						32		32
Grand Total				334	5	19	23	384	720	1,485	

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Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total
Region 7 - Lewistown	Fergus	Lewistown	District	85	6	117	16	58		282
			Justice						48	48
			City						82	82
	Golden Valley	Ryegate	District	8			1	8		17
			Justice						3	3
			City							
	Judith Basin	Stanford	District	10	1			16		27
			Justice						19	19
	Meagher	White Sulphur Springs	District	7			2			9
			Justice						5	5
			City						10	10
	Musselshell	Roundup	District	34	3		5	15		57
			Justice						34	34
			City						31	31
	Petroleum	Winnett	District	1						1
			Justice						2	2
	Wheatland	Harlowton	District	14				4		18
			Justice						3	3
City								1	1	
Grand Total				159	10	117	24	101	238	649

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Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total
Region 8 - Bozeman	Gallatin	Belgrade	City						256	256
		Bozeman	District	452	13	66	32	149		712
			Justice						679	679
			City						1,050	1,050
		Manhattan	City						15	15
		Three Forks	City						3	3
		West Yellowst..	City						43	43
	Park	Livingston	District	162	1	4	4	22		193
			Justice						128	128
			City						120	120
	Sweet Grass	Big Timber	District	13			4			17
			Justice						31	31
			City						9	9
	Grand Total			627	14	70	40	171	2,334	3,256

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Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 9 - Billings	Big Horn	Hardin	District	111	2	3	14	105		235	
			Justice						112	112	
			City						193	193	
	Carbon	Bridger	City						14	14	
			Fromberg	City					6	6	
			Red Lodge	District	37		4	9	20		70
		Stillwater	Columbus	Justice						49	49
				City						52	52
				District	36		1	7	8		52
	Yellowstone	Billings	Justice							53	53
			City							25	25
			District	1,670	24	248	209	1,114		3,265	
			Justice							881	881
			City	1						2,853	2,854
		Laurel	City						99	99	
Grand Total				1,855	26	256	239	1,247	4,337	7,960	

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Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total		
Region 10 - Glendive	Daniels	Scobey	District	3		1		6		10		
			Justice					1	1			
			City					1	1			
	Dawson	Glendive	District	122		7	8	72			209	
			Justice						54	54		
			City						79	79		
	McCone	Circle	District	3			5	6			14	
			Justice						14	14		
	Prairie	Terry	District	3			2	9			14	
			Justice						4	4		
	Richland	Fairview	City							27	27	
			Sidney	District	145		1	14	41			201
				Justice						65	65	
	Roosevelt	Culbertson	City							102	102	
			Justice						23	23		
			City						5	5		
		Wolf Point	District	36	1	3	2	11			53	
			City						6	6		
	Sheridan	Plentywood	District	25		3			57		85	
			Justice						11	11		
City								23	23			
Wibaux	Wibaux	District	2							2		
		City						1	1			
Grand Total				339	1	15	31	202	416	1,004		

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Region	County	City	Court Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 11 - Miles City	Carter	Ekalaka	District	2						2	
			Justice						2	2	
	Custer	Miles City	District	139	4	4	12	77		236	
			Justice						17	17	
			City						114	114	
	Fallon	Baker	District	15			4	6		25	
			Justice						18	18	
			City						17	17	
	Garfield	Jordan	District	6						6	
			Justice						2	2	
	Powder River	Broadus	District	9				3		12	
			Justice						7	7	
	Rosebud	Colstrip	City							32	32
			Forsyth	District	61	1		1	60		123
		Forsyth	Justice							80	80
City									2	2	
Treasure	Hysham	District	2					10		12	
		Justice						3	3		
		City						1	1		
Grand Total				234	5	4	17	156	295	711	

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 [47-1-125 (vi) (xi)]

	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total
Region 1 - Kalispell	2,374,211	7,507	37,978	150,671	962,608	1,186,840	\$4,719,815
Region 2 - Missoula	2,464,555	15,637	97,014	261,775	2,024,910	1,664,343	\$6,528,233
Region 3 - Great Falls	1,761,469	4,572	17,248	155,756	1,032,691	602,705	\$3,574,441
Region 4 - Helena	1,726,576	17,552	43,608	76,912	893,797	773,353	\$3,531,798
Region 5 - Butte	1,216,917	12,977	33,242	40,097	642,960	1,032,406	\$2,978,599
Region 6 - Havre	697,012	4,318	12,135	48,075	420,421	381,264	\$1,563,224
Region 7 - Lewistown	301,878	5,771	26,676	53,088	95,839	180,712	\$663,964
Region 8 - Bozeman	1,187,742	12,608	25,361	40,260	310,214	1,039,277	\$2,615,461
Region 9 - Billings	3,265,940	15,150	25,663	123,522	1,753,175	1,530,753	\$6,714,202
Region 10 - Glendive	793,632		937	26,815	258,391	211,267	\$1,291,042
Region 11 - Miles City	504,927	1,478	1,155	13,048	308,284	141,493	\$970,385
Grand Total	\$16,294,858	\$97,568	\$321,018	\$990,018	\$8,703,290	\$8,744,412	\$35,151,164

Additional Costs:
 Capital Cases \$62,868

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				Criminal Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total		
Region 1 - Kalispell	Flathead	Columbia Falls	City					67,105	\$67,105		
		Kalispell	City					234,495	\$234,495		
			District	1,108,367	5,442	29,222	93,294	567,852	\$1,804,178		
			Justice					294,784	\$294,784		
		Whitefish	City					30,496	\$30,496		
	Lake	Polson	City						43,208	\$43,208	
			District	762,610	1,448	2,218	40,932	289,914	\$1,097,120		
				Justice					291,763	\$291,763	
		Ronan	City						24,103	\$24,103	
		Saint Ignatius	City						2,834	\$2,834	
	Lincoln	Eureka	City						14,169	\$14,169	
			Libby	City						50,714	\$50,714
				District	297,052	150	3,453	10,491	57,764	\$368,909	
				Justice						50,235	\$50,235
		Troy	City						11,654	\$11,654	
	Sanders	Hot Springs	City							10,135	\$10,135
			Plains	City						10,476	\$10,476
		Thompson Falls	City							15,162	\$15,162
			District	206,182	467	3,086	5,955	47,077		\$262,767	
			Justice						35,506	\$35,506	
Grand Total				\$2,374,211	\$7,507	\$37,978	\$150,671	\$962,608	\$1,186,840	\$4,719,815	

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				Criminal	Guardianship	Involuntary	Juvenile	Neglect	All Limited	Grand Total	
						Commitment			Jurisdiction		
Region 2 - Missoula	Mineral	Superior	City						466	\$466	
			District	104,155		925	3,055	86,416		\$194,551	
			Justice						31,278	\$31,278	
	Missoula	Missoula	City						917,622	\$917,622	
			District	1,642,808	14,800	89,220	160,681	1,707,114		\$3,614,624	
			Justice						475,197	\$475,197	
		Superior	City						2,684	\$2,684	
		Ravalli	Darby	City						8,814	\$8,814
			Hamilton	City						44,734	\$44,734
	District			717,591	837	6,869	98,039	231,380		\$1,054,715	
			Justice						164,208	\$164,208	
		Stevensville	City						19,341	\$19,341	
	Grand Total				\$2,464,555	\$15,637	\$97,014	\$261,775	\$2,024,910	\$1,664,343	\$6,528,233

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				Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 3 - Great Falls	Cascade	Great Falls	City						231,386	\$231,386	
			District	1,460,978	511	12,356	131,242	784,820		\$2,389,907	
			Justice						172,614	\$172,614	
	Glacier	Cut Bank	City						76,189	\$76,189	
			District	109,188	2,685	1,556	2,716	119,228		\$235,373	
			Justice						43,087	\$43,087	
	Pondera	Conrad	City						16,231	\$16,231	
			District	70,184	486	3,275	8,568	43,293		\$125,806	
			Justice						16,238	\$16,238	
	Teton	Choteau	City						5,643	\$5,643	
			District	49,639			7,927	32,765		\$90,330	
			Justice						4,712	\$4,712	
	Toole	Shelby	City						16,259	\$16,259	
			District	71,480	890	60	5,303	52,586		\$130,320	
			Justice						20,345	\$20,345	
	Grand Total				\$1,761,469	\$4,572	\$17,248	\$155,756	\$1,032,691	\$602,705	\$3,574,441

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				Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 4 - Helena	Broadwater	Townsend	City						30,381	\$30,381	
			District	151,147	1,344	12,816	4,618	42,186		\$212,111	
			Justice						40,478	\$40,478	
	Jefferson	Boulder	City						21,971	\$21,971	
			District	128,055	6,738	2,721	1,641	109,522		\$248,677	
			Justice						32,254	\$32,254	
			Whitehall	City					13,548	\$13,548	
	Lewis & Clark	East Helena	City						15,362	\$15,362	
			Helena	City						352,641	\$352,641
				District	1,447,375	9,469	28,071	70,653	742,089		\$2,297,657
			Justice					266,718	\$266,718		
Grand Total				\$1,726,576	\$17,552	\$43,608	\$76,912	\$893,797	\$773,353	\$3,531,798	

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				Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 5 - Butte	Beaverhead	Dillon	City						35,096	\$35,096	
			District	105,481	413	2,801	4,693	94,308		\$207,696	
			Justice						50,845	\$50,845	
	Deer Lodge	Anaconda	District	264,990	4,666	8,942	10,638	196,163		\$485,398	
			Justice						279,792	\$279,792	
	Granite	Philipsburg	District	26,659	498	391	10,959	9,523		\$48,031	
			Justice						39,704	\$39,704	
	Madison	Ennis	City							11,982	\$11,982
			Virginia City	District	56,025	946	1,704	379	4,450		\$63,504
				Justice						103,182	\$103,182
	Powell	Deer Lodge	City							39,192	\$39,192
			District	254,455	3,483	4,972	57	59,052		\$322,019	
			Justice						35,799	\$35,799	
	Silver Bow	Butte	City							217,513	\$217,513
			District	509,307	2,971	14,432	13,371	279,465		\$819,546	
Justice								219,300	\$219,300		
Grand Total				\$1,216,917	\$12,977	\$33,242	\$40,097	\$642,960	\$1,032,406	\$2,978,599	

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				Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total
Region 6 - Havre	Blaine	Chinook	City						3,536	\$3,536
			Justice						16,248	\$16,248
		Harlem	City						1,006	\$1,006
				Malta	District	102,314	32	975	10,839	108,761
	Chouteau	Fort Benton	City						4,558	\$4,558
			District	51,710	1,024			8,209	\$60,943	
			Justice					7,463	\$7,463	
	Hill	Havre	City						197,972	\$197,972
			District	452,450	1,130	9,197	35,407	247,947	\$746,131	
			Justice					111,564	\$111,564	
	Liberty	Chester	District	14,845	792		1,331	13,372	\$30,339	
			Justice					2,073	\$2,073	
	Phillips	Malta	City						8,123	\$8,123
			District	12,060	187			13,860	\$26,107	
			Justice					6,435	\$6,435	
	Valley	Glasgow	City						12,604	\$12,604
			District	63,633	1,153	1,963	498	28,271	\$95,519	
			Justice					9,682	\$9,682	
Grand Total				\$697,012	\$4,318	\$12,135	\$48,075	\$420,421	\$381,264	\$1,563,224

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				Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total
Region 7 - Lewistown	Fergus	Lewistown	City						55,826	\$55,826
			District	181,013	4,169	26,676	37,891	57,191		\$306,941
			Justice						46,010	\$46,010
	Golden Valley	Ryegate	District	13,895			2,048	5,749		\$21,692
			Justice						4,925	\$4,925
	Judith Basin	Stanford	District	26,742				3,694		\$30,436
			Justice						18,860	\$18,860
	Meagher	White Sulphur Springs	City						7,775	\$7,775
			District	4,878			3,341			\$8,218
			Justice						3,152	\$3,152
	Musselshell	Roundup	City						16,550	\$16,550
			District	53,982	1,602		9,809	25,280		\$90,673
			Justice						23,279	\$23,279
	Petroleum	Winnett	District	3,411						\$3,411
			Justice						983	\$983
	Wheatland	Harlowton	City						1,191	\$1,191
			District	17,956				3,925		\$21,881
			Justice						2,160	\$2,160
Grand Total				\$301,878	\$5,771	\$26,676	\$53,088	\$95,839	\$180,712	\$663,964

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				Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 8 - Bozeman	Gallatin	Belgrade	City						113,263	\$113,263	
		Bozeman	City						442,066	\$442,066	
			District	927,162	12,188	23,762	35,845	248,870		\$1,247,827	
			Justice						322,511	\$322,511	
			Manhattan						12,974	\$12,974	
			Three Forks						732	\$732	
			West Yellowstone						21,407	\$21,407	
	Park	Livingston	City							65,230	\$65,230
			District	225,401	420	1,599	3,439	59,030			\$289,889
			Justice							39,356	\$39,356
	Sweet Grass	Big Timber	City							5,062	\$5,062
			District	35,178			976	2,313			\$38,468
			Justice							16,676	\$16,676
	Grand Total				\$1,187,742	\$12,608	\$25,361	\$40,260	\$310,214	\$1,039,277	\$2,615,461

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				Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total	
Region 9 - Billings	Big Horn	Hardin	City						76,637	\$76,637	
			District	147,790	609	513	7,770	103,376		\$260,057	
			Justice						49,911	\$49,911	
	Carbon	Bridger	City							6,776	\$6,776
										1,906	\$1,906
										6,282	\$6,282
		Red Lodge	City							55,833	\$55,833
				District	79,935		891	12,424	48,561		\$141,810
				Justice						42,947	\$42,947
	Stillwater	Columbus	City							15,097	\$15,097
				District	53,506		90	6,356	42,971		\$102,925
				Justice						47,152	\$47,152
	Yellowstone	Billings	City							791,850	\$791,850
				District	2,984,709	14,541	24,169	96,972	1,558,267		\$4,678,657
				Justice						340,104	\$340,104
Laurel		City						96,258	\$96,258		
Grand Total				\$3,265,940	\$15,150	\$25,663	\$123,522	\$1,753,175	\$1,530,753	\$6,714,202	

Office of Public Defender
 Director's Report to the Governor, Supreme Court and Legislature
 Expenditure Data - Division 1 and 3
 [47-1-125 (vi) (xi)]

				Criminal	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total
Region 10 - Glendive	Daniels	Scobey	City					146	\$146
			District	80,564			4,931		\$85,494
	Dawson	Glendive	City					27,337	\$27,337
			District	205,278	347	14,803	97,114		\$317,542
			Justice					17,479	\$17,479
	McCone	Circle	District	4,028		1,257	6,233		\$11,518
			Justice					4,847	\$4,847
	Prairie	Terry	City					112	\$112
			District	1,531		2,507	4,752		\$8,791
	Richland	Fairview	City					16,798	\$16,798
			Sidney	City				63,238	\$63,238
				District	331,405	174	8,248	84,276	
			Justice					47,673	\$47,673
	Roosevelt	Culbertson	City					325	\$325
			Justice					12,615	\$12,615
		Wolf Point	City					3,239	\$3,239
			District	132,102	417		25,168		\$157,687
	Sheridan	Plentywood	City					10,516	\$10,516
			District	37,154			35,917		\$73,071
			Justice					5,843	\$5,843
Wibaux	Wibaux	City					347	\$347	
		District	1,569					\$1,569	
		Justice					752	\$752	
Grand Total				\$793,632	\$937	\$26,815	\$258,391	\$211,267	\$1,291,042

Office of Public Defender
 Director's Report to the Governor, Supreme Court and Legislature
 Expenditure Data - Division 1 and 3
 [47-1-125 (vi) (xi)]

				Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	All Limited Jurisdiction	Grand Total
Region 11 - Miles City	Carter	Ekalaka	District	31,244				1,027		\$32,271
			Justice					691		\$691
	Custer	Miles City	City						52,585	\$52,585
			District Justice	340,712	1,260	1,155	8,757	219,804	16,651	\$571,688 \$16,651
	Fallon	Baker	City						9,663	\$9,663
			District	44,400			3,588	1,888		\$49,876
			Justice						13,223	\$13,223
	Garfield	Jordan	District	18,245						\$18,245
			Justice						1,277	\$1,277
	Powder River	Broadus	District	9,039	105				989	\$10,132
			Justice						4,431	\$4,431
	Rosebud	Colstrip	City						14,367	\$14,367
			Forsyth						1,288	\$1,288
		District	60,318	113		703	69,711		\$130,845	
		Justice						26,010	\$26,010	
	Treasure	Hysham	City						360	\$360
			District	969				14,866		\$15,835
			Justice						947	\$947
Grand Total				\$504,927	\$1,478	\$1,155	\$13,048	\$308,284	\$141,493	\$970,385



OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

CASE WEIGHT SYSTEM - RULES

Revised by the Labor Management Committee May 2, 2014

Effective June 1, 2014

BEST PRACTICES: how to administer and use this system

Step 1- VALUE THE CASE

Assign case hours to each case when assigned – this means DAILY, as the cases come in, then write the hours on the appointment sheet. Likewise, the hours assigned should be entered into JustWare.

Step 2- DAILY TRACKING

This system is designed to help evenly distribute cases among attorneys and to monitor how many cases each attorney receives each month. We are currently using JustWare to generate monthly reports.

Step 3- GENERATE MONTHLY JUSTWARE REPORT

Print a JustWare Report for each attorney at the end of each month.

Step 4- ATTORNEY REVIEWS MONTHLY JUSTWARE REPORT

At the close of the month distribute the reports to the attorneys. If there are questions, concerns, or changes, the attorney can write in the comment section on the form and talk to the manager about changes.

Step 5- AFTER ADJUSTMENTS, ATTORNEY AND MANAGER SIGN AND DATE MONTHLY REPORT, REPORT IS SENT TO CENTRAL OFFICE

STEP 1 – VALUE THE CASE

1. The Regional Deputy Public Defender and/or Managing Attorney will assign and track cases by attorney for the office or region. If the Regional Deputy Public Defender or Managing Attorney is absent they will appoint a backup person who will be an attorney to assign and track cases. Every region will provide the Central Office with a list of those individuals that are approved to assign and track cases including all backup personnel. **(See pages 4-7 for specifics on values.)**

STEP 2 – DAILY TRACKING

2. Cases will be assigned DAILY and entered into JustWare DAILY. This information will be reported to the Central Office within 10 calendar days after the end of each month.
3. There will be a separate JustWare Form for each attorney.
4. This case weighting system is designed to monitor case assignments rather than open cases. Therefore, there is no incentive for a staff attorney to keep cases open.
5. One case is any number of tickets or charges an individual received in a specific incident and assigned to one jurisdiction for adjudication (i.e. traffic stop results in a speeding ticket, criminal distribution of dangerous drugs and possession – if litigated in the same court – all one case).
6. **When an attorney's monthly hours reach 125, the Regional Manager or Managing Attorney must meet with the staff attorney to discuss the attorney's caseload.**
7. This tool is not a performance measure but is simply used to assess whether resources are being properly distributed and help assure that the agency is not exceeding ethical caseload limits.

STEP 3 – STEP 5 GENERATE, ATTACH, REVIEW, SIGN AND DATE

8. At the close of each month, print off the JustWare Report and distribute to every attorney. The attorney then has a chance to review the JustWare Report for errors, questions, concerns, and can write their comments on the form. Once the review is completed and adjustments are made, if any, both the attorney and manager sign the JustWare Report.
9. The JustWare Report must be sent to the Central Office within 10 calendar days after the end of each month.

Summary Report (generated by Central Office)

10. The JustWare Report will be used by Central Office to generate a summary form for each attorney. The summary form will have 12 months for each attorney and a sum of the activity for the 12 month period at the bottom of each column.

11. On the summary form for a new attorney, any month that does not have “actual information” for case assignments will have 125 hours in place of the non-existent actual information. Therefore each attorney will begin with 1500 hours (12 months times 125 hours = 1500).

12. Actual monthly hours will replace the 125 hour place holder and become part of the calculation of total annual hours.

13. This is a “rolling month” process so the most recent actual information replaces the old information and the total is recalculated.

14. New hires: Central Office will backfill the summary report with the total number of hours transferred to the attorney at 125 hours per month beginning with the current month until all cases that have been transferred are accounted for. Backfill to fill out the year with 125.

Special Circumstances

15. Warrants: If a case goes to warrant status, make no adjustments.

16. Similarly, if a case comes back from warrant status to active, make no adjustments unless the case has been re-assigned to another attorney. (Generally, these cases will most likely return to the attorney’s caseload within the year.)

17. Conflicts: If a case is conflicted out of the office after it has been assigned, subtract the appropriate hours from the attorney to whom it was assigned. (Management retains discretion to leave the hours on the original attorney’s count if the case goes to conflict at a late stage after the attorney has worked the case for some time or if the attorney has expended significant hours.)

Adjustments should be made in the month in which the transfer takes place, regardless of when the appointment was made.

18. Co-counsel: If an attorney is full co-counsel, give that attorney full hours. If the attorney is a trial-only co-counsel, give the attorney one-half of the allotted hours.

19. When a case is transferred from one attorney to another the case hours move with the case (subtract from the original attorney, add to the new attorney). Adjustments should be made in the month in which the transfer takes place.

CASE WEIGHT HOURS

Misdemeanor (Including Juvenile Cases):

2.5 hours

-Fugitive / Out of County warrants

3 hours

-ALL Traffic Offenses (Title 61) (chapters 3, 5, 6, 7, 8, 9, 11, 13)
Except (DUI / Per Se – 61-8-401 and 61-8-406)

-Crimes (ONLY these three): Disorderly Conduct 45-8-101
Obstructing 45-7-302
Minor in Possession 45-5-624

-All City Ordinance Violations

7 hours

-DUI / Per Se (Title 61) (DUI 61-8-401 and Per Se 61-8-406)

-Crimes (ALL Title 45) (chapters 2, 5, 6, 7, 8, 9, 10)
Except Disorderly Conduct 45-8-101
Obstructing 45-7-302
Minor in Possession 45-5-624

10 hours

-misdemeanor sex crime

Add hours spent in a BENCH TRIAL (round down) to the month the bench trial occurs
(if it's less than one hour, add nothing, Example: 30 minutes = add no hours,
2.75 hours, add 2 hours, 8.1 hours, add 8 hours)

Add 5 hours to the total for appeals from Justice/Municipal/City court upon appeal

Add 5 hours to the hours assigned if the case is outside of the assigned region.

(Example: DUI (misdemeanor) charged in Kalispell, but the attorney comes from
Missoula = DUI (7) + 5 for travel, assign 12 hours)

Add 7 hours if there are **5 or more charges in one case.**

Add 8 hours a day - per day(s) spent in trial to the month when a **JURY TRIAL** occurs.

Add 20 hours to the **month for those who practice in courts located outside**
of the city where their office is located.

Assign the hours based on the highest crime charged, then no hours for the other charges

EXAMPLES

1- Disorderly, DUI, and open container = 7 hours

(because DUI is worth the most, don't count the others)

2- No insurance, obstructing, and driving while suspended = 3 hours

(that's the highest unit for any one of them)

3- No insurance, obstructing, no DL, speeding, minor in possession,
which goes to jury trial for two days= 26 hours

(start with 3 hours since all are in the 3 hour category, then add 7 hours for five or
more charges, then add 16 hours for two days jury trial)

Felony (Including Juvenile Cases):

- 2.5 hours** -Fugitive / Out of County warrants
- 7 hours** -Petition To Revoke
- 10 hours** -Property Crimes (45-6-101 – 45-6-341)
-Offenses Against Public Administration (45-7-101 – 45-7-501)
-Offenses Against Public Order (45-8-103 – 45-8-408)
- 15 hours** -Dangerous Drugs (45-9-101 – 45-9-132)
-Felony DUI (61-8-401, 61-8-406)
- 20 hours** -Felony theft
-Offenses Against the Person (45-5-201 – 45-5-401 and 45-5-601 - 637)
Except Felony Sex and Homicide charges
- 50 hours** -Felony Sex Offense (45-5-501 – 45-5-512)
- 100 hours** -Homicide (45-5-101 – 45-5-106)

Add 5 hours to the hours assigned if there are 3 or 4 charges in the case

Add 5 hours to the hours assigned if the case is outside of the assigned region.

(Example: Kidnapping charged in Kalispell, but the attorney comes from Missoula – person crime + 5 hours for travel, assign 25 hours.)

Add 8 hours a day - per day(s) spent in trial to the month when a TRIAL (bench OR jury trial) occurs.

Add 10 hours to the hours assigned if there are 5 or more charges in the case

Add 20 hours to the **month** for those who practice in courts located outside of the city where their office is located.

Inchoate Offenses (**Solicitation, Conspiracy, and Attempt**), assign hours according to the underlying crime.

Example: attempted robbery, assign hours for robbery, 45-5-401 = 20 hours

Assign the hours based on the highest crime charged, then look at the number of charges for extra points:

EXAMPLES

- 1- Possession of Dangerous Drugs, Stalking = 20 hours
(since stalking is worth the most, don't assign hours for PODD)
- 2- Criminal Mischief, Arson, Burglary = 15 hours
(even though all are in the 10 hour category, add 5 hours since there are THREE charges)
- 3- Attempted negligent homicide that goes to bench trial for four days= 132 hours
(even though its attempted homicide, look at underlying charge of homicide so 100 hours, then add 8 hours a day for four days, or 32 hours)

Civil:

2.5 hours

-DI (Involuntary Commitment)

Add 5 hours if goes to contested judge hearing (total possible 7.5 hours)

Add 10 hours if goes to contested jury trial (total possible 12.5 hours)

4 hours

-DD (Developmentally Disabled)

5 hours

-DG (Guardianship)

Add 5 hours if the case goes to final contested hearing
(total possible 10 hours)

-DJ (Juveniles - misdemeanor / status offense)

Add 5 hours to the month when a jury trial occurs

Add 7 hours -If there are 5 or more charges in one case

20 hours

-DN (Dependent Neglect)

Add 10 hours if goes to contested termination (total possible 30 hours)

Note: DN case weighting is based upon the cause number of the parent(s), not the number of children, and includes termination proceedings, so trial level preparation is necessary. The value for a DN case is only placed in one of the DN cases that are all related to the same filings against the one client. The value should be placed in the first case the office receives or in the lowest cause number associated with the one client. The case weight value should only be counted once regardless of the number of children.

Add 5 hours to the hours assigned if the case is outside of the assigned region.

Add 20 hours to the **month** for those who practice in courts located outside
of the city where their office is located.

DUI / Treatment Court:

Add 20 hours every month for each treatment court the attorney is assigned to.

Each treatment court is separate and distinct, unless they are consolidated for the purpose of staffing, hearing and case work. For example, some courts have separate official names, but don't require separate attorney time because all court and case work is done at the same time.

Jail Run / Initial Appearances:

Add 70 hours every month for the attorney who is the "designated daily jail attorney" for their office (applies to Regions 1, 2, 3, 4, 5, 8 and 9) This value applies when there is only ONE person doing the jail run and initial appearances for the entire office. This does not apply in offices that use a rotation to cover the jail run and initial appearances.



OFFICE OF THE STATE PUBLIC DEFENDER
 STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED
 FY2017
 July 2016 - June 2017

Region	Attorney ID	Case Weight	Target	Over (Short)
1 - Kalispell	211195	2,419	1,500	919
1 - Kalispell	188649	2,417	1,500	917
1 - Kalispell	204633	2,561	1,500	1,061
1 - Kalispell	201259	2,360	1,500	860
1 - Kalispell	198797	1,910	1,500	410
1 - Kalispell	100990	1,124	1,000	124
1 - Kalispell	186221	2,563	1,500	1,063
1 - Kalispell	227155	131	125	6
1 - Kalispell	148299	1,243	1,500	(257)
1 - Kalispell	98467	1,877	1,500	377
1 - Kalispell	11746	2,124	1,500	624
1 - Kalispell	116504	2,031	1,500	531
1 - Kalispell	98497	1,276	750	901
1 - Kalispell	197145	339	250	89
1 - Kalispell	160139	1,554	1,500	54
1 - Kalispell	72035	1,396	1,000	396
1 - Kalispell	199839	2,443	1,500	943
1 - Kalispell	77344	2,291	1,500	791
1 - Kalispell	134006	1,729	1,500	229
1 - Kalispell	177931	2,348	1,500	848
1 - Kalispell	199606	3,045	1,250	1,795
1 - Kalispell	170996	347	438	128
2 - Missoula	176810	2,251	1,500	751
2 - Missoula	2376	1,782	1,500	282
2 - Missoula	11291	1,622	1,500	122
2 - Missoula	67203	492	750	(259)
2 - Missoula	57620	511	625	(114)
2 - Missoula	82681	379	313	223
2 - Missoula	136579	1,695	1,500	195
2 - Missoula	10212	1,744	1,500	244
2 - Missoula	5006	1,306	1,250	56
2 - Missoula	211634	2,341	1,500	841
2 - Missoula	115668	2,153	1,500	653
2 - Missoula	199607	2,445	1,375	1,070
2 - Missoula	122055	2,199	1,500	699
2 - Missoula	9475	3,009	1,500	1,509
2 - Missoula	210861	2,477	1,500	977
2 - Missoula	98497	1,376	750	1,001
2 - Missoula	12123	2,107	1,500	607
2 - Missoula	133017	1,052	1,500	(448)
2 - Missoula	197145	1,772	1,250	522
2 - Missoula	12686	150	313	(6)



OFFICE OF THE STATE PUBLIC DEFENDER
 STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED
 FY2017
 July 2016 - June 2017

Region	Attorney ID	Case Weight	Target	Over (Short)
2 - Missoula	134642	835	1,000	(166)
2 - Missoula	208273	1,513	375	1,325
2 - Missoula	13533	2,048	1,500	548
2 - Missoula	16611	948	1,500	(553)
2 - Missoula	82591	644	500	144
2 - Missoula	19035	1,416	1,500	(85)
2 - Missoula	19639	2,585	1,500	1,085
2 - Missoula	20418	322	375	(54)
2 - Missoula	100217	1,227	1,000	227
2 - Missoula	125946	2,675	1,500	1,175
2 - Missoula	24001	2,152	1,500	652
3 - Great Falls	3460	1,390	1,375	15
3 - Great Falls	65157	1,452	750	1,077
3 - Great Falls	85065	1,520	1,000	520
3 - Great Falls	60544	879	313	723
3 - Great Falls	5562	1,726	1,500	226
3 - Great Falls	168625	2,260	1,500	760
3 - Great Falls	93100	2,388	1,500	888
3 - Great Falls	155279	2,777	1,500	1,277
3 - Great Falls	200299	3,556	1,500	2,056
3 - Great Falls	200200	3,136	1,500	1,636
3 - Great Falls	12133	1,992	1,500	492
3 - Great Falls	217332	189	188	95
3 - Great Falls	145122	2,176	1,500	676
3 - Great Falls	220663	220	125	95
3 - Great Falls	19893	834	500	334
3 - Great Falls	202623	3,980	500	3,480
3 - Great Falls	28675	2,214	1,500	714
4 - Helena	4466	915	750	540
4 - Helena	6163	430	375	149
4 - Helena	101	1,963	1,500	463
4 - Helena	220000	1,313	875	438
4 - Helena	63245	1,981	1,125	856
4 - Helena	151121	2,903	1,500	1,403
4 - Helena	195569	550	250	300
4 - Helena	6163	997	750	247
4 - Helena	195114	2,873	1,500	1,373
4 - Helena	221167	1,182	750	432
4 - Helena	215470	2,313	1,250	1,063
4 - Helena	152741	1,444	938	740
4 - Helena	137867	1,519	750	769
4 - Helena	220663	477	500	(24)
4 - Helena	173014	2,347	1,500	847



OFFICE OF THE STATE PUBLIC DEFENDER
 STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED
 FY2017
 July 2016 - June 2017

Region	Attorney ID	Case Weight	Target	Over (Short)
4 - Helena	187672	343	375	(32)
4 - Helena	146630	160	250	(90)
4 - Helena	172123	921	500	421
4 - Helena	163957	2,698	1,500	1,198
4 - Helena	152162	2,060	750	1,310
4 - Helena	219041	1,547	1,000	547
5 - Butte	3651	2,185	1,500	685
5 - Butte	212094	2,047	1,500	547
5 - Butte	24135	2,704	1,500	1,204
5 - Butte	201527	1,812	1,375	437
5 - Butte	63316	1,735	750	985
5 - Butte	199827	1,759	1,500	259
5 - Butte	19633	2,209	1,500	709
5 - Butte	217161	1,940	1,125	815
5 - Butte	188008	426	375	51
5 - Butte	194869	1,793	1,250	543
6 - Havre	133840	1,333	1,375	(43)
6 - Havre	215866	1,837	1,250	587
6 - Havre	210853	140	125	15
6 - Havre	214047	2,044	1,375	669
6 - Havre	101111	2,302	1,500	802
7 - Lewistown	158201	1,628	1,000	628
7 - Lewistown	214648	1,296	1,375	(79)
8 - Bozeman	39619	1,759	1,500	259
8 - Bozeman	141464	2,187	1,500	687
8 - Bozeman	38962	1,812	1,500	312
8 - Bozeman	193704	1,870	1,500	370
8 - Bozeman	7922	1,389	1,000	389
8 - Bozeman	137596	2,030	1,500	530
8 - Bozeman	217281	322	250	72
8 - Bozeman	57485	2,198	1,500	698
8 - Bozeman	14857	1,913	1,500	413
8 - Bozeman	220670	860	750	110
8 - Bozeman	172123	1,168	875	293
8 - Bozeman	186767	2,037	1,500	537
9 - Billings	209168	1,717	1,375	342
9 - Billings	39077	1,710	1,500	210
9 - Billings	51592	1,840	1,500	340
9 - Billings	51608	1,840	500	1,590
9 - Billings	164073	720	438	501
9 - Billings	14024	1,100	469	748
9 - Billings	100099	1,320	1,500	(180)



OFFICE OF THE STATE PUBLIC DEFENDER
STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED
FY2017
July 2016 - June 2017

Region	Attorney ID	Case Weight	Target	Over (Short)
9 - Billings	3022	1,499	750	749
9 - Billings	170282	929	375	554
9 - Billings	81231	1,016	750	266
9 - Billings	39078	391	375	16
9 - Billings	212426	3,734	1,500	2,234
9 - Billings	224466	1,471	500	971
9 - Billings	164949	1,887	1,500	387
9 - Billings	188060	2,292	1,500	792
9 - Billings	224464	1,413	500	913
9 - Billings	39086	906	250	656
9 - Billings	212529	5,581	1,375	4,206
9 - Billings	107913	2,824	1,500	1,324
9 - Billings	210764	3,367	1,500	1,867
9 - Billings	204555	833	375	458
9 - Billings	155309	4,568	1,500	3,068
9 - Billings	204399	418	375	231
9 - Billings	178365	2,418	1,500	918
9 - Billings	49551	2,630	1,500	1,130
9 - Billings	43104	2,373	1,500	873
9 - Billings	202623	2,009	875	1,134
9 - Billings	130917	1,027	375	840
9 - Billings	81272	2,571	1,500	1,071
9 - Billings	152162	823	625	198
9 - Billings	202916	816	656	324
9 - Billings	50288	2,469	656	1,977
9 - Billings	68482	1,926	875	1,051
9 - Billings	96880	2,435	1,500	935
9 - Billings	151966	1,645	1,125	520
9 - Billings	227584	679	250	429
10 - Glendive	222101	545	313	389
10 - Glendive	12897	1,569	1,500	69



OFFICE OF THE STATE PUBLIC DEFENDER
 STAFF ATTORNEY CASE WEIGHTS AS ASSIGNED
 FY2017
 July 2016 - June 2017

Region	Attorney ID	Case Weight	Target	Over (Short)
10 - Glendive	204555	1,053	1,000	53
11 - Miles City	137867	1,144	625	519
11 - Miles City	177409	996	750	246
11 - Miles City	58167	1,933	1,125	808

Column 1 is the Region number.
 Column 2 is the attorney ID number from the Agency's case management system.
 Column 3 is the sum of the actual case weightings.
 Column 4 is the target of 125 hours/month x the number of months worked.
 Column 5 is the amount over or under the target.

The target of 1500 hours was determined by Chairman Gillespie in his 2012 Response to the ACLU and American University evaluations of the public defender system.
 (see page 11, <http://publicdefender.mt.gov/ChairDocs/AU-ACLUResponse/PF-Response.pdf>).

¶22 221 FTE Staff Lawyer Workdays per Year. A 2080 work-hour year comes from 260 work days, *i.e.*, 52 weeks times 5 eight hour days. Although paid on the basis of 2,080 hours, expecting that many productive-hours per year from the most efficient lawyer is not realistic when at least 10 holidays, not less than 15 but not more than 24 vacation days, up to 12 sick leave days, and 15 hours of continuing education reduce the work year. Thus, 260 work days shrink to not more than 221 FTE staff lawyer workdays per year.

¶23 147,750 FTE Staff Lawyer-hours. 8.0 productive-hours per day, *i.e.*, representing clients or managing, over 221 days provides 1,768 hours. **1,547 hours comes out of 7.0 productive-hours per day.** Seven productive-hours over 221 work days is more realistic, although probably optimistic after OPD training, office meetings, breaks, and other requirements are taken into consideration. Thus, the productive-hours per annum is rounded down to 1,500 to account for lawyers entitled to more than 15 vacation days and the meetings and other requirements. 1500 hours equates to 6.79 productive-hours on each of the 221 working days. Even that may be hopeful when travel time and waiting in court are considered. 98.5 FTE lawyers producing 1,500 hours of production gives OPD management 147,750 FTE staff lawyer-hours annually.



Office of the State Public Defender
STAFFING REPORT
 as of 6/30/2017
(Includes Modified FTE)

Region	Location	Regional Deputy Public Defenders	Current Number of Staff (FTE)		Number of Vacant Positions		FY 2017 Budget	Number of Contractors by Region*
			Attorney	Non-Attorney	Attorney	Non-Attorney		
	Public Defender Division		1.00	0.25	1.75	0.94	3.94	
	Central Services Division			18.25		1.50	19.75	
	Conflict Defender Division		1.00	1.00	3.25		5.25	
1	Kalispell	1.00	20.00	11.00			32.00	42
2	Missoula	1.00	28.00	14.75			43.75	61
3	Great Falls	1.00	13.50	8.00		1.00	23.50	47
4	Helena	1.00	14.25	7.00	1.00		23.25	51
5	Butte	1.00	9.00	5.00			15.00	54
6	Havre	1.00	4.00	4.00			9.00	26
7	Lewistown	1.00	1.00	2.00			4.00	39
8	Bozeman	1.00	11.00	8.00			20.00	34
9	Billings	1.00	29.75	13.03	1.00	2.00	46.78	53
10	Glendive	1.00	1.50	2.00	1.00		5.50	24
11	Miles City	1.00	2.00	2.00			5.00	24
	Major Crimes	-	2.00	1.00	2.00	1.00	6.00	6
Subtotal		11.00	138.00	97.28			246.28	
	Appellate Defender Division	-	12.50	3.00			15.50	29
Total FTE		11.00	150.50	100.28	10.00	6.44	278.22	

<i>Total</i>	<i>Total</i>	<i>Total</i>
<u>Current FTE</u>	<u>Vacant FTE</u>	<u>Budget</u>
261.78	16.44	278.22

* 226 Total unique contractors--some are available to work in multiple regions

Office of the State Public Defender

FY 17

TRAINING PROGRAMS

July 1, 2016-June 30, 2017

Date of Training	Description of Training	Internal Personnel		External Personnel		Totals
		Attorney	Non-Attorney	Attorney	Non-Attorney	
2016						
August 3-4	Appellate Symposium and Seminar on Litigation †	15				15
August 31- Sept. 1	OPD Management Meeting	16	3			19
September 8	Foundations, Objections and Winning at Trial* †	16				16
September 9	MTACDL/OPD Forensics CLE †	21	11	18		50
September 9-10	Fall CSKT-ICWA Legal Summit	9				9
September 14-16	Trial Skills †	21		2		23
October 12-13	OPD Statewide Training Conference	136	20	77	3	236
	- The Importance of Family Defense					
	- How Law Enforcement Creates Crimes †					
	- Simplify and Improve Your Practice: JustWare, Office 365 & More					
	- Potential Impacts of Marsy's Law on Investigations †					
	- What Are You Getting At - Ideas for Effective Voir Dire †					
	- Suspended License? The Ins and Outs of Suspensions, Revocations and Reinstatement †					
	- Strategies for Achieving Success: Overcoming Challenges in Our Cases †					
	- Addressing 404b †					
	- Just Science or Just Junk †					
	- The Ethics of Social Media Investigations of Your Client and Defense Witnesses †					
	- Implicit Racial Bias and the Myth of Colorblind Justice					
	- Development from Adolescence : Effects of Characteristics, Context, & Traumatic Experience					
	- Representing Parents with Disabilities in Dependency and Neglect Cases					
	- Experts, Attacking Theirs and Bullet-Proofing Yours †					
	- Cell Phone and Celebrite Forensics †					
	- Forensic-based Defense of Child Pornography Cases †					
	- When You Don't Want to Make the News †					
	- Policy Roundtable – What's Trending in the World of Public Defense †					
	- JustWare: Tools to Make Your Practice More Efficient					
	- Questioning the Child Witness †					
	- Case Update †					
December 1	File Management & Online Resources for Public Defenders*	20				20
2017						
February 17	Writing Motions in Limine: A How-To Guide* †	26				26
March 31	Ethics & Evidence: Our Clients & Their Phones* †	29				29
May 4	Case Update Training* †	25				25
May 10-12	Trial Skills †	24				24
May 18	2017 Legislative Update* †	37				37
June 7	2017 Legislative Update* †	7				7
Ongoing	New Employee Orientation	28				28
Ongoing	Eligibility Specialist Training - Various		15			15
Ongoing	Targeted Attorney & Staff Training	6				6
Ongoing	Annual Standards Verification					
	Totals	436	49	97	3	585

† Training topics presented to train attorneys for criminal defense or procedure.

* These web-based trainings are now available on demand via the OPD Brief Bank



OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

September 29, 2017

Amy Carlson
Legislative Fiscal Analyst
P.O. Box 201711
Helena, MT 59620-1711

Dear Ms. Carlson:

Enclosed with this letter are three reports that are due from the Office of the State Public Defender to the Legislative Fiscal Analyst by September 30, 2017 as per Title 47-1-201 (10) (a) and (b).

These reports are:

1. The net case report;
2. The case duration report; and
3. The assessments and collections report.

Please contact me if you need any clarification of this information at 406-496-6080.

Sincerely,

A handwritten signature in black ink that reads "H Freebourn".

Harry Freebourn
Interim Director

cc:

Scot Conrady, Legislative Fiscal Division
Malissa Williams, Office of Budget and Program Planning



OFFICE OF THE STATE PUBLIC DEFENDER
CASES OPENED AND CLOSED IN FY 2017
ACTIVE AND INACTIVE CASES REMAINING OPEN
TITLE 47-1-201 (10) (a)

<u>FY 2017 CASES</u>		
7/1/2016	Beg. Balance	33,096
FY 2017	Cases Opened	37,174
FY 2017	Cases Closed	<u>(37,513)</u>
6/30/2017	Ending Balance	32,757
Active Cases		25,583
Inactive Cases		<u>7,174</u>
		32,757



OFFICE OF THE STATE PUBLIC DEFENDER
AVERAGE NUMBER OF DAYS OPEN BY CASE TYPE
CASES CLOSED DURING FY 2017
TITLE 47-1-201 (10)(a)

CASE TYPE NAME	CODE	2017 AVG. DAYS
		OPEN
Criminal	DC	280
Guardianship	DG	327
Involuntary Commitment	DI	52
Juvenile	DJ	276
Dependent & Neglect	DN	553
Courts of Limited Jurisdiction	LC	180

Office of the State Public Defender Administrative Policies

Subject: Eligibility Determination	Policy No.: 105
Title 47	Pages: 8
Section: 1-111	Last Review Date: 2-24-14
Effective Date: 5-6-14	Revision Date: 2-24-14

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 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

2017

Household Size	Federal Poverty 100%	OPD Guidelines			
		133% Annual	133% Monthly	133% Bi- Weekly	133% Weekly
1	\$12,060	16,040	1,337	617	308
2	16,240	21,599	1,800	831	415
3	20,420	27,159	2,263	1,045	522
4	24,600	32,718	2,727	1,258	629
5	28,780	38,277	3,190	1,472	736
6	32,960	43,837	3,653	1,686	843
7	37,140	49,396	4,116	1,900	950
8	41,320	54,956	4,580	2,114	1,057
Each Addtl	4,180	5,559	463	214	107

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

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

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__.

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

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

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

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

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

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

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

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:	Determining Conflicts of Interest	Policy No.:	119
Title	47	Pages:	3
Section:	1-105(5)	Last Review Date:	05/14/13
Effective Date:	10/25/11	Revision Date:	08/12/16

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 and in addressing perceived conflicts.
- 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, potential conflicts of interest may be identified by the client, the case management system or other means.
 - 2.1.1 The Conflict Coordinator will review potential conflicts at the earliest possible opportunity and will do sufficient inquiry into the nature of the conflict.
 - 2.1.2 The Conflict Coordinator will make a written determination as to whether an actual conflict of interest exists.
 - 2.1.3 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.
 - 2.1.4 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 consult with the Conflict Coordinator.
 - 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 Contract Steering Committee for assistance.

- 2.2.3** Any appeal taken to the Contract Steering 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 Contract Steering Committee shall review the materials and determine whether a conflict of interest, in fact, exists. The 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 2.1.3.
- 2.2.5** The written finding of the Contract Steering 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: _____

Conflict Coordinator: _____

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: Outside Employment	Policy No.: 120
Title:	Pages: 1
Section:	Last Review Date: 4-11-13
Effective Date: 8-17-10	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: Staff Investigators	Policy No.: 121
Title:	Pages: 3
Section:	Last Review Date: 4-11-13
Effective Date: 8-10-10	Revision Date: 4-25-13

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

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

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

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

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: Contractor Six-Month Waiting Period	Policy No.: 133
Title 2	Pages: 1
Section: 2-201	Last Review Date:
Effective Date: 11/17/16	Revision Date:

1.0 POLICY

The Office of the State Public Defender has established the following procedures for former employees wishing to contract with OPD for professional services in accordance with 2-2-201, MCA. This policy applies to all former employees except for those whose employment was involuntarily terminated due to a reduction in force.

2.0 PROCEDURES

2.1 OPD employees who leave the agency are prohibited from taking new assignments as contractors for six months following voluntary termination.

2.1.1 On a case-by-case basis, regional deputy public defenders may allow departing employees to continue working on existing cases as contractors using criteria including whether a trial is imminent, client continuity demands, and the difficulty level of the case. The regional deputy public defender will document the reasons any case was allowed to leave with the departing staff member and is required to keep the number of cases to a minimum.

2.2 Employees who are involuntarily terminated for cause will not be considered for approval as contract vendors.

2.3 Former employees may not be employed by an employer who contracts with the state involving matters with which the former employee was directly involved during employment.

2.4 Following completion of the six-month waiting period, a former employee may follow the procedure for prospective contractors per OPD Policy 130 (Contract Counsel) or Policy 132 (Contract Investigative Services).

3.0 Cross-Reference Guide

MCA 2-2-201

OPD Policy 130, Contract Counsel

OPD Policy 132, Contract Investigative 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, MT 59701

Phone: 406-496-6080

Office of the State Public Defender Administrative Policies

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

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: Standards Compliance	Policy No.: 136
Title:	Pages: 1
Section:	Last Review Date:
Effective Date: 7-15-10	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: Witness Fees	Policy No.: 140
Title 26	Pages: 5
Section: 2-501 through 2-503	Last Review Date: 4-11-13
Effective Date: 2-20-09	Revision Date: 4-23-13

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

NAME	MAILING ADDRESS
PHONE NUMBER	DATE(S) OF TESTIMONY (ATTACH SUBPOENA)
DATE OF DEPARTURE (MONTH/DAY/YEAR)	TIME OF DEPARTURE (A.M./P.M.)
DEPARTURE AND DESTINATION CITIES	
DATE OF RETURN (MONTH/DAY/YEAR)	TIME OF RETURN (A.M./P.M.)
MODE OF TRAVEL <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"/> MEALS: Please indicate by date which meals you would like to be reimbursed for (B) Breakfast, (L) Lunch, (D) Dinner, _____ _____ <i>You must indicate departure/return times above so it can be determined whether you are eligible for meal reimbursement.</i>	
SIGNATURE (please sign in ink)	DATE

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>Legal Name (as entered with IRS) If Sole Proprietorship, enter your Last, First, MI</p> <hr/> <p>Trade Name If doing business as (DBA) or enter business name of Sole Proprietorship</p> <hr/> <p>Primary Address (for 1099 form) PO Box or Number and Street, City, State, ZIP + 4</p> <hr/> <p>Remit Address (where payment should be mailed, if different from Primary Address) PO Box or Number and Street, City, State, ZIP + 4</p>	<p>Entity Designation (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>Exempt from Backup Withholding <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)
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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 ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or Single-Owner LLC	The owner ³
For this type of account:	Give name and EIN of:
6. Sole Proprietorship or Single-Owner LLC	The owner ³
7. A valid trust, estate, or pension trust	Legal entity ⁴
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

¹ 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.
² Circle the minor's name and furnish the minor's SSN.
³ **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).
⁴ 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: Major Crimes Unit	Policy No.: 150
Title	Pages: 3
Section:	Last Review Date: 9-19-11
Effective Date: 11/02/09	Revision Date: 9-19-11

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

Office of the State Public Defender Administrative Policies

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

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

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

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

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

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

Subject: Mobile Devices and Services	Policy No.: 225
Title	Pages: 4
Section:	Last Review Date: 4/05/17
Effective Date: 11/10/10	Revision Date: 4/05/17

1. POLICY

The Office of the State Public Defender supports and encourages the use of personal mobile devices for employees who use these devices to enhance productivity or who are required to use a mobile device in conjunction with their job duties. Using a personal mobile device is cost-effective and, through the use of Mobile Device Management (MDM), effectively secures State data and resources at the same time. Users are responsible for securing their personal mobile device so that others cannot use it inappropriately to access State data. MDM is required on all mobile devices that access State email.

2. REQUIREMENTS FOR ISSUING A STATE DEVICE

State mobile devices shall be issued on a case by case basis with the approval of the program manager or designee. The employee will be required to sign the Mobile Device Management User Agreement required by the Department of Administration (Attachment A).

3. REQUIREMENTS FOR REIMBURSEMENT OF PRIVATE DEVICE COSTS

If a private device is used for business purposes a reimbursement request may be made per Attachment A, and the employee will be required to sign the Mobile Device Management User Agreement.

4. CROSS REFERENCE GUIDE

The use of mobile devices for state government work is also governed by the following policies and laws: [Electronic Mail](#), [Information Security](#), and [Social Media](#) found on the MOM website at <http://mom.mt.gov>; and [2-15-114](#) and [2-17-534](#), MCA. For a definition of a mobile device, refer to the [Enterprise Mobile Device Management Policy - Section VI Definitions Mobile Device Management \(MDM\)](#).

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 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

Mobile Device User Agreement and Reimbursement Request

Department of Administration

Mobile Device Management User Agreement

This User Agreement covers the use of all mobile devices that interact with State of Montana information technology resources.

Users utilizing an MDM-enrolled device acknowledge and agree:

1. The State Information Technology Services Division (SITSD) may remove State data from my enrolled mobile device, **STATE OR PERSONAL**, without any notification, resulting in loss of all State data on the enrolled mobile device. Devices enrolled as "Bring Your Own Device" (BYOD) will only experience data removal of State data. State-owned devices may be set back to factory default settings. SITSD will make a reasonable effort to contact the user in a timely manner to inform them of and reasons for the data removal. Some of the common reasons to remove State data from a mobile device are listed below:
 - a. If the mobile device is suspected of being compromised and poses a threat to the State;
 - b. If the mobile device user violates State policies or statutes concerning the use of the mobile device;
 - c. If a technical issue arises requiring the mobile device to be wiped to resolve; or
 - d. If the owner of the mobile device resigns, is terminated, or suspended with/without pay.
2. During the initial enrollment with the MDM infrastructure, default Security Profiles will be pushed to the enrolled mobile device. Security Profiles are meant to protect and secure the State's information on the mobile device. BYOD profiles are minimal and intended to only protect State data. No personal private information is collected with BYOD enrollment.
3. The Security Profiles may change because they are periodically reviewed. SITSD will attempt to inform users before changes are made, but in the case of an emergency change, prior contact may not be possible.
4. If a mobile device configured to connect to State information technology resources is lost, the user shall take the actions listed below as soon as possible, but no later than 24 hours from losing the managed mobile device:
 - a. Contact the Department of Administration Security Officer and SITSD Service Desk to report the loss;
 - b. Contact the cellular company that provides their service and have the mobile device deactivated; and
 - c. Change their Active Directory password, which is the password associated with the user's C# which allows them access to the State network.

-
5. Support of the mobile device is provided by the employee's mobile device provider.
 6. The use of mobile devices for state government work is also governed by the following policies and laws: [Electronic Mail](#), [Information Security](#), and [Social Media](#) found on the MOM website at <http://mom.mt.gov>; and [2-15-114](#) and [2-17-534](#), MCA. For a definition of a mobile device, refer to the [Enterprise Mobile Device Management Policy - Section VI Definitions Mobile Device Management \(MDM\)](#).
 7. State-Owned Devices: All network activity conducted while doing State business and with State-owned resources and/or hardware is the State's property. The State reserves the right to monitor and log all State network activity including email, text messages, Twitter messages, internet use, and all other social media use, with or without notice. Therefore, there is no expectation of privacy in the use of these resources and the content of the messages sent using these resources.

Employee-Owned Devices: The foregoing does not apply to use of employee-owned devices that do not connect to the State network. However, messages or other data content generated from such use and involving State business may be public information under Montana's open records laws and therefore subject to disclosure. In addition, each employee is responsible to identify and retain public records consistent with the State's records retention laws. Email messages generated and received with a State email account are subject to open records and records retention laws.

Request for Monthly Reimbursement/Personal Mobile Device

If an employee required to carry or authorized to use a mobile device to enhance productivity elects to use their personal mobile device, the employee will be reimbursed for voice/text only (\$10) or voice and data/email usage (\$25). Employees who work outside an office environment (example: some General Services Division employees) may choose to use their personal cellular phone as their work phone. In this instance, a division administrator may approve a \$25 reimbursement for voice/text use only. Employees may request enrollment in MDM for reasons of convenience and receive no reimbursement; however, since there is a cost associated with MDM enrollment, approval is required.

Recurring monthly reimbursements are set up to align with the fiscal year and requests must be reviewed and reapproved at the beginning of the fiscal year. Management reserves the right to adjust these reimbursement amounts at their discretion due to change in usage, position, etc.

Monthly Reimbursement Requested:

- \$10 - Voice/Text Only
- \$25 - Voice, Text, and Data/Email
- \$25 - Voice/Text Only (in a position with no desk/work phone)
- \$0 - MDM enrollment is approved for a personal cellular device, but with no reimbursement.
- \$0 - MDM enrollment is approved for a state-owned device, no reimbursement needed.

This reimbursement is subject to applicable local, state, and federal taxes.

To assist in the installation of MDM, let us know what type of device you will be using:

Platform/Mobile Operating System	Device Ownership
<input type="checkbox"/> iOS (Apple Products)	<input type="checkbox"/> Personal
<input type="checkbox"/> Android	<input type="checkbox"/> State-Owned
<input type="checkbox"/> Windows	Phone Number: _____

By signing this Mobile Device Management Agreement, I acknowledge that I have read and understand (i) the terms and conditions of the agreement and (ii) the policies and laws referenced in this agreement. I agree to comply with these laws and policies.

USER/Employee:

Signature: _____ Date: _____
Print Name: _____ Employee ID: _____
Office Location: _____ Program: _____

SUPERVISOR

Signature: _____ Date: _____
Print Name: _____

ACCOUNTING

Org/Fund/Sub Class to Charge for Monthly Recurring Expense: _____

AGENCY SECURITY OFFICER

Signature: _____ Date: _____
Print Name: _____

Once completed and all signatures are obtained, agency security officer will submit this request to the OPD Central Services Office for processing. Recurring monthly reimbursements are set up through the end of the fiscal year and must be reapproved and renewed annually.

Central Services Office Use Only:	
Reimbursement timeframe: _____ to _____	Entered by: _____
Notes: _____	

Office of the State Public Defender Administrative Policies

Subject: Office Stipend	Policy No.: 226
Title:	Pages: 3
Section:	Last Review Date: 11-29-16
Effective Date: 11-10-15	Revision Date: 11-29-16

1.0 POLICY

The Office of the State Public Defender (OPD) may provide an office stipend to assistant public defenders to reduce financial hardship for employees who do not have an existing home office or an OPD-provided office in which to perform their essential job functions. This policy applies to current and new employees.

2.0 PURPOSE

The office stipend is intended only for payment for office space and expenses and shall not be used for housing or other rental costs. An investigation may be conducted at any time, to ensure that the policy is followed as intended. Any violations may nullify the office stipend and may lead to disciplinary action.

3.0 DURATION

- 3.1 The office stipend will be discontinued if office space becomes available through OPD.
- 3.2 The office stipend is dependent on adequate funding within the program budget.
- 3.3 The office stipend can be eliminated and/or the agreement can be rescinded at any time with a 30-day notice to the employee.

4.0 PROCEDURE

- 4.1 Employees who rent office space may submit a written request for an office stipend equivalent to the actual cost of the rental up to a maximum of \$200 per month, and/or the cost of internet service, up to a maximum of \$60 per month.
- 4.2 To be eligible for a rental stipend, the employee must submit a signed office rental or lease agreement to the program manager for approval. The following information must be included on the rental or lease agreement:
 - 4.2.1 Employee's name
 - 4.2.2 Rental company/landlord name
 - 4.2.3 Rental company/landlord address
 - 4.2.4 Amount of rent
 - 4.2.5 Effective date of lease
- 4.3 Monthly verification of the rent payment is required. Documentation must be received by the program manager by the tenth calendar day of the month. The

employee will submit a travel expense report, supplemented by one of the following:

- 4.3.1 Receipt from the lessor, OR
- 4.3.2 Cancelled check, OR
- 4.3.3 Copy of money order.

- 4.4 To be eligible for an internet stipend, the employee must submit a copy of the monthly bill from their internet service provider with the travel expense report.
- 4.5 Central Services will process the approved travel expense reports through the biweekly payroll process.
- 4.6 All office stipend payments are taxable as required by IRS regulations.
- 4.7 The office stipend is void under the following conditions:
 - 4.7.1 the employee terminates employment with the agency;
 - 4.7.2 the employee is no longer renting an office;
 - 4.7.3 the agency has established office space for the employee.
- 4.8 The employee is responsible for notifying the program manager if they are no longer entitled to the stipend. Any excess already paid will be recovered from the employee by payroll deduction.

5.0 CLOSING

Questions about this policy should be directed to Central Services 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

OFFICE STIPEND ACKNOWLEDGEMENT AND UNDERSTANDING

I, _____ acknowledge I have read and understand the Office Stipend policy providing an office stipend to assistant public defenders without access to an office provided by OPD or an available home-based office.

Specifically, I understand by requesting this discretionary office stipend I am responsible for:

1. Providing the program manager with a copy of the lease agreement and/or the monthly bill from the internet service provider.
2. Notifying the program manager immediately if the terms and conditions of my lease change.
3. The tax liability associated with the office stipend.
4. Reimbursing my employer all funds provided for but not used in the execution or fulfillment of the lease agreement in which the office stipend was based.

I understand that the approved office stipend will be paid to me the first pay period ending following the 10th of the month and will be reimbursed on my paycheck.

Lease/rental amount: _____

Internet amount: _____

Monthly amount to be received: _____

Program Manager approval: _____

By signing below, I certify that I have read and understand my responsibilities associated with receiving an office stipend. Intentional falsification, failure to notify the program manager of changes, or failure to reimburse my employer for funds I should not have received may subject me to discipline, up to and including termination.

Signature

Date

Office of the State Public Defender Administrative Policies

Subject: Media Policy	Policy No.: 230
Title	Pages: 2
Section:	Last Review Date:
Effective Date: 04/23/09	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: Public Participation Guidelines	Policy No.: 235
Title 2	Pages: 1
Section: 3-103	Last Review Date: 7-30-14
Effective Date: 01/09/09	Revision Date: 7-31-14

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

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**

Subject: Computer Use	Policy No.: 502
Title	Pages: 4
Section:	Last Review Date: 4-1-13
Effective Date: 11-01-06	Revision Date: 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
Administrative Policies
Human Resources**

Subject: Vehicle Use	Policy No.: 503
Title	Pages: 7
Section:	Last Review Date: 4-1-07
Effective Date: 03-27-06	Revision Date: 10-28-16

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
Central Service Division
44 West Park
Butte, MT 59701

(406) 496-6080

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 subchapter, 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, 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.

(4) "Under the influence" means that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a state vehicle has been diminished.

History: [2-17-424](#), MCA; [IMP](#), [2-9-201](#), [2-9-305](#), [2-17-424](#), MCA; [NEW](#), 2001 MAR p. 2013, Eff. 10/12/01; [AMD](#), 2012 MAR p. 2595, Eff. 12/21/12.

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 nonstate employee enrolled and registered as a student at a university of the state to conduct university business;
- (g) a nonstate 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 nonstate 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 nonstate 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 nonstate employee to drive. Prior approval is not required; and
- (j) an inmate of a state prison who must operate a state vehicle to fulfill job duties for a position with Montana Correctional Enterprises or a state prison, and who is approved by the appropriate division as outlined in Montana State Prison/Montana Women's Prison/Montana Correctional Enterprises Procedure. If an inmate who is allowed to drive on Department of Corrections' property under this rule does not have a valid driver's license, the inmate may drive a state vehicle if:
 - (i) the inmate has a valid facility driving permit;
 - (ii) is timely paying fines, if any, associated with the inmate's loss of a driver's license; and
 - (iii) is working toward obtaining a valid state of Montana driver's license.

(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, 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01; AMD, 2012 MAR p. 2595, Eff. 12/21/12.

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) Nonprobationary 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) Nonprobationary 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 ten 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 ten 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](#), [2-17-424](#), MCA; [NEW](#), 2001 MAR p. 2013, Eff. 10/12/01; [AMD](#), 2008 MAR p. 614, Eff. 4/11/08.

2.6.209 ALCOHOL AND DRUGS

(1) No person may be under the influence while on state business.

(2) 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](#), [2-17-424](#), MCA; [NEW](#), 2001 MAR p. 2013, Eff. 10/12/01; [AMD](#), 2012 MAR p. 2595, Eff. 12/21/12.

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.

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 [2.21.6505](#) through [2.21.6509](#) and [2.21.6515](#).

History: [2-17-424](#), MCA; [IMP](#), [2-9-201](#), [2-9-305](#), [2-17-424](#), MCA; [NEW](#), 2001 MAR p. 2013, Eff. 10/12/01; [AMD](#), 2008 MAR p. 614, Eff. 4/11/08; [AMD](#), 2008 MAR p. 614, Eff. 4/11/08.

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 0.08 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) 496-6080

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

Subject: Reimbursement for Personal Vehicle Use	Policy No.: 504
Title	Pages: 1
Section:	Last Review Date: 11/18/13
Effective Date: 9/1/09	Revision Date: 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**

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

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

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

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

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**

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

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

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:

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

Subject: Workplace Safety	Policy No.: 530
Title 39	Pages: 5
Section: 71	Last Review Date: 11-18-13
Effective Date: 09-01-07	Revision Date: 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: Drug-Free Workplace	Policy No.: 531
Title:	Pages: 2
Section:	Last Review Date:
Effective Date: 7-15-10	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**

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

Subject: Broadband Pay Plan	Policy No.: 540
Title	Pages: 4
Section:	Last Review Date: 11-18-13
Effective Date: 5-21-09	Revision Date: 5-26-16

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

Montana Public Defender Commission

Practice Standards

Updated December, 2012

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Practice Standards

December, 2012

Section I, Introduction

1. Purpose:

These standards are intended to encourage and allow attorneys representing indigent and all other persons entitled to public legal representation to perform to a high standard of representation and to promote excellence and professionalism in the representation of those persons. The following standards are adopted to foster a legal representation system in which:

A. The public legal representation function, including the selection, funding, and payment of counsel for indigent clients, is as independent from political influence and judicial supervision as possible given the geographic and demographic diversity of the State of Montana;

B. Those persons entitled to public legal representation are adequately represented through a legal services delivery system consisting of defender offices, the active participation of the private bar, or both;

C. Applicants requesting legal services based upon indigence are screened for eligibility based upon uniform standards, then assigned and notified of an appointment as soon as is practically possible;

D. Counsel has sufficient time, confidential space, and confidential electronic communications to converse with the client;

E. Counsel's workload matches counsel's capability;

F. Counsel's ability, training, and experience match the complexity of the case;

G. To the extent possible, the same attorney continuously represents the client until completion of the case;

H. Counsel for a client entitled to public legal representation has parity of resources with opposing counsel and is included as an equal partner in the justice system; and,

I. Counsel is required to obtain continuing legal education and training.

Practice Standards

December, 2012

Section I, Introduction

2. Application

A. These standards are intended to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of counsel to determine the effectiveness of representation. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

B. These standards apply generally to all counsel who represent persons at state expense pursuant to the Montana Public Defender Act. In cases where these standards conflict with or contradict the standards established for representation in certain specific types of cases, the more specific standards shall apply.

Practice Standards

December, 2012

Section I, Introduction

3. Discrimination:

A. No government agency or any entity contracting with a government agency, in its selection of an attorney, firm, or agency to provide public legal representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the basis of race, color, religion, national origin, age, marital status, sex, sexual orientation or disability. Government entities, defender offices, contract counsel, and assigned counsel shall comply with all federal, state, and local non-discrimination laws.

Practice Standards

December, 2012

Section II, Case Selection

1. Nature of Case:

A. Counsel may be assigned to represent persons in all cases as described in the Montana Public Defender Act and in any other case deemed appropriate by the Montana Supreme Court.

Practice Standards

December, 2012

Section II, Case Selection

2. Publicizing of Services:

A. The availability of public defender services should be publicized by the Office of the State Public Defender, regional public defender offices, and local public defender offices. Reasonable efforts should be made to ensure that notices containing information about public defender services and how to access those services are posted conspicuously in police stations, jails and wherever else it is likely to give effective notice.

Practice Standards

December, 2012

Section III, The Attorney-Client Relationship

1. Nature of Representation:

Goal: The paramount obligation of counsel is to provide quality representation and diligent advocacy to the client at all stages of the representation.

A. To provide quality representation and diligent advocacy, counsel must preserve, protect, and promote the client's rights and interests, and be loyal to the client.

B. Public defenders, contract counsel, shall provide services to all clients in a professional, skilled manner consistent with the Montana Rules of Professional Conduct, case law, applicable court rules defining the duties of counsel and the rights of their clients, and these Standards.

Practice Standards

December, 2012

Section III, The Attorney-Client Relationship

2. Initial Contact:

Goal: Counsel shall be made available to indigent defendants at the earliest opportunity.

A. Effective representation should be available to an eligible person upon request of the person, or someone acting on the person's behalf, to a court, a public defender office, or contract counsel as soon as the person is under investigation, arrested, charged with a criminal offense, becomes a party to any litigation in which the person is entitled to public legal representation, or when the interests of justice require representation. This standard does not create a duty of counsel to provide indigent legal representation to a person beyond those duties imposed by statutes and case law.

B. A person not in custody shall be advised of the right to representation and, if eligible, offered the services of counsel at the person's first appearance before a judicial officer. Assigned counsel shall make an appointment at counsel's earliest convenience, prior to the next court appearance, to personally meet with any prospective client. A person in custody who is not represented by retained counsel shall be entitled to consult with a public defender for not less than fifteen minutes prior to his or her first court appearance. If feasible, counsel should offer representation for the initial appearance for the purposes of making a bond argument. When a court incarcerates a person who appears before it and that person requests indigent representation, counsel shall make personal contact with the person within three working days.

C. When it is determined that a person is ineligible for public legal representation, counsel should decline the case and advise the person of how to appeal the determination of ineligibility. However, should immediate service be necessary to protect that person's interests, such service should be rendered until the person has the opportunity to retain counsel. In that event, the Office of the State Public Defender shall be reimbursed for counsel's services at the current hourly rate for contract counsel.

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3. Duration of Representation:

Goal: Once a case is assigned to an attorney, continuous and uninterrupted representation by the same attorney is the most effective method of representation.

A. Counsel shall provide continuous and uninterrupted representation to eligible clients from time of entry into the case through final disposition in the trial court. The Appellate Defender's Office shall provide appellate representation before the Montana Supreme Court.

B. In the event that counsel is no longer employed by a public defender office or private counsel no longer does cases for the Office of the State Public Defender (OPD), either the Regional Deputy Public Defender or Contract Coordinator, in his or her discretion, may direct that counsel shall continue to represent the client through final disposition of the case at the rate of compensation for assigned counsel set forth in these Standards. Completion of a client's case shall not be required if counsel is unable to continue representation or is relocating to a residence outside the Region. These Standards shall not prohibit counsel from withdrawing from a case in which a court has recognized a conflict of interest for counsel or in which a client is found to be ineligible for indigent legal services.

C. In the event that a court should deem it appropriate to set an evidentiary hearing on a *pro se* petition for postconviction relief, the Office of the State Public Defender shall assign previously assigned counsel for the petitioner, unless the petition raises an issue of ineffective assistance of counsel. Ineffective assistance of counsel shall be handled by the Office of the Appellate Defender.

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4. Conflicts of Interest:

Goal: The duty of loyalty to the client is paramount.

A. Organization of the State Public Defender System: The State Public Defender System is made up of eleven Regional Public Defender Offices, the Office of the Appellate Defender, the Major Crimes Unit, the Conflict Coordinator, and various local offices and contract attorneys. The Office of the Appellate Defender is independent from all trial division offices. The Conflict Coordinator is independent from all trial division offices and is independent of the Appellate Defender Office.

Each local office is under the direct supervision of a Regional Deputy Public Defender. The Major Crimes Unit is under the direct supervision of a manager who is responsible for directing, coordinating, and evaluating the work of attorneys employed in the unit. The Major Crimes Unit manager is solely responsible for providing guidance to and determining litigation strategy for attorneys assigned to his supervision. The Regional Deputy Public Defenders are responsible for directing, coordinating, and evaluating the work of attorneys employed in the local office and any contract attorneys that are also assigned to his or her overall supervision. The Regional Deputy Public Defenders are solely responsible for providing guidance to and determining litigation strategy for attorneys assigned to their supervision.

Each regional office and the Major Crimes Unit has its own support staff and investigators separate from those employed by any other independent office. Each office is physically separate from the others. No supervisor or staff from one independent office has access to files or premises of another independent office. However, a supervisor or staff from a regional office has access to the files and premises of a local office that is under that regional office's supervision. Each office has its own phone numbers, facsimile equipment, and computers. Although computer networks will be linked for purposes of reporting statistical information, confidential client information shall be separated by appropriate firewalls or other screening devices.

Neither the Chief Public Defender nor anyone assigned to the State Public Defender System administrative division exercises general control or influence over the handling of individual trial division or appellate division cases, has access to client files or client confidences, has keys to any independent office, or has unsupervised access to the premises of any independent office. The only other exception to this rule is for major litigation cases in which the State Public Defender's office may provide assistance through its Major Crimes Unit. While the Office of the State Public Defender must sign off on all expenditures and coordinate in advance on some expenditures for expert witnesses, certain other investigative assistance, and equipment purchases, these requirements are only to ensure compliance with State disbursement

Sections III. 4. A., C., E., F. and L. were amended to reflect the scope of the Conflict Coordinator function. Section A. was also amended to remove reference to the Chief Public Defender and Contract Manager taking cases to comply with statutory changes. Amendments adopted at the [August 27, 2012](#) Commission meeting. Additional discussion at the [August 8, 2012](#) Standards Committee meeting.

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procedures and promote sound fiscal practices; they do not dictate trial strategy, which remains the exclusive province of the Regional Public Defender's Office or Major Crimes Unit.

B. State Public Defender System Organization and Conflicts of Interest: Each independent regional office, including any local office under its supervision, is a separate "firm" for purposes of representing clients. The Major Crimes Unit is a separate "firm" for purposes of representing clients. Accordingly, a client with a conflict of interest with one regional office may be represented by another regional office or the Major Crimes Unit. In such an event, the client shall be screened through appropriate devices and procedures from having contact with any confidential information concerning any other case in the conflicting region. A local office may not represent a client in conflict with a client of its regional parent office, or vice versa.

The Office of the Appellate Defender is also a separate "firm" for purposes of client representation. The Office of the Appellate Defender may represent a client in conflict with a client of any regional or local office, or in conflict with any contract attorney. In representing the former client or a trial division office, the Office of the Appellate Defender may take the position that a regional or local office attorney, or a contract attorney, did not provide the client constitutionally effective assistance of counsel.

C. Examination for Potential Conflicts of Interest: Early detection of a potential conflict of interest is crucial to its appropriate resolution. As soon as is practicable following appointment to represent a client, a Regional Public Defender Office must examine its records to determine whether it may have a conflict of interest involving another current or former client, or otherwise. An office must promptly update this examination as it investigates the case and receives discovery, with particular attention paid to finding out if conflicts may exist with anticipated witnesses for the prosecution or defense. In the event that a potential conflict of interest develops, the matter shall be referred to the Conflict Coordinator, who shall be provided sufficient facts to decide the issue.

Clients and potential witnesses may also have information that will assist in uncovering possible conflicts of interest. Accordingly, each local public defender office should use standard questions for its client intake interviews and witness interviews that are designed to uncover conflicts on forms developed by the State Public Defender's Office.

In a situation in which a public defender's office makes an initial appearance on behalf of codefendants, the clients must be cautioned at the first opportunity not to disclose confidential information concerning the case until a determination can be made if a conflict exists.

D. Policy and Guidance on Potential Conflicts of Interest: It is the policy of the Office of the State Public Defender that all State Public Defender System offices will comply with all legal requirements and ethical guidelines relating to conflicts of interest in the representation of

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clients. The Rules of Professional Conduct are mandatory authority. To the extent that this Standard may be interpreted as inconsistent with the Rules, the latter controls.

The difficulty in developing case-specific policies is that it is impossible to formulate rules that will apply in every situation. The following guidance contains examples of situations where conflicts are likely to result and others that are probably not conflicts of interest. This is not an exclusive list; however, this list contains many situations expected to arise in cases. Any potential conflicts must be resolved on a case-by-case basis.

E. Codefendants: Public defender offices within a region or the Major Crimes Unit will not represent codefendants except in rare situations when it is clear that each codefendant's interests are completely consistent with the others and each codefendant agrees. Even so, the better course of action is to represent only one codefendant. If possible, the regional public defender should keep one of the cases. If the public defender can make a choice of codefendants before obtaining privileged information from either one, the choice should be the codefendant with the most serious or difficult case. Otherwise, the local public defender should keep the first codefendant to which the office is appointed and refer the other codefendant(s) to the Conflict Coordinator.

F. Simultaneous representation of a defendant and a potential prosecution witness or alleged victim: There will almost always be a conflict of interest in this situation. There may not be a conflict if the prosecution witness's credibility or the alleged victim's character is not at issue, and the prosecution witness' testimony is not a crucial factor in the defendant's case. This issue should always be referred to the Conflict Coordinator.

G. A former client is a potential prosecution witness or alleged victim: This is not a *per se* conflict of interest, but a conflict will often exist in this situation. There may not be a conflict of interest if the prosecution witness's credibility or the alleged victim's character is not at issue, and the prosecution witness's testimony is not a crucial factor in the defendant's case. In other cases, there may not be a conflict of interest if the local public defender's office has no privileged information about the former client that would be useful in representing the defendant.

H. Investigation reveals that another person may have committed the charged crime and that other person is a former client: This will almost always be a conflict of interest. This presents a conflict of interest if the local public defender's office has privileged information about the former client that would further the theory that the former client is the perpetrator.

I. An employee of the local public defender's office is a potential prosecution witness or an alleged victim: Either situation is a conflict of interest.

Sections III. 4. A., C., E., F. and L. were amended to reflect the scope of the Conflict Coordinator function. Section A. was also amended to remove reference to the Chief Public Defender and Contract Manager taking cases to comply with statutory changes. Amendments adopted at the [August 27, 2012](#) Commission meeting. Additional discussion at the [August 8, 2012](#) Standards Committee meeting.

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J. The defendant was convicted in a previous case while represented by the local public defender's office and has a colorable claim of ineffective assistance of counsel in that case: This presents a conflict of interest as long as the ineffective assistance claim is unresolved.

K. Situations that do not present *per se* conflicts of interest: The following are not *per se* conflicts of interest. However, if the particular situation actually degrades the quality of client representation or creates an appearance from which a reasonable person would doubt that a local public defender's office can exercise independent professional judgment on behalf of a client, a conflict would exist. The individual circumstances control. They include:

- a. A dispute between client and attorney or other member of the local public defender's office staff.
- b. A client refuses to follow an attorney's advice, unless it involves the commission of a future crime.
- c. A client files a grievance against the attorney with the attorney's supervisor or the Office of Disciplinary Counsel. A client should not be allowed to manipulate appointment of counsel by filing a frivolous grievance against an assigned attorney. However, a non-frivolous grievance may create a conflict of interest. A client complaint, even if not creating a conflict of interest, should usually justify the local public defender in changing assigned counsel as a matter of supervisory discretion.
- d. An alleged victim or potential prosecution witness has a friend or relative in the local public defender office.
- e. A witness for the defense is a present or former client, unless there is a reasonable possibility the testimony could turn adverse to the defendant or the theory of defense may implicate the present or former client.
- f. An employee of the public defender office is closely related by blood or marriage, is engaged to be married, or otherwise has a close relationship with an employee of a State, county, or city office that has prosecution, law enforcement, or child welfare responsibilities. Appropriate steps must be taken to disclose the relationship, ensure protection of privileged information, and reinforce confidence in the independent judgment and zealous representation of the public defender officer. A "close relationship" would include sharing a household and extended dating.
- g. An employee of the public defender office is a former employee of a State, county, or city office that has prosecution, law enforcement, or child welfare responsibilities. However, if the former employee of such office participated personally and substantially in a case, the public defender office would have a conflict of interest and be disqualified. If the former employee of such office did not participate personally and substantially in the case, a timely deployed "ethical wall" will prevent disqualification of the public defender office.

Sections III. 4. A., C., E., F. and L. were amended to reflect the scope of the Conflict Coordinator function. Section A. was also amended to remove reference to the Chief Public Defender and Contract Manager taking cases to comply with statutory changes. Amendments adopted at the [August 27, 2012](#) Commission meeting. Additional discussion at the [August 8, 2012](#) Standards Committee meeting.

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- h. An employee of the public defender office is a former employee of another public defender office or other law firm that represented clients in conflict with the public defender office where the employee is now employed. This situation sometimes occurs when Public Defender System employees transfer from one public Defender System office to another, and when personnel are hired from law firms that handle criminal or juvenile cases. Apply the same process as above.
- i. An employee of the prosecutor's office is a former employee of the public defender's office. Apply the same process as above.
- j. A public defender appears before a judge who is a former associate in the public defender office. In such cases, appearances before former associates are proper when there has been full disclosure.
- k. An employee of the public defender office is closely related by blood or marriage, or is engaged to be married, to a judge before which the public defender office appears, or otherwise has a close relationship with a judge before which the public defender office appears. A "close relationship" would include sharing a household or extended dating. Such a relationship must be disclosed in any case where the public defender office appears before the judge and each party given the opportunity to request recusal.
- l. A public defender has applied for or been offered a job in a state, county, or city office that has prosecution, law enforcement, or child welfare responsibilities, or is running for election as a prosecutor or law enforcement officer. In such cases, the Office of the State Public Defender may give the public defender and his or her supervisor guidance concerning campaign ethics laws, the public defender's caseload, and other matters to ensure client and public confidence in the continued zealous advocacy by the public defender and the public defender office.
- m. A public defender has applied for appointment to a judgeship.

L. Action after identifying a possible conflict of interest: There is no one-size-fits-all solution here, either. However, there are a couple "must do's" and several "maybe should do's" when a possible conflict is uncovered. They include:

- a. Seek advice from supervisors and others: A "must do." The first source of advice should be the office supervisor. An office staff meeting is a good vehicle for hashing out these issues. In addition, the Conflict Coordinator is available to help answer questions of professional ethics.
- b. Full disclosure to the client: Another "must do," even if the attorney does not think there is an actual conflict. If the situation doesn't present a real conflict, the attorney should explain that to the client and obtain his or her acknowledgment that continued representation is appropriate. If the client doesn't agree and wants the attorney removed, or isn't mentally competent, the attorney can then make a decision on how to proceed. But, attorney must never withhold information from

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the client about any potential conflict. The attorney should document the disclosure and the client's response. The attorney should inform the client of his or her right to file a grievance of the issue and the right to raise the issue to the court.

- c. Request for waiver from the defendant or other current client: If there is an actual conflict of interest, the client may want to waive the conflict and retain the attorney after full disclosure of the conflict and what it means to continued representation by counsel. The attorney should document the disclosure and any waiver on the forms provided by the Office of the State Public Defender. The attorney should use sound judgment in deciding whether to ask a current client to waive a conflict. Some conflicts are so serious that the attorney should move to withdraw, even though the client likes the attorney so much that he or she would be willing to waive anything.
- d. Request for waiver from a prior client: If, for example, a prior client is a witness or an alleged victim in a current case, the attorney can ask him or her to waive a conflict. This would most likely involve consent for disclosure of privileged information or use of the conviction for which a public defender office represented the prior client as impeachment or character attack. Again, the attorney should use sound judgment in deciding whether to ask for such a waiver, as some conflicts are so serious that waiver will not remove the appearance of impropriety. *See also Montana Rules of Professional Conduct*, Rules 1.9 (Duties to Former Clients), 4.3 (Dealing with Unrepresented Person). Again, the attorney should document the disclosure and any waiver.
- e. Building an "ethical wall": In rare cases, an "ethical wall" may cure a conflict of interest. This type of procedure will always be used when an attorney from another Region or the Major Crimes Unit comes into a new Region to handle a conflict matter. An "ethical wall" will screen the attorney from information except that necessary for his case. The "ethical wall" shall screen the attorney from both hard copies of other files, as well as any electronic information concerning the other clients, whether in the case management software, email, or other electronic data.
- f. Disclosure to the court and prosecutor: If the attorney is confident that the situation doesn't present an actual conflict, the client agrees, and the attorney documented the client disclosure and acknowledgment, then the attorney may not need to disclose the situation to the court and prosecutor. The attorney may not want to inform others if doing so might tip trial strategy, compromise privileged information, reveal attorney work product, or cause undue invasion of someone's privacy. However, if the attorney's instincts indicate that it is too big of an issue to keep under wraps, or might come back to haunt him or her, then it's time to bring in the judge and opposing counsel. Certainly, any actual conflict of interest should be brought to all parties' attention, even if the client is willing to waive it.

Sections III. 4. A., C., E., F. and L. were amended to reflect the scope of the Conflict Coordinator function. Section A. was also amended to remove reference to the Chief Public Defender and Contract Manager taking cases to comply with statutory changes. Amendments adopted at the [August 27, 2012](#) Commission meeting. Additional discussion at the [August 8, 2012](#) Standards Committee meeting.

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- g. Making a record: If the matter is disclosed to the court and prosecutor, the attorney must make sure there is a record of it with all parties present. The client's on-the-record waiver or agreement that there is no actual conflict of interest, after full disclosure that is also on the record, will close the door on almost any controversy. If the attorney's position is that there is no conflict, the attorney will be required to elaborate; a simple denial of a conflict is insufficient.
- h. Moving to withdraw: If there is an actual conflict and there is no waiver, the office must withdraw. If multiple current clients are in conflict, the attorney may be able to keep one of the cases if he or she identified the conflict early enough. If so, the attorney should try to keep the most serious or difficult case. If that is not feasible, then the attorney should try to keep the first client in the door. Often, however, the conflicts among current clients aren't discovered until the office is well into its representation of all. If so, the office usually must withdraw from all cases. If the attorney must move to withdraw, keep in mind that, as a general rule, the attorney doesn't have to reveal the factual basis for the conflict. The attorney should resist requests to reveal anything more than is necessary to articulate the conflict and must protect privileged information.
- i. Resolve close cases in favor of the most conservative action: If an attorney's instincts indicate something is a potential conflict, then it probably is. If an attorney is uncertain whether a situation presents an actual conflict, then it likely does. If an attorney is ambivalent about telling the court about a possible conflict that he or she thinks was resolved, then the attorney probably should.

M. Joint Defense Agreements: In the event of a multiple defendant case involving a public defender office, or a contract attorney, and any outside counsel, the following guidelines should apply to any joint defense agreements entered into. A joint defense agreement should be in writing, signed by all counsel and clients after consultation, and should provide the following:

- a. The agreement must not create any kind of an attorney-client relationship between co-defendants;
- b. Information that is shared under the agreement is privileged;
- c. Anyone who withdraws from the agreement remains bound by confidentiality as to any information obtained through the joint defense agreement;
- d. All parties agree that in the event one withdraws to cooperate with the government, any potential conflict of interest is waived by all parties. Anyone who withdraws from the agreement shall provide notice to all other parties prior to withdrawing, and return all documents provided pursuant to the agreement prior to withdrawing. A log should be kept of all meetings attended under the joint defense agreement, as well as any information and documents shared pursuant to the agreement;
- e. In the event that any defendant in the agreement testifies at trial, he or she agrees to waive the confidentiality provisions of the joint defense agreement to allow any

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other remaining party to the agreement to cross-examine him or her on the basis of information he or she has shared through the joint defense agreement;

- f. The agreement must recite a procedure for withdrawing from the agreement;
- g. All documents provided pursuant to the joint defense agreement must be returned upon the termination of the agreement.

Sections III. 4. A., C., E., F. and L. were amended to reflect the scope of the Conflict Coordinator function. Section A. was also amended to remove reference to the Chief Public Defender and Contract Manager taking cases to comply with statutory changes. Amendments adopted at the [August 27, 2012](#) Commission meeting. Additional discussion at the [August 8, 2012](#) Standards Committee meeting.

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5. Conflict Cases:

A. When a case is determined to be a conflict of interest, the Regional Deputy Public Defender shall refer the case to the Conflict Coordinator. If the Conflict Coordinator determines that the case is indeed a conflict, the Conflict Coordinator shall assign the case to a private attorney whose name is maintained on the contract attorney list, assign the case to an FTE within another region, or assign the case to the Major Crimes Unit.

B. Once the Conflict Coordinator assigns a conflict case, the Regional Deputy Public Defender and all staff including investigators within that office shall have no involvement in the case whatsoever.

C. The conflict attorney shall submit bills for the payment of attorney time to the Conflict Coordinator.

D. Costs, other than attorney fees, expected to be incurred by a conflict attorney which exceed \$200, will be pre-approved by the Conflict Coordinator.

E. The Chief Public Defender, Contracts Manager, Training Coordinator, and Conflict Coordinator will confer with each other about the availability of experts or other options relating to costs in cases without reference to the specifics of any case.

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1. Attorney-Client Communication:

Goal: Regular and confidential communication between attorneys and clients is a necessary part of effective representation.

A. Effective representation of an accused client requires prompt and effective communication with the client. This communication includes personal and telephone contacts with a client in custody.

B. To ensure the privacy essential for confidential communication between counsel, public defender staff, and client, adequate facilities should be available for private discussions in jails, prisons, courthouses, healthcare facilities, and other places where accused clients must confer with counsel.

C. Personnel of jails, prisons, custodial institutions, and healthcare facilities should be prohibited from examining or otherwise interfering with any communication or correspondence between client, defense counsel, or public defender staff relating to legal action arising out of charges or incarceration.

D. Each jail or detention facility should make available an unmonitored and unrecorded toll-free telephone for purposes of allowing indigent clients to contact and confer with counsel and public defender staff on at least a daily basis. Counsel should be allowed personal contact with an incarcerated client at any time upon counsel's request.

E. A public defender office policy, contract for indigent defense services, and individual assignments of counsel shall include a requirement that a client in custody must speak with counsel either in person or by telephone at least weekly, unless otherwise agreed between the client and counsel.

F. The Regional Public Defender Offices shall take appropriate action to ensure these standards are implemented.

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2. Delivery of Services:

Goal: Counsel shall strive for excellence in the representation of the indigent client.

A. Counsel representing indigent clients should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of counsel for specific cases should not be made by the judiciary, but should be arranged for by the administrators of the public defender office, assigned counsel, and contract-for-service programs.

B. The Chief Public Defender and his or her staff should be compensated at a rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices.

C. The Office of the State Public Defender shall award contracts for indigent legal services only after determining that counsel or the firm chosen can meet the standards set forth herein. Under no circumstances should a contract be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned. Counsel or firms bidding for contracts must demonstrate their ability to meet these standards. While the Office of the State Public Defender may, in the sole discretion of the Chief Public Defender, choose to consult with judges, the Attorney General's Office, city attorneys, county prosecutors, and law enforcement officers in deciding who to select as attorneys to provide services as assigned counsel, those parties may neither select nor prohibit the selection of any counsel or law firm.

D. Contracts for public legal representation services should be awarded for at least one-year terms. Removal of the contracting counsel or firm before the agreed term should be for good cause only. The contract shall define "good cause" as "a failure by contracting counsel to comply with the terms of the contract that impairs the delivery of services to clients, or a willful disregard by contracting counsel of the rights and best interest of clients."

E. Contracts for services must be awarded on a competitive process and must involve the following considerations:

- a. The categories of cases in which contracting counsel is to provide services;
- b. The term of the contract and the responsibility of contracting counsel for completion of cases undertaken within the contract term;
- c. Identification of counsel who will perform legal representation under the contract and prohibition of substitution of counsel without prior approval;
- d. Allowable representation workloads for individual counsel, including the amount of private practice engaged in outside the contract, and measures to address excessive workloads, consistent with these Standards;

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- e. Minimum levels of experience and specific qualification standards for contracting counsel, including special provisions for complex matters, compliance with standards established by the Montana Supreme Court in capital cases, and compliance with the standards of the Montana Public Defender Commission for capital cases;
 - f. A policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses;
 - g. Reasonable compensation levels consistent with these standards and a designated method of payment;
 - h. Sufficient support services and provision for reasonable expenses, subject to prior approval as outlined by the Office of the State Public Defender in its policy manual, for paralegal and investigative services, expert witnesses, and other litigation costs to be paid on an “as needed” basis in addition to the contract compensation;
 - i. A process for the professional development of assigned counsel, including supervision, evaluation, and training in accordance with standards set by the Montana Public Defender Commission;
 - j. Protection of client confidences, attorney-client information, and work product related to contract cases, except under a legal court order to divulge, or after receiving a voluntary, knowing, and intelligent waiver from the client in the case, or to a subsequent attorney in the case;
 - k. A system of case management and reporting as required by the Office of the State Public Defender;
 - l. The grounds for termination of the contract by the parties;
 - m. A requirement that contracting counsel provide for retention of client files in a manner that affords protection of the client’s confidentiality interest for three years from the date of conclusion of the matter in the trial court, or until the client is no longer subject to State supervision, whichever is longer.
- F. Determination of indigence after initial representation by retained counsel.
- a. It is of primary importance to the members of the bar and to the public that a lawyer who undertakes representation of a client in criminal proceedings continues to represent the client at least through the trial stage of the proceedings, unless the continued representation would result in the violation of a disciplinary rule. Continuity of counsel in proceedings should be mandated in order to protect the rights of the client by avoiding, wherever possible, the adverse effect and possible prejudice to the client caused by an attorney's withdrawal.
 - b. The Office of the State Public Defender shall assign counsel to a client initially represented by retained counsel only after a written motion has been made by retained counsel.
 - c. If retained counsel has filed a written motion for a determination of indigence and to withdraw from the case no later than sixty days after counsel has either filed a

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notice of appearance or actually made a court appearance on behalf of the client, and not less than thirty days prior to trial or any evidentiary hearing, OPD, subject to a determination of indigence, shall assign new counsel to the client.

- d. When retained counsel makes a written motion for a determination of the client's indigence at a time other than that set forth in paragraph (c), above, and the client meets the financial eligibility requirements for indigent services, OPD shall assign the moving counsel to provide legal services for the client.
- e. If, upon motion by the Regional Public Defender's Office, a court determines that the foregoing practice has led to abuse by an attorney who has in the past repeatedly requested a determination of his client's indigence after undertaking representation as retained counsel, the court may order continued representation by that attorney without assignment by the public defender's office or cost to the public.
- f. If contract counsel becomes aware of a client, who has been assigned to a contract attorney by OPD, having or acquiring sufficient funds to hire counsel, the contract counsel shall contact the Regional Deputy Public Defender and request a redetermination of indigency.
- g. Contract counsel is prohibited from taking any fee from a client assigned by OPD.

G. The Chief Public Defender and Regional Public Defenders shall provide for contract oversight and enforcement to assure compliance with these Standards and applicable Montana statutes. For conflict of interest cases, the Conflicts Coordinator shall provide such oversight.

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3. Accounting and Billing System:

Goal: A transparent standardized accounting and billing system that maintains client confidentiality is the best way to achieve financial accountability.

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4. Performance Evaluations

- A. Each attorney employed as a public defender shall have their work performance evaluated on a yearly basis.
- B. The evaluation will be conducted by a combination of the Chief Public Defender, and the Training Coordinator, and/or the Regional Deputy Public Defender in the region in which the public defender is employed and/or the Managing Attorney in the office in which the public defender is employed.
- C. The performance evaluation shall be done on forms approved by the Office of the State Public Defender.
- D. In conducting the evaluation, the evaluators may obtain information from a variety sources including clients, other public defenders, office staff, judicial personnel and faculty from trainings the public defender has attended.
- E. The public defender shall be interviewed during the evaluation process.
- F. At the conclusion of the process, the evaluation will be reviewed and discussed with the public defender.
- G. If the public defender disagrees with the results of the evaluation the public defender has the right to submit a written rebuttal which shall be attached to the evaluation. A permanent employee may file a grievance as provided by state law.
- H. Performance evaluations shall remain in the personnel file for the duration of employment and in conformity with state policy.

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5. Proficiency Determination for Contract Attorneys

- A. Each private attorney providing contract/conflict services to the Montana Office of the State Public Defender shall undergo a proficiency determination biennially.
- B. The proficiency determination will be conducted by the OPD Contracts Manager or the Conflict Coordinator. The Chief Public Defender, OPD Training Coordinator, and the Regional Deputy Public Defenders may assist in the proficiency determination.
- C. In conducting the determination, the contract attorney will be observed in court and information may be obtained from clients, the Regional Deputy Public Defender in any region in which the contract attorney renders public defender services, judicial personnel and faculty from training the contract attorney attends during the preceding contract year.
- D. The contract attorney will meet with OPD during the determination process.
- E. The contract attorney will provide OPD with a copy of the CLE affidavit filed annually with the State Bar. A new “experience survey” will be submitted if the contract attorney wishes to provide services in a new practice area.
- F. Upon the completion of the determination process, OPD shall certify the contract attorney’s proficiency within all applicable areas of public defense law.
- G. A proficiency certification will be signed by the contract attorney and the Contracts Manager or Conflict Coordinator.
- H. If the contract attorney is determined to not be proficient in an area of public defense law, OPD will recommend remedial steps to obtain proficiency. The contract attorney may file an objection with the OPD and meet with the Chief Public Defender.

Section IV. 5. was amended to change the proficiency determination from annual to biennial; to require a copy of the CLE affidavit instead of an annual experience survey; and to allow the conflict coordinator to participate in the proficiency determination process. Amendments adopted at the [August 29, 2011](#) Commission meeting.

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Section V, Caseloads

Goal: Caseloads must not be oppressive, and should match counsel's experience, training, and expertise.

1. Governing Principle:

Counsel caseloads should be governed by the following:

A. Individual Public Defender. Caseload levels are the single biggest predictor of the quality of public defense representation. Not even the most able and industrious lawyers can provide effective representation when their work loads are unmanageable. Whenever a salaried or contracting counsel determines, in the exercise of counsel's best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases, will lead to furnishing representation lacking in quality or the breach of professional obligations, the attorney is required to inform the Regional Public Defender's Office, who shall inform the Chief Public Defender. The Chief Defender will then inform the Montana Public Defender Commission.

B. Chief Public Defender. The caseload of public defense attorneys should allow each lawyer to give each client the time and effort necessary to ensure effective representation. Whenever the Chief Public Defender determines, in the exercise of his or her best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will, by reason of their excessive size and complexity, interfere with the rendering of quality representation, or the breach of professional obligations, the Chief Public Defender is required to inform the Montana Public Defender Commission, which in turn will inform the Law and Justice Interim Committee, the Legislative Finance Committee, and the Office of Budget and Program Planning and shall take all reasonable steps to alleviate the situation.

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Section V, Caseloads

Goal: Caseloads must not be oppressive, and should match counsel's experience, training, and expertise.

2. Caseload Evaluation:

A. In attempting to establish caseload standards for public defender offices, the Commission encountered a number of difficulties. In considering maximum caseload standards, it is inherently difficult to compare the work required for different types of cases. Each case is so individually different, that it is nearly impossible to set rigid numerical objectives. Also, physical and geographical factors can influence an office's caseload capacity as well. An office which from a single location in a geographically large jurisdictional area is required to serve numerous distant scattered courts has a lower caseload capacity per attorney than an office in a geographically small jurisdiction or one in which all of the courts, the jail, and the public defender's office are housed in a single building.

B. The caseload of counsel should allow him or her to give each client the time and effort necessary to ensure effective representation. Regional public defender offices, contract counsel, and assigned counsel should not accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation. Caseload limits should be determined by the number and type of cases being accepted, and on the local prosecutors charging and plea-bargaining practices. It is the Commission's intention in considering caseloads, that the caseload of each counsel shall be considered by the criteria of reasonableness. One measure of the reasonableness of an attorney's caseload is to assess the amount of time an attorney would spend on a case under these standards. An accepted national standard for public defender attorneys is to work approximately 2,000 hours per year. One serious case requiring 50-100 hours to bring to trial, limits the time an attorney can devote to his or her remaining cases. In setting these maximum caseload levels, it is the Commission's intent that the maximum caseload levels of each attorney be judged by considering the complexity of the case, trial preparation, and travel. In other words, if a public defender works diligently and efficiently as required by the employment agreements, then the number of cases he or she is able to handle would be considered reasonable. Conversely, to require a public defender attorney to work diligently and efficiently more than the time required by the employment agreements would be considered an unreasonable caseload.

C. A "case" consists of all charges against a single defendant arising out of a single event, transaction, or occurrence, or all charges arising out of a series of related incidents charged in a single information or complaint (including collateral matters such as probation violations which do not require a separate dispositional hearing) and should be counted and reported as one case. If a separate probation revocation hearing is required, the probation hearing shall be counted as a separate misdemeanor case. If two or more defendants are

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Section V, Caseloads

charged in a single information or complaint, the charges against each defendant should be counted and reported as separate cases.

D. The Montana Public Defender Commission intends to review numerical caseload standards from time to time. These suggested caseload numbers shall be posted on the Public Defender Web site and may be modified from time to time.

E. The standard applicable to each category of cases is intended to be a suggestion only and is not intended to be a maximum limitation on the average current caseloads of each attorney employed as a public defender. Based on the standard of reasonableness, the numerical limits found on the Website may have to be adjusted in rural areas where attorneys may travel great distances between courts or upon the complexity of each case.

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Section VI, Qualifications and Duties of Counsel

VI. QUALIFICATIONS AND DUTIES OF COUNSEL

Goal: Counsel must meet these minimum standards before accepting a case. In order to provide effective representation, counsel must engage in regular and ongoing training.

A. In order to assure that clients receive the effective assistance of counsel to which they are constitutionally and statutorily entitled, counsel providing public legal representation should meet the following minimum professional qualifications:

- a. Satisfy the minimum requirements for practicing law in Montana as determined by the Montana Supreme Court;
 - b. Complete continuing legal education within each calendar year as required by the Montana State Bar, which may include courses offered by the Office of the State Public Defender relating to public defender practice or representing persons whose liberty is at risk as a result of State-initiated proceedings;
 - c. Comply with all other training requirements established by the Training Coordinator of the Office of the State Public Defender and approved by the Public Defender Commission; including, but not limited to, mental health disabilities, cultural competency, and drug dependency.
 - d. In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the State of Montana. Counsel has a continuing obligation to stay abreast of changes and developments in the law;
 - e. The foregoing requirements shall be deemed satisfied if counsel is representing clients pursuant to the Student Practice Rule and is being directly supervised by a supervising attorney who meets the standards required for felony defense set forth below.
 - f. All counsel will be evaluated periodically to ensure proficiency in the area(s) in which they practice on behalf of the Office of the State Public Defender.
- B. Additional trial attorneys' qualifications according to type of case:
- a. Death penalty representation. Each attorney acting as lead counsel in a death penalty case shall meet the standards for competency of counsel for indigent persons in death penalty cases adopted by the Montana Supreme Court, and those set forth in the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003);
 - b. Juvenile cases. See Standard Number XIII;
 - c. Involuntary commitments. See Standard Number XIV, XV, XX, XXI;
 - d. Abuse and neglect cases. See Standard Number XVII;
 - e. Felony representation. See Standard Number VI;

Section VI. A. was amended to change the CLE requirement to align with State Bar requirements. In addition, the numerical training requirement for each individual practice area was removed and the new requirement is to "demonstrate proficiency" in each area of practice. Amendments adopted at the [August 27, 2012](#) Commission meeting. Additional discussion at the [August 8, 2012](#) Standards Committee meeting.

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Section VI, Qualifications and Duties of Counsel

- f. All other cases. Each attorney shall meet the requirements set forth herein and in the Montana Rules of Professional Conduct.

- C. Counsel should only request or accept an assignment if counsel is able to provide quality representation and diligent advocacy for the client.

- D. Trial Standards for Non-capital Cases.

Section VI. A. was amended to change the CLE requirement to align with State Bar requirements. In addition, the numerical training requirement for each individual practice area was removed and the new requirement is to “demonstrate proficiency” in each area of practice. Amendments adopted at the [August 27, 2012](#) Commission meeting. Additional discussion at the [August 8, 2012](#) Standards Committee meeting.

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Section VI, Qualifications and Duties of Counsel

1. General Duties of Defense Counsel:

A. Before agreeing to act as counsel, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge, and experience to offer effective representation to a defendant in a particular matter. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

B. Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. When appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.

C. Counsel has the obligation to keep the client informed of the progress of the case.

D. If a conflict develops during the course of representation, counsel has a duty to notify the client and the court in accordance with the Rules of Professional Conduct and in accordance with the Disciplinary Rules of the State Bar of Montana.

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Section VI, Qualifications and Duties of Counsel

2. Obligations of Counsel Regarding Pretrial Release:

A. Counsel has an obligation to meet with incarcerated defendants as stated previously in these Standards, and shall take other prompt action necessary to provide quality representation, including:

- a. Invoking the protections of appropriate constitutional provisions, federal and State laws, statutory provisions, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client, as soon as practicable via a notice of appearance or other pleading filed with the State and court.
- b. Attempting to secure the pretrial release of the client.

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3. Counsel's Interview with Client

- A. Preparing for the Interview. After being assigned to a case and prior to conducting the initial interview, the attorney should, where possible, do the following:
- a. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known; and,
 - b. obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports made by bail agencies concerning pretrial release, and law enforcement reports that might be available. In addition, where the client is incarcerated, the attorney should:
 - i. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;
 - ii. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and,
 - iii. be familiar with any procedures available for reviewing the bail determination.
- B. Conducting the Interview. The attorney should, where possible, do the following:
- a. The purpose of the initial interview is to acquire information from the client concerning the case, the client, and pre-trial release, and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, disability, or different cultural backgrounds, can be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, and prison records, or other records as may be pertinent.
 - b. Counsel shall complete the interview form provided by the Office of the State Public Defender for use at the initial interview. Information that should be acquired from the client includes, but is not limited to, the following:
 - i. The client's version of arrest, with or without warrant; whether client was searched and if anything was seized, with or without warrant or consent; whether client was interrogated and, if so, whether a statement given; client's physical and mental status at the time any statement was given; whether any exemplars were provided and whether any scientific tests were performed on client's body or bodily fluids;
 - ii. The names and custodial status of all co-defendants and the name of counsel for co-defendants, if counsel has been appointed or retained;
 - iii. The names and locating information of any witnesses to the crime and/or the arrest, regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the State, which counsel should take steps to insure is preserved;

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Section VI, Qualifications and Duties of Counsel

- iv. The client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or aliases used, family relationships, immigration status if applicable, employment record and history, and social security number;
 - v. The client's physical and mental health, educational, vocational and armed services history;
 - vi. The client's immediate medical needs including the need for medication, detoxification programs and/or substance abuse treatment;
 - vii. The client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies and also whether he or she is on probation or parole and the client's past or present performance under supervision;
 - viii. The names of individuals or other sources that counsel can contact to verify the information provided by the client; counsel should obtain the permission of the client before contacting these individuals;
 - ix. For clients who are incarcerated, the ability of the client to meet any financial conditions of release;
 - x. Where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense, including releases from the client for any records of treatment or testing for mental health or developmental disability; and
 - xi. The client's citizenship status.
- C. Information to be provided to the client includes, but is not limited to, the following:
- a. a general overview of the procedural progression of the case, where possible;
 - b. an explanation of the charges and the potential penalties;
 - c. an explanation of the attorney-client privilege and instructions not to talk to anyone, including prisoners, about the facts of the case without first consulting with the attorney;
 - d. the names of any other persons who may be contacting the client on behalf of counsel;
 - e. any potential impact of Federal prosecution;
 - f. an explanation of the procedures that will be followed in setting the conditions of pretrial release;
 - g. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense;
 - h. a warning of the dangers with regard to the search of a client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials.

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D. Counsel must be alert to potential issues concerning the client's incompetency, mental illness or developmental disability. If counsel or the client raises a potential claim based on any of these conditions, counsel should consider seeking an independent psychological evaluation. Counsel should be familiar with the legal criteria for any plea or defense based on the defendant's mental illness or developmental disability, and should become familiar with the procedures related to the evaluation and to subsequent proceedings. Also:

- a. Counsel should be prepared to raise the issue of incompetency during all phases of the proceedings, if counsel's relationship with the client reveals information that presents genuine issues of competency;
- b. Where appropriate, counsel should advise the client of the potential consequences of raising questions of competency, as well as the defense of mental disease and defect, both as it relates to guilt and to sentencing. Prior to any proceeding, counsel should consider interviewing any professional who has evaluated the client. Counsel should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate. Counsel has an issue to raise legitimate issues of competency even over the objection of the client.

E. If special conditions of release have been imposed, such as random drug screening, or other orders restricting the client's conduct have been entered, such as a no contact order, the client should be advised of the legal consequences of failure to comply with such conditions. In the event the court orders routine contact with the attorney is a condition of release, the attorney shall not waive attorney-client privilege as to contact with the client.

F. If counsel is meeting with the client before his assignment to the case pursuant to these Standards, counsel should only obtain information necessary to advise the client concerning the initial hearing and advise the client not to discuss confidential information concerning the merits of the case.

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Section VI, Qualifications and Duties of Counsel

4. Counsel's Duty in Pretrial Release:

A. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, make a proposal concerning conditions of release.

B. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

C. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets.

D. The decision as to whether or not the client should testify at any bond hearing shall be made after consultation between counsel and the client. In the event that the client and counsel decided that it would be in the best interests of the client to testify regarding bond, counsel should instruct his or her client not to answer any questions that do not pertain strictly to the issue of bond.

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Section VI, Qualifications and Duties of Counsel

5. Counsel's Duties at Preliminary Hearing:

A. If the client is entitled to a preliminary hearing, counsel should take steps to see that the hearing is conducted in a timely fashion, unless there are strategic reasons for not doing so.

B. In preparing for the preliminary hearing, counsel should become familiar with:

- a. the elements of each of the offenses alleged;
- b. the law of the jurisdiction for establishing probable cause;
- c. factual information which is available concerning probable cause;
- d. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings; and,
- e. the potential impact on the admissibility of any witness' testimony if they are later unavailable at trial.

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Section VI, Qualifications and Duties of Counsel

6. Duty of Counsel to Conduct Investigation:

A. Counsel has a duty to conduct a prompt investigation of each case. Counsel should, regardless of the client's wish to admit guilt, ensure that the charges and disposition are factually and legally correct and that the client is aware of potential defenses to the charges.

B. Sources of investigative information and relevant procedures may include the following:

- a. Arrest warrant, accusation, complaint and/or information, along with any supporting documents used to establish probable cause, should be obtained and examined to determine the specific charges that have been brought against the accused;
- b. The relevant criminal statutes and case law precedents should be examined to identify:
 - i. the elements of the offense(s) with which the accused is charged;
 - ii. the defenses, ordinary and affirmative, that may be available;
 - iii. any lesser included offenses that may be available; and,
 - iv. any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.
- c. Interviewing witnesses. Counsel should consider the necessity to interview the potential witnesses, including any complaining witnesses and others adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview.
- d. The police and prosecution reports and documents. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless sound tactical reasons exist for not doing so. Counsel should obtain CJIN (NCIC or criminal history records from other states) records for the client and for the prosecution witnesses.
- e. Physical evidence. Where appropriate, counsel should make a prompt request for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.
- f. The scene of the incident. Where appropriate, counsel should attempt to view the scene of the alleged offense as soon as possible after counsel is appointed. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident, including the same weather, time of day, and lighting conditions.
- g. Securing the assistance of experts. Counsel should secure the assistance of experts where it is necessary or appropriate to:
 - i. the preparation of the defense;
 - ii. adequate understanding of the prosecution's case; or

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iii. rebut the prosecution's case.

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7. Formal and Informal Discovery

A. Counsel should consider seeking discovery, at a minimum, of the following items by written motion:

- a. Potential exculpatory information;
- b. Potential mitigating information;
- c. The names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;
- d. All oral and/or written statements by the client, and the details of the circumstances under which the statements were made;
- e. The prior criminal record of the client and any evidence of other misconduct that the government may intend to use against the client;
- f. All books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
- g. All results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
- h. Statements of co-defendants;
- i. All investigative reports by all law enforcement and other agencies involved in the case;
- j. All records of evidence collection and retained by law enforcement; and,
- k. Counsel shall file with the court a receipt of all materials received.

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8. Development of a Theory of the Case:

During investigation and trial preparation, counsel should develop and continually reassess a theory of the case and develop strategies for advancing the appropriate defenses on behalf of the client.

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Section VI, Qualifications and Duties of Counsel

9. The Duty to File Pretrial Motions:

A. Counsel should consider filing an appropriate motion whenever there exists a good faith reason to believe that the defendant is entitled to relief which the court has discretion to grant.

B. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Counsel should withdraw or decide not to file a motion only after careful consideration and determining whether the filing of a motion may be necessary to protect the defendant's rights, including later claims of waiver or procedural default.

D. Counsel should consider the advisability of disqualifying or substituting the presiding judge. This consideration should include any information about the judge's history in aligning himself with the prosecution on bail issues, motion rulings, trial rulings, any routine refusals of plea bargains, the client's experience with the judge, and any specific dislike of counsel, other public defenders, or public defenders in general.

- a. Prior to filing a motion to disqualify or substitute the judge, counsel shall consult with the managing attorney in his office and/or his or her Regional Deputy Public Defender.
- b. The decision to disqualify 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 counsel.

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Section VI, Qualifications and Duties of Counsel

10. Preparing, Filing, and Arguing Pretrial Motions:

A. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules, and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect it might have upon the defendant's speedy trial rights.

B. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

- a. investigation, discovery, and research relevant to the claim advanced;
- b. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;
- c. full understanding of the burdens of proof, evidentiary principles, and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client testify; and
- d. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial.

C. In every case, counsel should examine whether it is appropriate to file a motion to suppress evidence or statements.

D. In every case that proceeds to trial, counsel should file timely and appropriate motions in limine to exclude any improper evidence or prosecutorial practices.

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11. Continuing Duty to File Pretrial Motions:

A. Counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Further, counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

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Section VI, Qualifications and Duties of Counsel

12. Duty of Counsel in Plea Negotiation:

A. Counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and, in doing so, should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.

B. Counsel should keep the client fully informed of any continued plea discussion and negotiations and promptly convey to the accused any offers made by the prosecution for a negotiated settlement.

C. Counsel shall not accept any plea agreement without the client's express authorization.

D. The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

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13. The Process of Plea Negotiations:

A. In order to develop an overall negotiation plan, counsel should be aware of, and make sure the client is aware of the following:

- a. the maximum term of imprisonment, fine or restitution that may be ordered, and any mandatory sentence, as well as the possible adverse impact on those with a guilty plea;
- b. the possibility of forfeiture of assets;
- c. other consequences of conviction including, but not limited to, deportation, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office, and potential federal prosecutions;
- d. any possible and likely sentence enhancements or parole consequences, and the actual possibility of programs from the Department of Corrections;

B. In developing a negotiation strategy, counsel should be completely familiar with:

- a. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to, the following:
 - i. not to proceed to trial on merits of the charges;
 - ii. to decline from asserting or litigating any particular pretrial motions;
 - iii. an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and
 - iv. providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity.
- b. benefits the client might obtain from a negotiated settlement, including, but not limited to, an agreement that provides:
 - i. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;
 - ii. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;
 - iii. that the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct;
 - iv. that the defendant will receive, with the agreement of the court, a specified sentence or sanction or a sentence, or one within a specified range;
 - v. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;

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- vi. that the prosecution will not present, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, certain information; and,
 - vii. that the defendant will receive, or the prosecution will recommend, specific benefits concerning the client's place and/or manner of confinement and/or release on parole, and the information concerning the client's offense and alleged behavior that may be considered in determining the client's date of release from incarceration, taking into consideration availability of probation from Department of Corrections.
- c. the position of any alleged victim with respect to conviction and sentencing. In this regard, counsel should:
- i. consider whether interviewing the alleged victim or victims is appropriate and, if so, who the best person to do so is and under what circumstances;
 - ii. consider to what extent the alleged victim or victims might be involved in the plea negotiations;
 - iii. be familiar with any rights afforded the alleged victim or victims under Montana law; and,
 - iv. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.
- C. In conducting plea negotiations, counsel should be familiar with:
- a. the various types of pleas that may be agreed to, including a plea of guilty, a plea of *nolo contendere*, and a plea in which the defendant is not required to personally acknowledge his or her guilt - see North Carolina v. Alford plea;
 - b. the advantages and disadvantages of each available plea according to the circumstances of the case;
 - c. whether the plea agreement is binding on the court, prison, and parole authorities; and,
 - d. possibilities of pre-trial diversion.
- D. In conducting plea negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department which may affect the content and likely results of negotiated plea bargains.

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14. The Decision to Enter a Plea of Guilty:

A. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution and explain to the client the full content of the agreement, as well as the advantages and disadvantages of the potential consequences of the agreement.

B. The decision to enter a plea of guilty rests solely with the client; counsel should not tempt to unduly influence that decision.

C. If the client is a juvenile being prosecuted as an adult, consideration should be given to the request that a guardian be appointed to advise the juvenile if an adult family member is not available to act in a surrogate role.

D. A negotiated plea should be committed in writing.

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15. Entering the Negotiated Plea before the Court:

A. Prior to the entry of the plea, counsel should:

- a. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;
- b. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions, and collateral consequences the client will be exposed to by entering a plea;
- c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense; and,
- d. make certain that if the plea is non-binding, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court.

B. Counsel must become familiar with the consequences of a plea or finding of guilty in state court upon any current or future federal prosecution. These consequences include, without limitation, the following:

- a. Federal Lacey Act prosecutions for fish and game violations;
- b. Federal firearms charges, including those resulting in mandatory minimum sentences when firearms are associated with the possession or distribution of dangerous drugs;
- c. The possibility of a separate federal prosecution based upon the same transaction, without the defense of double jeopardy, in charges alleging dangerous drug distribution, possession and sale of drug paraphernalia, bank robbery, fraud, environmental crimes, arson, intimidation, kidnapping, murder, civil rights violations, bribery, and child pornography;
- d. The impact of a conviction on the United States Sentencing Guidelines when determining the client's criminal history category;
- e. Racketeering Influenced and Corrupt Organization (RICO) prosecutions for engaging in a pattern of conduct which includes state crimes stemming from violence or gambling;
- f. Money laundering prosecutions for engaging in financial transactions associated with or involving income derived from certain criminal conduct;
- g. Hobbs Act prosecutions for state crimes of intimidation, arson, and violent crimes impeding or affecting interstate commerce;
- h. Firearm restrictions on those convicted of felonies and certain misdemeanor convictions;
- i. Immigration consequences of convictions of re-entry into the United States after certain felony convictions.
- j. Impact of the Adam Walsh Act

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C. When entering the plea, counsel should make sure that a written plea agreement containing the full content and conditions of the plea agreement are placed on the record before the court.

D. After entry of the plea, counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for and present to the court all reasons warranting the client's release on bail pending sentencing.

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16. Counsel's Duty of Trial Preparation:

A. The decision to proceed to trial with or without a jury rests solely with the client after consultation with counsel. Counsel should discuss the relevant strategic considerations of this decision with the client and maintain a record of the advice provided to the client, as well as the client's decision concerning trial.

B. Where appropriate, counsel should have the following materials available at the time of trial:

- a. copies of all relevant documents filed in the case;
- b. relevant documents prepared by investigators;
- c. *voir dire* questions;
- d. outline or draft of opening statement;
- e. cross-examination plans for all possible prosecution witnesses;
- f. direct examination plans for all prospective defense witnesses;
- g. copies of defense subpoenas;
- h. prior statements of all prosecution witnesses, such as transcripts or police reports; counsel should have prepared transcripts of any audio or video taped witness statements;
- i. prior statements of all defense witnesses;
- j. reports from defense experts;
- k. a list of all defense exhibits and the witnesses through whom they will be introduced;
- l. originals and copies of all documentary exhibits;
- m. proposed jury instructions with supporting case citations;
- n. a list of the evidence necessary to support the defense requests for jury instructions;
- o. copies of all relevant statutes and cases; and,
- p. outline or draft of closing argument.

C. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process; counsel should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

D. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial, such as the use of prior convictions to impeach the defendant, and, where appropriate, prepare motions and memoranda for such advance rulings.

E. Throughout the trial process, counsel should endeavor to establish a proper record for appellate review. Counsel must be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review and should ensure that a sufficient record is

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made to preserve appropriate and potentially meritorious legal issues for such appellate review, unless there are strategic reasons for not doing so.

F. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, counsel should ensure that the client has appropriate clothing and that the court personnel follow appropriate procedures so as not to reveal to jurors that the defendant is incarcerated. Counsel should ensure that the client is not seen by the jury in any form of physical restraint.

G. Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences.

H. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

I. Counsel shall take necessary steps to ensure full official recordation of all aspects of the court proceeding.

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Section VI, Qualifications and Duties of Counsel

17. Jury Selection:

A. Preparing for Voir Dire:

- a. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.
- b. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.
- c. Prior to jury selection, counsel should obtain a prospective juror list, and the standard jury questionnaires. Counsel should also consider requesting use of a separate questionnaire that is tailored to the client's case.
- d. Counsel should develop *voir dire* questions in advance of trial and tailor *voir dire* questions to the specific case. *Voir dire* should be integrated into and advance counsel's theory of the case. Among the purposes *voir dire* questions should be designed to serve are the following:
 - i. to elicit information about the attitudes of individual jurors, which will inform counsel and client about peremptory strikes and challenges for cause;
 - ii. to convey to the panel certain legal principles which are critical to the client's case;
 - iii. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;
 - iv. to present the client and his or her case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and,
 - v. to establish a relationship with the jury.
- e. Counsel should be familiar with the law concerning mandatory and discretionary *voir dire* inquiries so as to be able to defend any request to ask particular questions of prospective jurors.
- f. Counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Counsel should also be aware of the law concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.
- g. Where appropriate, counsel should consider whether to seek expert assistance in the jury selection process.

B. Examination of the Prospective Jurors:

- a. Counsel should personally *voir dire* the panel.
- b. Counsel should take all steps necessary to protect the *voir dire* record for appeal, including, where appropriate, filing a copy of the proposed *voir dire* questions or reading proposed questions into the record.

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- c. If the *voir dire* questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of the other jurors and that the court, rather than counsel, conduct the *voir dire* as to those sensitive questions.
 - d. In a group *voir dire*, counsel should avoid asking questions which may elicit responses which are likely to prejudice other prospective jurors.
- C. Challenging the Jurors for Cause:
Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.

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Section VI, Qualifications and Duties of Counsel

18. Opening Statement

A. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.

B. Counsel should be familiar with the laws of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.

C. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring the opening statement until the beginning of the defense case. It should only be in exceptional circumstances that the opening statement is not made at the first opportunity.

D. Counsel's objective in making an opening statement may include the following:

- a. to provide an overview of the defense case;
- b. to identify the weaknesses of the prosecution's case;
- c. to emphasize the prosecution's burden of proof;
- d. to summarize the testimony of witnesses and the role of each in relationship to the entire case;
- e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;
- f. to clarify the jurors' responsibilities;
- g. to state the ultimate inferences which counsel wishes the jury to draw; and,
- h. to establish counsel's credibility with the jury.

E. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.

F. Whenever the prosecutor oversteps the bounds of proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations suggest otherwise.

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Section VI, Qualifications and Duties of Counsel

19. Preparation for Challenging the Prosecution's Case

A. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.

B. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

C. In preparing for cross-examination, counsel should be familiar with the applicable laws and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

D. In preparing for cross-examination, counsel should:

- a. consider the need to integrate cross-examination, the theory of the defense, and closing argument;
- b. consider whether cross-examination of each individual witness is likely to generate helpful information;
- c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
- d. consider a cross-examination plan for each of the anticipated witnesses;
- e. be alert to inconsistencies in a witness' testimony;
- f. be alert to possible variations in witness' testimony;
- g. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
- h. have prepared a transcript of all audio or video tape recorded statements made by the witness;
- i. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records, and department regulations for possible use in cross-examining police witnesses;
- j. be alert to issues relating to witness credibility, including bias and motive for testifying; and,
- k. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

E. Counsel should consider conducting a *voir dire* examination of potential prosecution witness who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

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F. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should consider making appropriate motions or sanctions and, at a minimum, request adequate time to review these documents before commencing cross-examination.

G. Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for a judgment of acquittal on each count charged. Counsel should request, when necessary, that the court immediately rule on the motion so that counsel may make an informed decision about whether to present a defense case.

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Section VI, Qualifications and Duties of Counsel

20. Presenting the Defendant's Case

A. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Counsel should also consider the tactical advantage of having final closing argument when making the decision whether to present evidence other than the client's testimony.

B. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should maintain a record of the advice provided to the client and the client's decision concerning whether to testify.

C. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

D. In preparing for presentation of a defense case, counsel should, where appropriate, do the following:

- a. develop a plan for direct examination of each potential defense witness;
- b. determine the implications that the order of witnesses may have on the defense case;
- c. determine which facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
- d. consider the possible use of character witnesses;
- e. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
- f. review all documentary evidence that must be presented; and,
- g. review all tangible evidence that must be presented.

E. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

F. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

G. Counsel should conduct redirect examination as appropriate.

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H. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

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Section VI, Qualifications and Duties of Counsel

21. Preparation of the Closing Argument

A. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

B. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, as well as provisions for rebuttal argument by the prosecution.

C. In developing closing argument, counsel's argument should reflect his or her theory of the case. Counsel should review the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:

- a. highlighting weaknesses in the prosecution's case;
- b. describing favorable inferences to be drawn from the evidence;
- c. incorporating into the argument:
 - i. helpful testimony from direct and cross-examinations;
 - ii. verbatim instructions drawn from the jury charge; and,
 - iii. responses to anticipated prosecution arguments;
- d. and the effects of the defense argument on the prosecutor's rebuttal argument.

D. Whenever the prosecutor exceeds the scope of permissible argument, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to, the following:

- a. whether counsel believes that the case will result in a favorable verdict for the client;
- b. the need to preserve the objection for appellate review; or,
- c. the possibility that an objection might enhance the significance of the information in the jury's mind.

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Section VI, Qualifications and Duties of Counsel

22. Jury Instructions

A. Counsel should be familiar with the appropriate rules of court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges, and preserving objections to the instructions.

B. Counsel should always submit proposed jury instructions in writing.

C. Where appropriate, counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Counsel should provide citations to appropriate law in support of the proposed instructions.

D. Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.

E. If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of proposed instructions is included in the record along with counsel's objection.

F. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary, request additional or curative instructions.

G. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.

H. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

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Section VI, Qualifications and Duties of Counsel

23. Obligations of Counsel at Sentencing Hearing

- A. Among counsel's obligations in the sentencing process are the following:
 - a. where a client chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, financial, and collateral implications;
 - b. to ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;
 - c. to ensure all reasonably available mitigating and favorable information which is likely to benefit the client is presented to the court;
 - d. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;
 - e. to ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful, or is otherwise improper, is stricken from the text of the pre-sentence investigation report before distribution of the report; and,
 - f. to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever warranted and possible.

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Section VI, Qualifications and Duties of Counsel

24. Sentencing Options, Consequences and Procedures

A. Counsel should be familiar with the sentencing provisions and options applicable to the case, including:

- a. any minimum sentences and any exceptions;
- b. deferred sentences, suspended sentences, and diversionary programs;
- c. the effect of confidential criminal justice information;
- d. probation or suspension of sentence and permissible conditions of probation;
- e. the potential of recidivist sentencing;
- f. fines, associated fees, court costs;
- g. victim restitution;
- h. reimbursement of attorneys' fees;
- i. imprisonment including any mandatory minimum requirements;
- j. the effects of mental disease or defect, or the implication of MCA §46-14-311,312, "Guilty But Developmentally Disabled"; and,
- k. civil forfeiture implications of a guilty plea.

B. Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

- a. credit for pre-trial detention and credit against fines imposed;
- b. parole eligibility and applicable parole release ranges;
- c. place of confinement, level of security, and classification criteria used by Department of Corrections;
- d. eligibility for correctional and educational programs;
- e. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs;
- f. deportation and other immigration consequences;
- g. loss of civil rights;
- h. impact of a fine or restitution and any resulting civil liability;
- i. possible revocation of probation or possible revocation of parole status if client is subject to a prior sentence;
- j. suspension of a motor vehicle operator's permit;
- k. prohibition of carrying a firearm;
- l. other consequences of conviction including, but not limited to, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, registration as a sex offender and/or violent offender, loss of public housing, and the loss of the right to hold public office; and,
- m. potential federal consequences.

C. Counsel should be familiar with the sentencing procedures, including:

- a. the effect that plea negotiations may have upon the sentencing discretion of the court;

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Section VI, Qualifications and Duties of Counsel

- b. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;
 - c. the use of “Victim Impact” evidence at any sentencing hearing;
 - d. the right of the defendant to speak prior to being sentenced;
 - e. any discovery rules and reciprocal discovery rules that apply to sentencing hearings;
 - f. the use of any minimum sentences;
 - g. any restrictions that may be placed on parole or other early release; and,
 - h. the possibility of any increases in sentencing due to a persistent felony offender notice and any possible challenges to such notice.
- D. Where the Court uses a pre-sentence report, counsel should be familiar with:
- a. the practices of the officials who prepare the pre-sentence report and the defendant’s rights in that process;
 - b. the access to the pre-sentence report by counsel and the defendant;
 - c. the prosecution’s practice in preparing a memorandum on punishment; and,
 - d. the use of a sentencing memorandum by the defense.
- E. Counsel shall, where appropriate, attend any interview with the client, review any pre-sentencing homework, and review the pre-sentence investigation report with the client.

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Section VI, Qualifications and Duties of Counsel

25. Preparation for Sentencing

- A. In preparing for sentencing, counsel should consider the need to:
- a. Inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;
 - b. Maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;
 - c. Obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition, financial status, and family obligations, as well as sources through which the information provided can be corroborated;
 - d. Inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the any statement to be made to the court, taking into consideration the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial, or trial on other offenses;
 - e. Inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;
 - f. Prepare the client to be interviewed by the official preparing the pre-sentencing report and be present during any such interview. Counsel shall also review any pre-sentence investigation report with the client sufficiently in advance of the sentencing hearing to allow adequate time to rebut any inaccurate information in the PSI report.
 - g. Inform the client of the sentence or range of sentences counsel will ask the court to consider; if the client and counsel disagree as to the sentence or sentences to be urged upon the court, counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;
 - h. Collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence; and,
 - i. Inform the client of the operation of the Sentence Review Division and the procedures to be followed in submitting any possible sentence to them for review, if applicable.

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Section VI, Qualifications and Duties of Counsel

26. The Prosecution's Sentencing Position

Counsel should attempt to determine whether the prosecution will advocate that a particular type or length of sentence be imposed, unless there is a sound tactical reason for not doing so.

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Section VI, Qualifications and Duties of Counsel

27. The Sentencing Process

A. Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.

B. Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.

C. In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will be held, counsel should ascertain who has the burden of proving a fact unfavorable to the client, be prepared to object if the burden is placed on the defense, and be prepared to present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

D. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

E. Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning the place of confinement, probation or suspension of part or all of the sentence, psychiatric treatment, or drug rehabilitation.

F. Where appropriate, counsel should prepare the client to personally address the court.

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Section VI, Qualifications and Duties of Counsel

28. A Motion for a New Trial

A. Counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When a judgment of guilty has been entered against the client after trial, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

- a. The likelihood of success of the motion, given the nature of the error or errors that can be raised; and,
- b. The effect that such a motion might have upon the defendant's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the defendant's right to raise on appeal the issues that might be raised in the new trial motion.

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Section VI, Qualifications and Duties of Counsel

29. The Defendant's Right to an Appeal

A. Following conviction at trial, counsel should inform the client of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal.

B. Where the client takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

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Section VI, Qualifications and Duties of Counsel

30. Defendant's Right to Apply to the Sentence Review Panel

Where applicable, counsel should ensure that the client is informed of the procedure available for requesting a review of his or her sentence by the Sentence Review Division of the Montana Supreme Court, as well as the advantages and disadvantages of seeking such review.

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Section VI, Qualifications and Duties of Counsel

31. Defendant's Right to Postconviction Relief

Where applicable, counsel should ensure that the client is informed of the procedure available for requesting postconviction relief, as well as the advantages and disadvantages of seeking such review.

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Section VI, Qualifications and Duties of Counsel

32. Representation in Ancillary Proceedings

A. The Public Defender Act authorizes assigned counsel to represent indigent clients only in limited instances. Nevertheless, it may be advantageous to any given client to resolve or initiate ancillary proceedings when reaching the global resolution of a case for which counsel has been assigned. For instance, if a client has been charged with DUI it may be possible to reach a global settlement of that charge which includes the Prosecution conceding the return of the client's driver's license in spite of the fact that the client refused to provide a breath sample at the time of the client's stop or arrest.

B. If counsel is able to reach a global settlement of a case which requires only entry of appearance of counsel in an ancillary proceeding **for the sole purpose** of finalizing a global settlement of matters which include a case for which counsel has been assigned, counsel may do so. If counsel is a contract lawyer counsel shall be reimbursed for counsel's time and expense incurred in making an appearance in an ancillary proceeding solely for the purpose of finalizing a global settlement and for counsel's time in reviewing or drafting a settlement or judgment pursuant to a settlement and appearance in court to affect the settlement. On the other hand, if the ancillary proceeding is, or has the possibility of becoming, adversarial or contested, OPD employees shall not represent a client in an ancillary proceeding and contract counsel shall not be compensated by OPD for representing a client in an ancillary proceeding.

C. Counsel shall inform a client of the client's right or opportunity to initiate an ancillary proceeding when that right or opportunity exists (e.g. Petitioning for Return of Driver's License after refusal to provide breath sample, filing a Federal Habeas Corpus Petition, filing a Claim or Counterclaim for violation of the client's Civil Rights Claim pursuant to 42 U.S.C. 1983, or filing an answer in a forfeiture proceeding) but shall also advise the client that the client must seek counsel outside the Public Defender System to represent the client in such matters.

Practice Standards

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Section VII, Standby Counsel in Criminal Cases

VII. STANDBY COUNSEL IN CRIMINAL CASES.

Goal: To provide standby assistance to criminal defendants who are proceeding pro se while insuring their individual dignity and autonomy. Standby counsel's participation shall never destroy the jury's perception that the defendant is representing himself and the defendant shall personally manage and conduct his own defense. Attorneys providing standby assistance shall comply with the general standards for public defenders as well as these specific standards.

Practice Standards

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Section VII, Standby Counsel in Criminal Cases

1. Defense counsel acting as standby counsel shall:

A. Permit the accused to make the final decisions on all matters, including strategic and tactical matters relating to the conduct of the case.

B. If the defendant requests assistance, bring to the attention of the defendant matters beneficial to him;

C. Not actively participate in the conduct of the defense unless specifically asked to do so by the defendant.

D. Assist the defendant in overcoming routine procedural or evidentiary obstacles that the defendant has clearly shown he wishes to complete.

E. Help to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.

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Section VII, Standby Counsel in Criminal Cases

2. Standby counsel shall be prepared to assume representation of the Defendant at any stage of the proceedings.

Practice Standards

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Section VIII, Facilities and Support Services

1. Public defender offices should have a budget for operating expenses that provides for a professional quality office, library, and equipment comparable to the prosecutor's office.

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Section VIII, Facilities and Support Services

2. Public defender office budgets should include funds for procurement of experts and consultants, ordering of minutes and transcripts on an expedited basis, and for the procurement of other necessary services.

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Section VIII, Facilities and Support Services

3. In all assigned cases, reasonable compensation for expert witnesses necessary to preparation and presentation of the case shall be provided, subject to prior approval by the Office of the State Public Defender. Expert witness fees should be maintained and allocated from funds separate from those provided for legal services.

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Section VIII, Facilities and Support Services

4. All public defender offices, and all contract attorneys, shall make arrangements to maintain the confidentiality of client information. This includes physical security for confidential documents, exhibits, and electronic communications. Part of this obligation includes requiring outside contractors that may have access to confidential information to sign a confidentiality agreement on a form provided by the Office of the State Public Defender. Examples of personnel who might be required to sign such an agreement are IT personnel who have access to counsel's computer system and janitorial personnel who have physical access to counsel's office.

Practice Standards

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Section IX, Compensation

IX. COMPENSATION.

Goal: Parity of resources with the Prosecution is an essential part of effective representation. This includes parity in salaries for full time staff attorneys and a reasonable hourly rate for contract attorneys.

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Section IX, Compensation

1. Counsel providing public legal representation and staff should be compensated at a rate commensurate with their training and experience. To attract and retain qualified personnel, compensation and benefit levels should be equal to those of attorneys and staff in prosecutorial offices in the area. Compensation should be computed as follows:

- A. Regional Public Defenders shall be compensated at no less than the rate and with the same adjustments, including experience and longevity, as the salary for the County Attorneys of the largest county in which the Regional Public Defender Office is located, including all retirement funding and benefits.
- B. The Chief Public Defender shall be compensated at a rate commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.
- C. In contracts for public legal representation, the contracting firm or counsel shall affirmatively represent in its contract that, in compensating counsel providing services pursuant to the terms of the contract, consideration has been given to the rate commensurate with an equally experienced assistant public defender in that county or the nearest county seat in which a public defender office is located.

Practice Standards

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Section IX, Compensation

2. Contracts not awarded on an hourly basis should provide for extraordinary compensation over and above the normal contract terms for cases which require an extraordinary amount of time and preparation, death penalty cases, and cases resulting in extended trials.

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Section IX, Compensation

3. When compensating counsel providing services on an hourly basis, the Office of the State Public Defender shall pay at an hourly rate to be established by the Montana Public Defender Commission. The Commission shall review the rate at least annually to determine whether it is a reasonable amount. In the event the rate should be increased, requests shall be made to the appropriate funding authorities for additional funds.

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Section IX, Compensation

4. Funding shall be sought for Fiscal Year 2008 to increase the contract rate.

Practice Standards

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Section X, Representation Standards for Appellate Advocacy

X. REPRESENTATION STANDARDS FOR APPELLATE ADVOCACY

Goal: To actively and effectively represent clients in the appellate process by presenting for appellate review all legal issues that have a reasonable probability of resulting in reversal of the client's conviction or commitment, or improving his or her legal position. Attorneys representing appellants shall comply with the general standards for public defenders as well as these specific Standards.

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Section X, Representation Standards for Appellate Advocacy

1. TRAINING.

A. The attorney will demonstrate proficiency or receive training specific to the Rules of Appellate Procedure, including acceptable pleadings, deadlines, citations to the record and authority, procedural and substantive legal issues, and applicable rules of professional conduct.

B. Counsel shall reserve regular time to keep current with the statutes, rules, and cases regarding both procedural and substantive legal issues.

C. Counsel shall participate, whether as an instructor or student, in regular training events as directed by the Chief Appellate Defender and shall endeavor to improve professionally to the benefit of his or her clients.

Practice Standards

December, 2012

Section X, Representation Standards for Appellate Advocacy

2. HANDLING THE CASE¹

A. As soon as feasible after conviction or commitment, appellate counsel should confer personally with the appellant to discuss the case. Counsel should explain the meaning and consequences of the court's judgment as well as the right to an appeal and a general outline of the appellate process.

B. Counsel shall, within the time frame set forth in the Rules of Appellate Procedure, request all transcripts and case records.

C. Counsel shall promptly review all transcripts and case records and discuss the matter with trial counsel.

D. After reviewing the record, counsel should confer with the appellant and discuss whether, in his or her professional judgment, there are meritorious grounds for appeal and the probable results of an appeal. Counsel should explain the advantages and disadvantages of an appeal. The decision whether to proceed with the appeal must be the client's own.

E. Counsel shall be diligent in expediting the timely submission of the appeal and shall comply with all applicable rules regarding conduct, pleadings, deadlines, and citations to authority.

F. Counsel shall not abandon an appeal solely on the basis of his or her own determination that the appeal lacks merit, but rather should advance any sound basis for changing the law. If, after conscientious analysis, counsel determines that there are no non-meritorious grounds for appeal, counsel should follow the procedures outlined in Anders v. California, 386 U.S. 738 (1967) and §46-8-103 MCA. Counsel shall discuss with the client the termination that counsel has made and give due consideration to the wishes of the client.

G. If counsel, after investigation, is satisfied that another lawyer who served in an earlier phase of the case did not provide effective assistance, and those facts appear on the record, he or she should seek appellate relief for the client on that ground. If counsel is satisfied that a prior attorney did not provide effective assistance and the facts do not appear on the record, counsel should advise the client regarding postconviction rights and, if the appeal is not successful, file the appropriate postconviction petitions.

H. After exercising independent professional judgment, which may include omitting issues too weak or tenuous to secure relief or distractive of superior claims, counsel should assert claims which are supported by the record and which will benefit the client if successful.

¹ These standards assume that trial counsel has filed all appropriate post-trial motions as well as a Timely Notice of Appeal

Practice Standards

December, 2012

Section X, Representation Standards for Appellate Advocacy

I. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument.

J. Counsel should seek editing assistance and legal feedback from at least one other attorney before filing a brief or a substantial motion. If oral argument is granted, counsel should prepare appropriately, including participating in a moot court session.

K. Counsel shall periodically apprise the client of the progress of the case and copy the client on all pleadings filed or received.

L. When an opinion is issued, counsel shall promptly communicate the outcome to the client and explain remaining remedies, including the right to postconviction relief, and the scope of further representation. This information, with particular emphasis on applicable deadlines, should be memorialized in a letter to the client.

M. Counsel shall apply professional judgment when determining whether to file a petition for re-hearing or a petition for *certiorari* to the United States Supreme Court. If counsel believes that the client has a valid claim of ineffective assistance of counsel, counsel should conduct the appropriate investigation and file a timely petition for postconviction relief.

N. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the records, transcripts, files, and other information pertinent to postconviction proceedings.

Practice Standards

December, 2012

Section XI, Representation Standards for Postconviction Proceedings

XI. REPRESENTATION STANDARDS FOR POSTCONVICTION PROCEEDINGS

GOAL: To actively and effectively represent clients in postconviction proceedings by evaluating the case, conducting the appropriate investigation, and presenting all factual and legal issues that have a reasonable probability of resulting in the vacation of the client's conviction or materially improving his or her legal position. Attorneys representing clients in postconviction proceedings shall comply with the general standards for public defenders as well as these specific Standards and with Section 46-21-101 et seq.

Practice Standards

December, 2012

Section XI, Representation Standards for Postconviction Proceedings

1. APPOINTMENT

A. When a court determines an attorney shall be appointed in a postconviction proceeding, the Appellate Defender Office shall assign the case to a contract attorney.

Practice Standards

December, 2012

Section XI, Representation Standards for Postconviction Proceedings

2. TRAINING

A. The attorney will demonstrate proficiency or receive training specific to the representation of clients in the postconviction process.

B. Counsel shall become familiar with the applicable statutes and case law including civil, pretrial discovery, and motions rules. Counsel shall be familiar with deadline issues, acceptable pleadings, as well as the procedural and substantive legal issues relating to the postconviction process.

C. Counsel shall reserve regular time to keep current with the statutes, rules, and cases regarding both procedural and substantive legal issues.

D. Counsel shall participate, whether as an instructor or student, in regular training events and shall endeavor to grow professionally to the benefit of his or her clients.

Practice Standards

December, 2012

Section XI, Representation Standards for Postconviction Proceedings

3. HANDLING THE CASE

A. As soon as feasible after appointment, counsel should confer personally with the client to discuss the case. Counsel should explain the scope of and procedures applicable to the postconviction process.

B. Counsel shall promptly request all transcripts and case records. Counsel shall request appropriate releases from the client and promptly request complete attorney files. Counsel shall conduct an appropriate investigation and interview relevant witnesses.

C. Counsel shall promptly review all transcripts and case records and discuss the matter with trial counsel as well as appellate counsel and conduct other appropriate investigation into matters that are not of record.

D. After reviewing the record and conducting the appropriate investigation, counsel should confer with the client and discuss, whether in his or her professional judgment there is the need for filing an amended petition for postconviction relief, including a petition for DNA testing, and probable results of pursuing this avenue. Counsel should explain the advantages and disadvantages of pursuing postconviction relief, as provided by these Standards.

E. If counsel, after investigation, is satisfied that another lawyer who served in an earlier phase of the case did not provide effective assistance, counsel should pursue relief for the client on that ground.

F. In preparing an amended petition, and after exercising independent professional judgment, which may include omitting issues too weak or tenuous to secure relief or distracting of superior claims, counsel should assert claims which are supported by the record and which will benefit the client if successful.

G. Counsel shall be diligent in expediting the timely submission of an amended petition for postconviction relief, keeping in mind the corresponding federal requirements for *habeas corpus* relief, and shall comply with all applicable rules regarding conduct, pleadings, submission of supporting evidence, deadlines, and citations to authority.

H. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument.

I. Counsel should seek editing assistance and legal feedback from at least one other attorney before filing a brief or a substantial motion and shall prepare appropriately for hearings, including interviewing and subpoenaing witnesses and locating, obtaining, and preparing to present the appropriate evidence.

Practice Standards

December, 2012

Section XI, Representation Standards for Postconviction Proceedings

J. Counsel shall appear with the client at the client's hearing for postconviction relief and/or DNA testing. Counsel shall present the witnesses, exhibits, and arguments that, in his or her professional judgment, are most likely to result in relief for the client.

K. Counsel shall periodically apprise the client of the progress of the case and copy the client on all pleadings filed or received.

L. When an opinion is issued, counsel shall promptly communicate the outcome to the client and explain remaining remedies and the scope of further representation. This information, with particular emphasis on subsequent deadlines, should be memorialized in a letter to the client. Counsel has a continuing duty to represent the client on appeal.

M. Counsel shall apply professional judgment when determining whether to file an appeal, a petition for *habeas corpus* relief in federal court, or a petition for *certiorari* to the United States Supreme Court. Any decision shall be reviewed by the Chief Appellate Defender.

N. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

Practice Standards

December, 2012

Section XII, Representation Standards for Sentence Review

XII. REPRESENTATION STANDARDS FOR SENTENCE REVIEW

GOALS:

To actively and effectively represent clients in the sentence review process by evaluating the case and giving the client appropriate advice as to whether to pursue sentence review and, if the client elects to proceed, to present all information and arguments supporting the imposition of a more favorable sentence. Attorneys representing clients in sentence review proceedings shall comply with the general standards for public defenders as well as these specific Standards.

Practice Standards

December, 2012

Section XII, Representation Standards for Sentence Review

1. TRAINING:

A. The attorney will demonstrate proficiency or receive training specific to the representation of clients in the sentence review process.

B. Counsel shall become familiar with the rules of the Sentence Review Division as well as the applicable statutes and case law.

C. Counsel shall become familiar with the range of sentences imposed for a particular offense and the factors that have affected the imposition of a particular sentence within that range, as well as with methods of accessing that information.

Practice Standards

December, 2012

Section XII, Representation Standards for Sentence Review

2. HANDLING THE CASE:

A. If a client receives a qualifying sentence, trial counsel shall advise the client of the right to sentence review and give the client appropriate advice as to whether to pursue sentence review.

B. Counsel shall advise the client that, upon review and within the limits fixed by law, his or her sentence may be raised, lowered, or remain the same. Counsel shall discuss with the client whether in his or her professional judgment there is a reasonable chance of obtaining a more or less severe sentence. Counsel should explain the advantages and disadvantages of proceeding to sentence review. The decision whether to proceed with the sentence review must be the client's own.

C. If the client decides to proceed to sentence review, counsel shall assist him or her in filing a timely application for sentence review.

D. Counsel shall gather and review all information relevant to the sentencing determination including, pre-sentence reports, and any other records, documents, or exhibits relevant to the review proceedings.

E. Counsel shall conduct an appropriate investigation and interview relevant witnesses.

F. Counsel shall make an evaluation as to whether the client's sentence is more or less harsh than sentences for similar offenses and shall determine what factors distinguish the client's case, either positively or negatively.

G. Counsel shall appear with the client at his or her sentence review hearing and present the witnesses, exhibits, and arguments that, in his or her professional judgment, are most likely to result in a sentence reduction.

Practice Standards

December, 2012

Section XIII, Standards for Representation of Youth in Youth Court

XIII. STANDARDS FOR REPRESENTATION OF YOUTH IN YOUTH COURT PROCEEDINGS

GOALS:

- A. To zealously defend youth charged with delinquency offenses and to protect their due process rights.**
- B. To serve the stated interest of the youth, be independent from the court and other participants in the litigation, including the youth's parents or guardians, and be unprejudiced and uncompromised in representing the youth.**
- C. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the youth. Attorneys representing a client subject to youth court proceedings shall comply with the general standards for public defenders providing representation of an adult charged with violations of the criminal law, as well as the specific Standards contained herein.**
- D. To recognize that youth are at a critical stage of development and that skilled juvenile defense advocacy will positively impact the course of clients' lives through holistic and zealous representation.**

Practice Standards

December, 2012

Section XIII, Standards for Representation of Youth in Youth Court

1. TRAINING:

A. To be eligible for assignment to represent youth in youth court, counsel shall demonstrate proficiency or receive training in representing youth in youth court, including supervised on-the-job training if appropriate in the duties, skills, and ethics of representing youth in youth court.

B. Counsel shall be knowledgeable in the following areas:

- a. Titles 41 (Montana Youth Court Act), 45 (Crimes) & 46 (Criminal Procedure), Montana Code Annotated;
- b. Child and adolescent development;
- c. The services and treatment options for youth both locally and statewide;
- d. The role and makeup of youth placement committees and kids' management authorities (KMAs);
- e. Local and state experts who are available to consult on youth court cases as well as perform evaluations of youth;
- f. Pre-dispositional and dispositional services and programs available through the court and probation;
- g. Brain development and the effect of neglect and trauma on brain development;
- h. The juvenile justice and child welfare systems;
- i. Substance abuse issues;
- j. Mental health issues;
- k. Special education laws, rights and remedies;
- l. School related issues including school disciplinary procedures and zero tolerance policies.

Practice Standards

December, 2012

Section XIII, Standards for Representation of Youth in Youth Court

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers and other experts who understand the public defender's advocacy role to investigate the various health and social services that may be available to the youth in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the youth.

C. Counsel shall advise the youth of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall advocate the youth's express wishes and shall not substitute his or her judgment about what is in the best interests of the youth. The primary role of counsel is to represent the perspective of the youth alone and not that of the youth's best interests or of the youth's parents or guardian. Appointment of a guardian-ad-litem to investigate the best interests of the child is a matter within the exclusive province of the court.

E. Counsel shall ensure that children do not waive appointment of counsel. Counsel should be assigned at the earliest possible stage of the youth court proceeding. Furthermore, counsel shall actively represent the youth at all stages of the proceeding. When the public defender becomes aware of the assignment, the public defender shall meet with the youth as soon as possible and sufficiently before any scheduled hearing or proceeding, including the probable cause or detention hearing, to permit effective preparation.

F. When meeting with the youth for the first time, counsel shall identify himself or herself by name and affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall explain that he or she is not a member of the facility staff. Counsel shall inform the youth their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others, including the youth's parent or guardian, in order to preserve the attorney-client confidentiality. Counsel shall also inform the youth that he or she has a right to remain silent.

G. Counsel shall maintain the attorney-client privilege with the understanding that the attorney represents the youth alone and not the youth's parents or guardians. The potential for a conflict of interest between the accused juvenile client and his or her parents should be clearly recognized and acknowledged. Counsel should inform the parent that he or she is counsel for the youth and that in the event of a disagreement between a parent or guardian and the youth, counsel is required to serve exclusively the interest of the youth.

Practice Standards

December, 2012

Section XIII, Standards for Representation of Youth in Youth Court

- H. During the conference, counsel shall:
- a. Explain the charges and possible dispositions;
 - b. Explain the youth court process, timelines, and the role of all the parties involved, such as judge, prosecutor, probation staff, guardian ad-litem, counsel, youth and parent;
 - c. Inform the youth and parent not to make statements to anyone concerning the offense;
 - d. Obtain signed releases by the youth and parent for medical and mental health records, school records, employment records, and other necessary records. Counsel should advise the youth of the potential use of this information and the privileges that attach to this information;
 - e. Obtain information from the youth concerning the facts of arrest and charges and whether there were any statements made, witnesses, co-defendants, and other relevant information.
- I. If the youth is detained, counsel must focus upon obtaining information relevant to the determination of pre-adjudication conditions of release. Such information should generally include:
- a. Youth's residence and length of time at the residence;
 - b. Youth's legal custodian and physical custodian with names, addresses, and phone numbers;
 - c. Mental and physical health and employment background, if any;
 - d. School placement, status, attendance, and whether the youth qualifies for special education;
 - e. Whether the youth or the youth's family had previous contact with the youth court system and the outcome of that contact;
 - f. Adults possibly willing to assume responsibility for the youth;
 - g. Useful social information, including the youth's home behavior, school performance, involvement with special education services, past or present employment, and other information concerning the youth's ability to stay out of trouble if released, and the parent's ability to control and discipline the youth.
- J. If counsel is unable to communicate with the youth because of language or other disability, counsel shall secure the assistance of such experts as are necessary to communicate with the youth.
- K. Whenever the nature and circumstances of the case permit, counsel should explore the possibility of informal adjustment under § 41-5-130, MCA.
- L. Counsel shall actively prepare the youth for any interview with the youth probation officer and accompany the youth at any such interview.

Practice Standards

December, 2012

Section XIII, Standards for Representation of Youth in Youth Court

M. If the court requires the posting of a bond, counsel should discuss with the youth and his or her parent or guardian the procedures that must be followed. Where the youth is not able to obtain release under the conditions set by the court, counsel should consider pursuing modifications of those conditions.

Practice Standards

December, 2012

Section XIII, Standards for Representation of Youth in Youth Court

3. HANDLING THE CASE:

- A. In preparation for the probable cause hearing, counsel should:
 - a. Review all evidence to identify relevant and meritorious pretrial motions;
 - b. Be fully informed of the rules of evidence, court rules, and the law with relation to all stages of the hearing process; be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudicatory hearing;
 - c. Be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review;
 - d. Be aware of the confidentiality provisions that pertain to youth court proceedings;
 - e. Prepare the youth and, when appropriate, the youth's parent or guardian, for the proceeding by explaining the process and that the probation officer may contact them to get information; stress the importance of providing the probation officer with factually accurate information.

- B. During the probable cause hearing, counsel should use the testimony at the hearing as a discovery tool and elicit as much information as possible about the facts and circumstances of the case.

- C. If probable cause is found, counsel shall argue for the least restrictive placement for the youth pending arraignment.

- D. Counsel shall promptly investigate the case. Regardless of whether the youth wishes to admit guilt, counsel shall ensure that the charges in the disposition are factually and legally correct and that the youth is aware of any potential defense to the charges.

- E. When conducting the investigation, counsel should:
 - a. Obtain the arrest warrant, petition, and copies of all charging documents in the case to determine the specific charges that have been brought against the youth;
 - b. Obtain the police reports and any other records, documents, and statements;
 - c. Research relevant law to determine the elements of the offenses charged and defenses available; interview all witnesses favorable and adverse and obtain any criminal or juvenile history of the witnesses;
 - d. Ascertain if there is physical evidence and make prompt requests to examine and view the crime scene if possible;
 - e. Determine whether an expert is needed to assist in preparation of the defense or to rebut the prosecution's case.

- F. In preparation for the adjudicative hearing, counsel should review all statements, reports, and other evidence to determine whether motions are appropriate.

Practice Standards

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Section XIII, Standards for Representation of Youth in Youth Court

G. At the adjudicative hearing, counsel shall, where it benefits the youth, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence.

H. Counsel shall offer evidence favorable to the youth's case and present lay and expert witnesses, if available.

I. Prior to engaging in plea negotiations, counsel must ensure that the youth and parent understand the concept of plea bargaining in general, as well as the details of any specific plea offer made to him or her.

J. Counsel should make it clear to the youth that the ultimate decision to enter the plea has to be made by the youth.

K. Counsel should investigate and candidly explain to the youth the prospective strengths and weaknesses of the case for the prosecution and defense, including the availability of prosecution witnesses, concessions and benefits which are subject to negotiation, and the possible consequences of any adjudication of delinquency.

L. Counsel should also ascertain and advise the youth of the court's practices concerning disposition, recommendations, and withdrawal of pleas or admissions.

M. Counsel's recommendation on the advisability of a plea or admission should be based on a review of the complete circumstances of the case and the youth's situation. Such advice should not be based solely on the youth's acknowledgement of guilt or solely on a favorable disposition offer.

N. The youth shall be kept informed of the status of the plea negotiations.

O. Where counsel believes that the youth's desires are not in the youth's best interest, counsel may attempt to persuade the youth to change his or her position. If the youth remains unpersuaded, however, counsel should assure the youth that he or she will defend the youth vigorously.

P. Notwithstanding the existence of ongoing plea negotiations with the prosecution, counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to an adjudicatory hearing on the merits.

Q. Counsel should make sure that the youth is carefully prepared to participate in the procedures required and used in the particular court.

Practice Standards

December, 2012

Section XIII, Standards for Representation of Youth in Youth Court

R. Counsel must also be satisfied that the plea is voluntary, that the youth understands the nature of the charges, that there is a factual basis for the plea or admission, that the witnesses are or will be available, and that the youth understands the right being waived.

S. Counsel must consider whether an admission will compromise the youth or the youth's family's public assistance or immigration status. If it does, the youth may need to reconsider the decision to plead.

T. Counsel should be aware of the effect the youth's admission will have on any other court proceedings or related issues, such as probation or school suspension.

U. In preparation for the disposition hearing, counsel should:

- a. Explain to the youth and parent or guardian, if applicable, the nature of the dispositional hearing, the issues involved, and the alternatives open to the court;
- b. Explain fully and candidly the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the youth's responsibilities under the proposed dispositional plan.

V. Counsel should be familiar with and consider:

- a. The dispositional alternatives available to the court and any community services that may be useful in the formation of a dispositional plan appropriate to the youth's circumstances;
- b. The official version of the youth's prior records, if any;
- c. The position of the probation department with respect to the youth;
- d. The prosecutor's sentencing recommendation;
- e. Using a creative interdisciplinary approach by collaborating with educational advocates, social workers, and civil legal service providers;
- f. The collateral consequences attaching to any possible disposition;
- g. Any victim impact statement to be presented to the court;
- h. Requesting a continuance for disposition at a later date; and,
- i. Securing the assistance of psychiatric, psychological, medical, or other expert personnel needed for the purposes of evaluation, consultation, or testimony with respect to the formation of a dispositional plan.

W. Counsel shall provide the youth with continuous legal representation throughout the youth court process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement, and sealing of records.

Practice Standards

December, 2012

Section XIII, Standards for Representation of Youth in Youth Court

X. If counsel withdraws from representation of a youth following adjudication and disposition, counsel shall make all reasonable efforts to ensure that the youth is well represented in matters that stem from the youth's adjudication. This includes ensuring a smooth transfer of responsibility to new counsel or monitoring of the detention status, probation, treatment, and services provided an adjudicated youth.

Practice Standards

December, 2012

Section XIII, Standards for Representation of Youth in Youth Court

4. YOUTH WHO ARE SUBJECT TO THE JURISDICTION OF THE DISTRICT COURT

A. To be eligible for assignment to represent youth who are prosecuted either under Section 41-5-206, MCA (filing in district court prior to formal proceedings in youth court) or Section 41-5-1602, MCA, (extended jurisdiction juvenile prosecution), counsel shall be qualified to represent adults charged with similar offenses and shall, in addition, demonstrate proficiency or receive training on the handling of juvenile transfer cases, including supervised on-the-job training if appropriate.

B. In preparing for the transfer hearing or for a designation of extended jurisdiction, counsel of record shall:

- a. Be aware of the statutory findings the court must make before transferring jurisdiction and the case law governing these findings;
- b. Fully advise the youth of his or her right to a hearing and the possible consequence of transfer to youth court or remaining in the district court;
- c. Investigate the offense with which the youth is charged sufficiently to address the question of whether the nature of the offense warrants prosecution in district court;
- d. Investigate the issue of community protection by interviewing the youth's agents, teachers, counselors, psychologists, community members, probation officers, religious affiliates, employers, or any others who have knowledge of the youth and can speak to his or her lack of dangerousness;
- e. Investigate the needs and stated interest of the youth, as well as the youth's circumstances;
- f. Provide the youth with full information and legal advice sufficient for the youth to make decisions concerning the transfer issue;
- g. Prepare to present evidence and testimony to prevent transfer, including testimony by people who can provide helpful insight into the youth's character and who have a positive personal and/or professional view of the youth; and,
- h. Consider obtaining an independent evaluation from a defense expert.

Practice Standards

December, 2012

Section XIV, Representation of a Respondent in Involuntary Commitment – Mental Illness

XIV. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – MENTAL ILLNESS

GOALS:

- A. To actively and professionally serve as a zealous advocate for the respondent who is the subject to a commitment proceeding for a mental disorder under §53-21-116, MCA.**
- B. To abide by specific mandatory standards of representation for Public Defenders as attorney for the respondent in an involuntary commitment proceeding.**
- C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.**
- D. To exercise independent and professional judgment in carrying out the duties assigned by the Court and to participate fully in the case on behalf of the respondent.**
- E. The term “involuntary commitment” in the following standards includes involuntary commitment and proceedings to extend the involuntary commitment period.**

Practice Standards

December, 2012

Section XIV, Representation of a Respondent in Involuntary Commitment – Mental Illness

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent a respondent in an involuntary commitment proceeding shall have a thorough understanding of involuntary commitment law as well as the mental health system.

B. To be eligible for assignment to represent respondents in involuntary commitment proceedings, counsel shall demonstrate proficiency or receive training in the duties, skills, and ethics of representing involuntary commitment respondents, including supervised on-the-job training and visits to a variety of treatment facilities including the Montana State Hospital if appropriate. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall have basic knowledge of the classification of mental disorders and the ability to read and understand medical terminology related to mental disorders, developmental disabilities, chemical dependence and alcoholism. Counsel shall be familiar with the medications used to treat mental disorders, developmental disabilities, and alcoholism. Counsel shall be aware of how a particular mental disorder, developmental disability, chemical dependence or alcoholism will affect attorney-client communications and should recognize that communications may require special efforts on the part of counsel.

Practice Standards

December, 2012

Section XIV, Representation of a Respondent in Involuntary Commitment – Mental Illness

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the respondent's case and explore various mental health and social services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the respondent find his or her objectives by advising him or her about the probability of success in pursuing these options. If the respondent expresses a desire to seek voluntary mental health treatment or related social services, counsel must give the respondent the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent alone, not the perspective of the respondent's relatives, friends or guardian. In addition, counsel will not substitute his or her judgment about what is in the best interest of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel must presume that respondent does not wish to be involuntarily committed.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to an emergency detention or involuntary commitment case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled emergency detention proceeding or involuntary commitment hearing to permit effective preparation and allow pre-hearing assistance to the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other health care facility, counsel shall make it clear to the respondent that he or she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that attorney-client confidentiality. Counsel shall also inform the respondent that he or she has the right to remain silent prior to the commencement of any court-ordered examination and that the respondent cannot be examined without the presence of counsel.

Practice Standards

December, 2012

Section XIV, Representation of a Respondent in Involuntary Commitment – Mental Illness

H. During the conference, counsel shall obtain the respondent's version of the facts of the case, including:

- a. The circumstances surrounding the filing of an involuntary commitment or emergency detention petition;
- b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the involuntary commitment petition or emergency detention;
- c. Any information about past psychiatric hospitalization and treatment;
- d. Information to aid the exploration of alternatives to commitment;
- e. The name of a mental health professional of respondent's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:

- a. Explain what is happening and why, including the basis on which the respondent's involuntary commitment is sought, and offer a description of the psychiatric examination and judicial hearing procedures;
- b. Explain the respondent's rights in the commitment process, including the right to treatment, the right to refuse treatment, and the right to an independent evaluation;
- c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender;
- d. Explain the respondent's option to accept voluntary treatment, the procedures of exercising that option, and the legal consequences of voluntary admission to a mental health facility, including whether the respondent is willing to accept voluntary treatment in a mental health facility or other settings;
- e. Obtain respondent's consent to enter into negotiations for settlement of the case with the county attorney and with mental health professionals if the respondent is willing and able to give informed consent to voluntary mental health care or related social services as an alternative to involuntary commitment;
- f. Discuss the desirability of a court hearing with the respondent; and,
- g. Request the respondent's written or oral permission to obtain access to relevant records, including any facility records or incident reports.

J. After being notified of the appointment, counsel shall, in preparation of any scheduled hearing, do the following:

- a. Become thoroughly familiar with the statutory requirements governing involuntary commitment in the jurisdiction, as well as case law and court rules;
- b. Thoroughly review the petition, detention order, or other documents used to initiate proceedings, the screening report, the prehearing examination reports, the medical records of the respondent, the facility records of any facility in which the

Practice Standards

December, 2012

Section XIV, Representation of a Respondent in Involuntary Commitment – Mental Illness

respondent has recently resided, and any other document relevant to the proceedings;

- c. Attempt to interview all persons who have knowledge of the circumstances surrounding the involuntary commitment petition or emergency detention, including the petitioners, the police officers who detained the respondent, the psychiatrists, social workers, and other persons who have examined or treated the respondent during the current involuntary commitment or emergency detention proceedings, previous mental health treatment providers, if any; the respondent's family, guardian or acquaintances; and any persons who may provide relevant information or who may be supporting or adverse witnesses at an emergency detention or involuntary commitment hearing;
- d. Facilitate the exercise of the respondent's rights to be examined by a professional person of the respondent's choice;
- e. Discuss with the respondent the various medications that the respondent has been prescribed to address the respondent's mental illness, including the effectiveness of the medication, and the long-term effects and side effects of each.

K. Counsel must ensure that a respondent's consent to voluntary treatment is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary treatment and care to all respondents as part of counsel's efforts to make respondents aware of all options available to them.

L. If the respondent indicates that he or she would consent to voluntary treatment, counsel shall:

- a. Ascertain whether the respondent was indeed aware that by electing to convert to voluntary patient status, he or she was agreeing to enter or remain in a mental health facility or begin or continue to receive mental health services; and,
- b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion.

M. If counsel has determined that the respondent's consent to voluntary treatment is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the involuntary commitment proceeding.

N. When, due to the respondent's disability, the effect of medication, or other factors, counsel is unable to determine that the conversion to voluntary patient status was made knowingly and voluntarily, he or she shall investigate the circumstances of the respondent's stated desire to voluntarily receive treatment.

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Section XIV, Representation of a Respondent in Involuntary Commitment – Mental Illness

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the involuntary commitment proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the involuntary commitment proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that the respondent may exercise his or her right to a jury trial. Counsel shall inform the respondent of his or her right to a jury trial and explain the benefits and detriments of a jury trial and a hearing in front of the judge alone. Counsel shall immediately notify the court if respondent chooses a jury trial. If the respondent waives his or her right to a jury trial, counsel shall establish that the waiver is knowing and voluntary.

C. Counsel shall ensure that a respondent actively participates in every stage of the involuntary commitment process. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings. Counsel shall advise the respondent of the legal basis under which the court will order discharge, emergency detention, commitment, conditional release, revocation or modification of a trial visit, outpatient or community commitment, or an extension of the commitment period, and how the court will determine the length of commitment.

D. Counsel shall avoid using his or her authority to waive respondent's presence at the hearing, except when attending would seriously jeopardize the respondent's mental or physical condition and an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects upon the respondent's mental condition.

E. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

F. If, at the time of hearing, a respondent is under the influence of psychotropic or other prescribed medications, counsel should consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

G. Counsel should zealously and effectively engage in all aspects of trial advocacy.

H. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in involuntary commitment proceedings, such as hospital and medical records.

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Section XIV, Representation of a Respondent in Involuntary Commitment – Mental Illness

I. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for detention or commitment have been met. Thus, in emergency detention proceedings, counsel shall seek to bifurcate the determination of whether there is probable cause for an emergency detention and the determination of the least restrictive setting for that detention. In involuntary commitment proceedings, counsel shall seek to bifurcate the determination of whether the respondent requires commitment and the post trial disposition hearing if it will advantage the respondent. Counsel shall plan objections to the admissibility of evidence regarding previous commitment and pending criminal charges so as to preclude their consideration at least until the adjudicative issue of whether commitment is warranted has been determined.

J. During the involuntary commitment hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

- a. Whether the case for detention or commitment is based on dangerousness to self or to the person or property of others;
- b. Whether there is any real factual basis for the determination of dangerousness;
- c. The probability of dangerous behavior in the future;
- d. How well the respondent is currently functioning and whether any indications of poor functioning are due to the respondent's social situation or to mental disorder;
- e. Whether there is any useful purpose to hospitalization and whether possible alternatives exist or have been explored;
- f. Whether mental health examinations and screenings were thorough;
- g. Whether the respondent had recently been exhibiting abnormal or unusual behavior; and,
- h. The factual basis of conclusory opinions about the respondent's suitability for detention or commitment under the applicable legal standards.

K. Counsel should be aware of the basis for and file a motion to seek release from custody in the form of a *writ of habeas corpus* when appropriate.

L. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses, including an impartial, independent mental health expert who has examined the respondent, if possible.

M. After discussions with the respondent and with his or her consent, counsel shall present all favorable evidence available regarding appropriate alternatives to involuntary commitment including, but not limited to, voluntary mental health treatment and commitment to community-based mental health treatment and care.

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Section XIV, Representation of a Respondent in Involuntary Commitment – Mental Illness

N. Whether or not the commitment hearing, the post trial dispositional hearing, the detention proceeding, or the detention placement determination are bifurcated, counsel shall offer evidence favorable to the respondent regarding the least restrictive placement for the commitment during the proceeding or part of the proceeding that constitutes the post trial dispositional hearing or detention placement determination.

O. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of committing the respondent to the most restrictive setting available, such as the Montana State Hospital. Counsel should explore and consider offering evidence of the respondent's compliance with treatment, success in community treatment programs, and family support in the community.

P. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of an involuntary medication order. Counsel should explore and consider offering evidence regarding the medications that the respondent has found to be effective, as well as those medications which have not been effective or cause significant long-term or side effects.

Q. Counsel should consider the condition of the respondent in determining the degree to which the hearing procedures should conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel should argue strict application for the burden of proof and the law; at all times, counsel should endeavor to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record.

R. Counsel should provide continuity in representation for the respondent throughout the involuntary commitment process. If the court has ordered the involuntary commitment, counsel shall advocate for an appropriate treatment and discharge plan to be developed which is reasonably designed to achieve the end sought in the commitment order. The treatment plan should be tailored to the respondent's needs. Counsel shall argue for the exclusion of all provisions that are unnecessarily restrictive or unsupported by the record. The treatment plan should include the following elements;

- a. All assessments of the respondent's problems and needs;
- b. A brief description of the nature and effects of service and treatment already administered to the respondent;
- c. A description of services and treatment to be administered, their possible side effects, and feasible alternatives, if any;
- d. The identities of agencies and specific individuals who will provide the services and treatment in the future;

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- e. The settings in which the services and treatment will be provided;
 - f. A time table for attaining the goals or benefits of treatment or care to be administered;
 - g. A statement of the criteria for transition to less restrictive placements or for conditional or unconditional discharge from involuntary mental health services and treatment, as well as the date for transfer or discharge; and,
 - h. A statement of the least restrictive conditions necessary to achieve the purposes of hospitalization.
- S. The discharge plan should include the following:
- a. An anticipated discharge date;
 - b. Criteria for discharge;
 - c. Identification of the facility staff member responsible for discharge planning;
 - d. Identification of the community-based agency or individual who is assisting in arranging post-discharge services;
 - e. Referrals for financial assistance needed by the patient upon discharge; and,
 - f. Other information necessary to ensure an appropriate discharge and adequate post-discharge services.
- T. Counsel who represented a respondent preceding and during a court hearing should make every effort to maintain responsibility for the respondent's legal representation so long as the respondent remains an involuntary patient or subject to a conditional release.
- U. If counsel who represented the respondent during the commitment proceeding does not continue to represent the respondent after commitment is ordered, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the respondent's commitment. Specific objectives include:
- a. A smooth transfer of responsibility to new counsel who assumes representation in post-hearing matters, including motions for amended findings, stays of the commitment order pending appeal, appeals, petitions for writs, periodic review hearings, court ordered release to alternative placement or treatment, and other available legal actions to contest commitment, as well as continued representation in proceedings to revoke conditional release, to extend conditions of release or the commitment period in a more restrictive setting, and other legal proceedings to extend commitment.
 - b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

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Section XV, Representation of a Respondent in Involuntary Commitment – Serious Developmental Disability

XV. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – SERIOUS DEVELOPMENTAL DISABILITY

GOALS:

- A. To actively and professionally serve as a zealous advocate for the respondent who is the subject of a proceeding for commitment or re-commitment as an individual with a serious developmental disability under §53-20-112, MCA.**
- B. To abide by mandatory standards of representation for public defenders as attorney for the respondent in an involuntary commitment proceeding.**
- C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent’s guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.**
- D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the respondent.**
- E. In the following standards, “involuntary commitment” refers to both involuntary commitment and recommitment proceedings.**

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Section XV, Representation of a Respondent in Involuntary Commitment – Serious Developmental Disability

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent a respondent in an involuntary commitment proceeding shall have a thorough understanding of involuntary commitment law as well as the developmental disabilities and mental health systems.

B. To be eligible for assignment to represent respondents in involuntary commitment proceedings, counsel shall demonstrate proficiency or receive training in the duties, skills, and ethics of representing involuntary commitment respondents, including supervised on-the-job training and visits to a variety of treatment facilities including the Montana Developmental Center and community service providers and group homes within the area served by the public defender if appropriate. Counsel shall utilize training and support provided by the office of the public defender.

C. Counsel shall have basic knowledge of the classification of developmental disorders and the ability to read and understand medical terminology related to developmental disabilities, mental illness, and co-occurring disorders or dual diagnosis. Counsel shall be familiar with the medications used to treat mental disorders and developmental disabilities. Counsel shall be aware of how a particular developmental disability, mental disorder, chemical dependency, or alcoholism will affect the attorney-client communications and shall recognize that communications may require assistance or special efforts on the part of counsel.

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2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the respondent's case and explore developmental health and social services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the respondent determine the respondent's objectives by advising the respondent about the probability of success in pursuing those options.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent alone, and not the perspective of the respondent's relatives, friends, or guardian. In addition, counsel shall not substitute his or her judgment about what is in the best interests of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel must presume that respondent does not wish to be involuntarily committed.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to an involuntary commitment case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled hearing to permit effective preparation and allow pre-hearing assistance to the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other health care facility, counsel shall make it clear to the respondent that he/she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve attorney-client confidentiality. Counsel should inform the respondent that he or she has the right to remain silent prior to the commencement of any court-ordered examination and that the respondent cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the respondent's version of the facts of the case, including:

- a. The circumstances surrounding the filing of the involuntary commitment;

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- b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the petition;
 - c. Information about past treatment either in the community or at the Montana Developmental Center or any past psychiatric hospitalization;
 - d. Information to aid the exploration of alternatives to commitment;
 - e. The name of a developmental disabilities expert of respondent's choice to conduct an independent evaluation.
- I. During the conference, counsel shall also:
- a. Explain what is happening and why, including the basis on which the respondent's involuntary commitment is sought, and offer a description of the examination conducted by the residential facility screening team and judicial hearing procedures;
 - b. Explain the respondent's rights in the commitment process, including the right to treatment and the right to refuse treatment;
 - c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender;
 - d. Explain the respondent's option to accept voluntary health care or other services, the procedures to exercise that option, and the legal consequences of voluntary acceptance of such services; discuss whether respondent is willing to accept those voluntary services;
 - e. As an alternative to involuntary commitment, obtain respondent's consent to enter into negotiations for settlement of the case with the county attorney if the respondent is willing and able to give informed consent to voluntary health or other services;
 - f. Discuss the desirability of a court hearing with the respondent; and,
 - g. Request the respondent's written or oral permission to obtain access to relevant records, including any facility records and incident reports.
- J. After being notified of appointment to the case, counsel shall, in preparation of any scheduled hearing, do the following:
- a. Become thoroughly familiar with the statutory requirements governing involuntary commitment in the jurisdiction, as well as case law and court rules;
 - b. Thoroughly review the petition or other documents used to initiate the commitment proceedings, the report of the residential facilities screening team, the report by the QMRP or other case manager, prehearing examination reports, the medical records of the respondent, and the facility records of any facility in which the respondent has recently resided and any other document relevant to the proceedings;
 - c. Consider the advisability of seeking the services of a qualified mental retardation professional;

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Section XV, Representation of a Respondent in Involuntary Commitment – Serious Developmental Disability

- d. Attempt to interview all persons who have knowledge of the circumstances surrounding the involuntary commitment petition:
 - i. The petitioners;
 - ii. The developmental disabilities professional, community services providers, facility staff, social workers, case managers, mental health professionals, and other persons who have examined or treated the respondent during the current involuntary commitment proceedings;
 - iii. Previous service providers, if any;
 - iv. The respondent's family, guardian or acquaintances;
 - v. The responsible person and the person's advocate, if any; and,
 - vi. The persons who may provide relevant information or who may be supporting or adverse witnesses at a commitment hearing.
- e. Facilitate the exercise of the respondent's right to be examined by a professional person of the respondent's choice.

K. Counsel must ensure that a respondent's consent to receive voluntary services is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary services and care to all respondents as a part of counsel's efforts to make respondents aware of all options available to them.

- L. If the respondent indicates that he or she would consent to receive voluntary services, counsel shall:
- a. Ascertain whether the respondent was indeed aware that by electing to convert to voluntary status, he or she was agreeing to enter or remain in services voluntarily; and
 - b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion

M. If counsel has determined that the respondent's consent to receive voluntary services is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the voluntary commitment proceeding.

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Section XV, Representation of a Respondent in Involuntary Commitment – Serious Developmental Disability

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the involuntary commitment proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the involuntary commitment proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that a respondent actively participate in every stage of the involuntary commitment proceeding. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings. Counsel shall advise the respondent of the legal basis under which the court will order discharge, commitment, or recommitment, and the length of commitment.

C. Counsel shall avoid using his or her authority to waive respondent's presence at the hearing except in the following extraordinary cases:

- a. When the respondent unequivocally refuses to attend and cannot be encouraged to do so;
- b. When attending would seriously jeopardize the respondent's mental or physical condition; or,
- c. When the respondent's presence at the hearing would completely disrupt and prevent a meaningful proceeding.

D. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

E. If at the time of hearing, a respondent is under the influence of prescribed medications, counsel shall consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

F. Counsel shall zealously and effectively engage in all aspects of trial advocacy.

G. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in involuntary commitment proceedings such as hospital and medical records.

H. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for commitment have been met. Counsel shall plan objections to the admissibility of evidence regarding previous commitment and pending criminal charges, if any,

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so as to preclude their consideration at least until the adjudicative issue of whether commitment is warranted has been determined.

I. During the involuntary commitment hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

- a. Whether the case for commitment is based upon self-help deficits so severe so as to require total care;
- b. Whether there is a real factual basis for the determination of these deficits that would prevent safe and effective habilitation in community-based services;
- c. Whether the case for commitment is based on imminent danger to self or others;
- d. Whether there is any real factual basis for the determination of imminent danger;
- e. The probability of dangerous behavior in the future;
- f. Whether any indications of poor functioning are due to the respondent's social situation or to a mental disorder;
- g. Whether the information and the interpretation of that information relied upon by the residential facility screening team was accurate;
- h. Whether health examinations and screenings were thorough;
- i. Whether the respondent had recently been exhibiting abnormal or unusual behavior; and,
- j. The factual basis of conclusory opinions about the respondent's suitability for commitment under the applicable legal standards.

J. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses, including an impartial, independent developmental disabilities expert who has examined the respondent if possible.

K. After discussions with the respondent and with his or her consent, counsel shall present all evidence available that is favorable to the respondent regarding appropriate alternatives to involuntary commitment, including, but not limited to, the ability of the respondent to be served in the community, including the respondent's history of successful placement in the community, the availability of community-based services or other mechanisms to support the respondent in the community, including powers of attorney, guardianship or conservatorship.

L. Counsel shall offer evidence favorable to the respondent regarding the least restrictive placement for the commitment during the proceeding.

M. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of committing the respondent to the most restrictive setting available, such as the Montana

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Developmental Center. Counsel shall explore and consider offering evidence of the respondent's compliance with treatment, success in community treatment programs, and family and other support in the community.

N. Counsel shall consider the condition of the respondent in determining the degree to which the hearing procedures shall conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel shall argue strict application for the burden of proof and the law and at endeavor at all times to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record.

O. Counsel shall provide continuity in representation for the respondent throughout the involuntary commitment process. If the court has ordered involuntary commitment, counsel shall advocate for an appropriate individualized treatment plan to be developed, including a post-institutionalization plan which contains all the elements required by law and is tailored to the respondent's needs and is reasonably designed to maximize the resident's abilities and enhance the resident's ability to cope with the environment. Counsel shall argue for the exclusion of all provisions that are unnecessarily restrictive or unsupported by the record. The plan should include the following elements:

- a. All assessments of the respondent's specific limitations and needs;
- b. A description of intermediate and long range habilitation goals, with a projected timetable for their attainment;
- c. A statement of and an explanation for the plan of habilitation necessary to achieve the habilitation goals of the resident;
- d. A specification of the professionals and other staff members who are responsible for the particular resident's attaining these rehabilitation goals;
- e. Criteria for release to less restrictive settings for habilitation, based on the resident's needs including criteria for discharge and a projected date for discharge.

P. Counsel who has represented a respondent preceding and during a court hearing shall make every effort to maintain responsibility for the respondent's legal representation so long as the respondent remains committed.

Q. If counsel who represented the respondent during the commitment proceedings does not continue to represent the respondent after commitment is ordered, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the respondent's commitment. Specific objectives include:

- a. A smooth transfer of responsibility to new counsel who assumes representation in post-hearing matters, including motions for amended findings, stays of the

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commitment order pending appeal, appeals, petitions for writs, periodic review hearings, recommitment proceedings and other available legal actions to contest commitment;

- b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

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Section XVI, Representation of a Minor Voluntarily Committed to a Mental Health Facility

XVI. REPRESENTATION OF A MINOR WHO IS VOLUNTARILY COMMITTED TO A MENTAL HEALTH FACILITY UNDER §53-21-112, MCA

GOALS:

- A. To actively and effectively represent minor children in proceedings where they or, if under the age of 16, their parents or guardian, have consented to mental health services treatment under §53-21-112, MCA, in an effective and professional manner throughout all phases of the representation.**
- B. To abide by specific mandatory standards of representation for public defenders as attorney for the minor.**
- C. To serve the stated interests of the minor, to be independent from the court and other participants in the litigation, including the minor's parents or guardian, and to be unprejudiced and uncompromised in representing the minor.**
- D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the minor.**

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Section XVI, Representation of a Minor Voluntarily Committed to a Mental Health Facility

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent minors who have been voluntarily admitted to mental health services under §53-21-112, MCA, shall have a thorough understanding of involuntary commitment case law, statutes, and rules, as well as the mental health system.

B. To be eligible for assignment to represent minors who have been voluntarily admitted, counsel shall demonstrate proficiency or receive training in the duties, skills, and ethics of representing involuntary commitment respondents, including visits to a variety of youth treatment facilities if appropriate. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall be familiar with the public defender standards for representation of a respondent in a proceeding for involuntary commitment.

D. Counsel shall have basic knowledge of the classification of mental disorders and the ability to read and understand medical terminology related to mental disorders, developmental disabilities, alcoholism, and chemical dependency. Counsel shall be familiar with the medications used to treat mental disorders, developmental disabilities, alcoholism, and chemical dependency. Counsel shall be aware of how the minor's age, or a particular mental disorder, developmental disability, alcoholism, or chemical dependency will affect attorney-client communications and should recognize that communications may require special efforts on the part of counsel.

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Section XVI, Representation of a Minor Voluntarily Committed to a Mental Health Facility

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the minor's case and explore the range of mental health and social services that may be available to the minor in the minor's community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the minor.

C. Counsel shall advise the minor of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the minor determine his or her objectives by advising him or her about the probability of success in pursuing those options. If the minor expresses a desire to seek voluntary mental health treatment in a particular setting or related social services, counsel must give the minor the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the minor's express wishes. The primary role of counsel is to represent the perspective of the minor alone, and not the perspective of the minor's relatives, friends, or guardian. This is true regardless of the age of the minor. In addition, counsel will not substitute his or her judgment about what is in the best interest of the minor. To the extent that a minor is unable or unwilling to express personal wishes, counsel must presume that the minor wishes to reside in the least restrictive environment.

F. Counsel shall meet with the minor as soon as possible after notification of his or her assignment to represent the minor. This meeting shall be conducted in private and shall be held sufficiently before any scheduled legal proceeding to permit effective preparation and allow pre-hearing assistance to the minor.

G. When meeting with the minor for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall make it clear to the minor that he or she is not a member of the facility staff. Counsel shall inform the minor that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve the attorney-client confidentiality. Counsel shall also inform the minor client of the right to remain silent prior to the commencement of any court-ordered examination and that the minor cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the following:

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- a. The circumstances that brought about the attorney's assignment, including the voluntary admission, the minor's age at admission, the extent to which the minor's parents or guardian participated in that decision, and the reason that the minor asked for counsel if that request brought about the assignment;
- b. The names, addresses, and telephone numbers of all persons with knowledge of those circumstances;
- c. Any information about the minor's past mental health treatment;
- d. Information to aid the exploration of the minor's choices for treatment;
- e. The name of a mental health professional of the minor's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:

- a. Explain what is happening and why, including a description of the judicial hearing if one is pending;
- b. Explain the minor's rights in that process as well as the minor's rights regarding voluntary admission to mental health services; and
- c. Explain that the minor may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender.

J. Immediately after being assigned, counsel should review the file and should inform other parties and other counsel of his or her assignment and that, as counsel of record, he or she should receive copies of any pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

K. Immediately after being assigned, counsel should meet with the minor adapting all communications to the minor's level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the minor about the court system, the proceedings, and counsel's responsibilities. Counsel should elicit and assess a minor's views and concerns of the case.

L. Counsel shall encourage and support the minor in maintaining contact with family members and friends if the minor so desires and when doing so would benefit the minor.

M. Counsel should thoroughly explain to the minor the requirements for a valid voluntary admission to a mental health facility under §53-21-111, MCA, and discuss all practical and legal considerations that flow from their admission.

N. If counsel believes it to be appropriate, counsel should seek to have a medical evaluation of the minor done by a qualified physician of the minor's choosing, and preserve said examination for further use on behalf of the minor.

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Section XVI, Representation of a Minor Voluntarily Committed to a Mental Health Facility

O. Counsel should conduct thorough, continuing and independent investigations, including reviewing the minor's social service records, mental health records, if applicable, drug and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

P. If the public defender was assigned to the case because there is an upcoming legal proceeding, such as an involuntary commitment proceedings, counsel will follow the appropriate public defender standards as well as these Standards.

Q. Counsel must ensure that a minor's consent to voluntary treatment is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary treatment and care to the client.

R. If the minor indicates that he or she would consent to voluntary treatment, counsel shall:

- a. Determine whether the minor was indeed aware that by electing to receive voluntary patient status, he or she was agreeing to enter or remain in mental health services; and,
- b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion.

S. If counsel has determined that the minor's consent to voluntary treatment is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the involuntary commitment proceeding.

T. When, due to the minor's disability, the effect of medication, or other factors, counsel is unable to determine that the consent to voluntary patient status was made knowingly and voluntarily, he or she shall investigate the circumstances of the minor's stated desire to voluntarily receive treatment.

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Section XVI, Representation of a Minor Voluntarily Committed to a Mental Health Facility

3. HANDLING THE CASE:

A. In preparation for court hearings, counsel must thoroughly prepare for trial, the examination of both law and expert witnesses, submission of trial briefs and stipulations, and all evidentiary considerations.

B. At any court proceedings, counsel should present and cross examine witnesses, offer exhibits as necessary, introduce evidence where appropriate, make arguments on the minor's behalf, and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the minor's decisions about the representation with respect to each issue on which the minor is competent to direct counsel. Counsel should pursue the minor's expressed objectives.

C. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions if authorized by the client. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

D. Counsel should determine and advocate for, on behalf of the minor, the least restrictive alternatives to meet the needs and wishes of the minor.

E. After the initial disposition of the case, counsel should discuss the end of the legal representation with the minor and discuss all avenues of appeal and other assistance in the future on behalf of the minor.

F. When counsel's representation terminates, counsel shall cooperate with the minor and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

G. Counsel should provide continuity in representation for the minor. Counsel shall advocate for an appropriate treatment and discharge plan to be developed. The treatment plan should be tailored to the minor's needs. Counsel shall argue for the exclusion of all provisions that are unnecessarily restrictive or unsupported. The treatment plan should include the following elements:

- a. All assessments of the minor's problems and needs;
- b. A brief description of the nature and effects of service and treatment already administered to the minor;
- c. A description of services and treatment to be administered, their possible side effects and feasible alternatives, if any;
- d. The identities of agencies and specific individuals who will, in the future, provide the services and treatment;

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- e. The settings in which the services and treatment will be provided;
 - f. A time table for attaining the goals or benefits of treatment or care to be administered;
 - g. A statement of the criteria for transition to less restrictive placements, as well as the date for transfer or discharge; and,
 - h. A statement of the least restrictive conditions necessary to achieve the purposes of treatment.
- H. The discharge plan should include the following:
- a. An anticipated discharge date;
 - b. Criteria for discharge;
 - c. Identification of the facility staff member responsible for discharge planning;
 - d. Identification of community-based agency or individual who is assisting in arranging post discharge services;
 - e. Referrals for financial assistance needed by the patient upon discharge; and,
 - f. Other information necessary to ensure an appropriate discharge and adequate post discharge services.

I. Counsel who has represented a minor pursuant to §53-21-112, MCA, should make every effort to maintain responsibility for the minor's legal representation so long as the respondent remains a minor subject to a voluntary admission or involuntary commitment.

J. If counsel who represented the minor does not continue to represent the minor, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the minor's admission pursuant to §53-21-112, MCA. Specific objectives include:

- a. A smooth transfer of responsibility to new counsel who assumes representation of the minor, including representation in matters including the periodic review of the minor's status; and,
- b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

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Section XVII, Representation of Parents in Dependent/Neglect Cases

XVII. REPRESENTATION OF PARENTS IN DEPENDENT/NEGLECT CASES

GOALS:

- A. To actively, professionally, and zealously advocate for parents whose children are the subject of actions under the Child Abuse and Neglect laws of Montana and afford them every legal opportunity to preserve their parental rights.**
- B. To serve the state interest of the client and be independent from the court and other participants in the litigation, including the client's parents or guardians, and be unprejudiced and uncompromised in representing the client. Attorneys representing parents shall comply with the general standards for public defenders as well as these specific standards.**

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1. TRAINING:

A. To be eligible for assignment to represent parents in these court proceedings, counsel shall demonstrate proficiency or receive training in representing parents and the Indian Child Welfare Act.

B. Counsel shall be knowledgeable in the following areas:

- a. Legislation and case law on abuse and neglect, termination of parental rights, and adoption of children with special needs;
- b. The causes and available treatments of child abuse;
- c. Child welfare and family preservation services available in the community and the problems they are designed to address;
- d. Services the State will and won't routinely pay for;
- e. The structure and functioning of Child and Family Services of the Department of Public Health and Human Services;
- f. Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts to maintain or return the child to the home;
- g. Local and state experts who can provide attorneys with consultation and testimony of the special needs of Indian children and cultural differences;
- h. Child and adolescent development;
- i. Brain development and the affect of trauma on brain development;
- j. Substance abuse issues;
- k. Mental health issues; and
- l. Disability issues.

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Section XVII, Representation of Parents in Dependent/Neglect Cases

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the various health and social services that may be available to the parent in the community.

B. Counsel shall advise the parent of all available options, as well as the practical and legal consequences of those options.

C. If the client is a parent whose location is unknown, all standard means, such as telephone book, internet, and putative father registry, shall be used to locate the parent. Other parents who are available shall be consulted as to the location of the missing parent.

D. Counsel shall actively represent the client at all stages of the proceeding. When the public defender becomes aware of the assignment, the public defender shall meet with the client as soon as possible and sufficiently before any scheduled hearing or proceeding, including the show cause hearing, to permit effective preparation.

E. When meeting with the parent for the first time, counsel shall identify himself or herself by name and affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall make it clear to the minor that he or she is not a member of the facility staff. Counsel shall inform the parent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that attorney-client confidentiality. Counsel shall also inform the parent that he or she has a right to remain silent.

F. During the conference, counsel shall:

- a. Explain the issues and possible dispositions;
- b. Explain the court process, timelines, and the role of all the parties involved, such as judge, prosecutor, guardian ad-litem, and parent;
- c. Inform the parent not to make statements to anyone concerning the case without prior consultation with counsel;
- d. Obtain signed releases for medical and mental health records, employment records, and other necessary records. Counsel should advise the client of the potential use of this information and the privileges that attach to this information;
- e. Obtain information from the client concerning the facts and whether there were any statements made, witnesses, and other relevant information.

G. If counsel is unable to communicate with the client because of language or disability, counsel shall use the experts necessary to ensure the ability to communicate with the client.

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Section XVII, Representation of Parents in Dependent/Neglect Cases

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Section XVII, Representation of Parents in Dependent/Neglect Cases

3. HANDLING THE CASE:

A. Counsel should seek the most expedient and timely resolution of the proceeding possible while providing effective and zealous advocacy for the client. Counsel should only seek the continuance of any phase of the proceedings if it is necessary to effectively advocate for the client.

B. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in such proceedings, such as reports from agency employees, as well as substantive law in these proceedings.

C. In preparation for any proceedings such as show cause, adjudicatory or termination, counsel should:

- a. Review the petition and all other evidence;
- b. Prepare the client for the proceeding, explain the issues involved, and the alternatives open to the judge;
- c. If the child has already been removed from the home, determine the basis for the removal;
- d. Determine the actions taken by the State to investigate other possible actions to protect the child without removal, such as locating a non-custodial parent or relative, identifying services to address the needs of the parent and child, including intensive home-based services, and other services, such as disability support services.
- e. Review all statements, documents, reports, and documentary evidence, including medical records, if any, and discuss these documents with the client;
- f. Familiarize himself or herself with relevant law; and,
- g. Interview all witnesses, favorable and adverse.

D. During any proceedings, counsel shall, where it benefits the client:

- a. Examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence;
- b. Offer evidence favorable to the client's case, if available; and,
- c. Determine whether an expert is needed to assist in preparation of the parent's case.

E. During the show cause hearing, counsel shall examine witnesses as to:

- a. Whether the agency has made all reasonable efforts to explore services that will allow the child to remain safely at home and avoid protective placement of the child;
- b. Whether there are other responsible relatives or adults available who may be able to care for the child or provide additional supervision;

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- c. The accuracy of the facts contained in the petition or affidavit in support of intervention; and,
 - d. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.
- F. In preparation for an adjudicatory hearing, counsel shall:
- a. Determine what actions the client has taken since the preliminary proceeding, if there was one, to address the concerns of the state as to the safety of the child, and discuss with the client the treatment or other services to which the client would voluntarily agree;
 - b. Investigate whether the agency made reasonable efforts to prevent the need for placement and safely reunify the family, such as identifying services available to protect the child without removal, in-home baby sitters, intensive home-based services, and other services that address the needs of the parent and child, including disability support services, and whether the agency has taken prompt steps to evaluate relatives as possible caretakers.
- G. At the adjudicatory hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses, and challenge other non-testimonial evidence regarding:
- a. The accuracy of the facts presented by the State to prove abuse or neglect of the child;
 - b. Factual basis of opinions presented by the State to prove abuse or neglect of the child;
 - c. Whether the agency failed to provide services that would have allowed the child to stay safely in the home;
 - d. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation. In addition, after consultation with the client, counsel shall consider offering evidence to the court of treatment or services in which the client would voluntarily participate to obviate the need for a treatment plan or, if a treatment plan is ordered, to include in the treatment plan. Counsel shall challenge conditions in the treatment plan that are not justified or supported by the record.
- H. Prior to making admissions or stipulations or agreeing to voluntarily place the child or relinquish any right to visitation with the child, counsel must:
- a. Ensure that the client understands the consequences of such a decision;
 - b. Make it clear to the client that the ultimate decision to make the admission or voluntarily place the child has to be made by the client;

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- c. Investigate and candidly explain to the client the prospective strengths and weaknesses of the case, including the availability of the State's witnesses, concessions and benefits which are subject to negotiation, and the possible consequences of any adjudication;
- d. Be satisfied that the admission is voluntary, that there is a factual basis for the admission, and that the client understands the right being waived; and,
- e. Be aware of the effect the client's admission will have on any other court proceedings or related issues.

I. Counsel's recommendation on the advisability of an admission should be based on a review of the complete circumstances of the case and the client's situation.

J. Where counsel believes that the client's desires are not in the client's best interest, counsel may attempt to persuade the client to change his or her position. If the client remains unpersuaded, however, counsel should assure the client he or she will defend the client vigorously.

K. Notwithstanding the existence of ongoing negotiations with the State, counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to a hearing on the merits.

- L. In preparation for a disposition hearing, counsel should:
- a. Determine what actions the client has taken since the adjudicatory proceedings to address the concerns of the State as to the safety of the child;
 - b. Investigate what the agency has done to explore services that will allow the child to remain safely at home; and,
 - c. Determine what sort of disruption that the removal of the child has caused the child and the family.

M. In the disposition hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

- a. Whether, if the agency objects to placing the child with the parent, the agency sufficiently explored and provided services that would have allowed the child to reside safely in the parent's home;
- b. Whether the agency appropriately considered the non-custodial parent or other family members as caretakers; and,
- c. The factual basis of the agency's recommendations for placement outside of the home.

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N. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.

O. In preparation for a permanency hearing, and, if parental rights have not been terminated, counsel should:

- a. Keep in contact with the client and determine what actions the client has taken to address the concerns of the State as to the safety of the child;
- b. Investigate what the agency has done to explore services that will allow the child to live safely with the parent; and,
- c. Determine what sort of disruption the removal of the child has caused the child and the family.

P. In preparation for a parental rights termination proceeding, counsel should:

- a. Determine what actions the client has taken to address the concerns of the State as to the safety of the child;
- b. Investigate what the agency has done to explore services that will allow the child to remain safely in the home; and,
- c. Determine what sort of disruption that the removal of the child has caused the child and the family.

Q. In a parental rights termination proceeding, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

- a. Whether the statutory grounds for termination have been met;
- b. Whether termination is in the best interest of the child;
- c. Whether the agency made reasonable efforts to prevent the need for termination and safely reunify the family, such as identifying services available to protect the child without removal, in-home baby sitters, intensive home-based services, and other services that address the needs of the parent and child, including disability support services;
- d. Whether the treatment plan, if one was required, was appropriate.

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Section XVIII, Representation of Respondent in Guardianship/Conservatorship Proceeding

XVIII. REPRESENTATION OF A RESPONDENT IN A GUARDIANSHIP OR CONSERVATORSHIP PROCEEDING

GOALS:

- A. To advocate zealously and professionally for the respondent who is the subject of a guardianship or conservatorship proceeding.**
- B. To abide by mandatory and specific standards of representation for public defenders as attorney for the respondent in a guardianship or conservatorship proceeding.**
- C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.**
- D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the respondent.**
- E. Ensure that a guardianship, if ordered, encourages the development of maximum self-reliance and independence of the respondent, and is ordered only to the extent that the respondent's actual mental and/or physical limitations require.**

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Section XVIII, Representation of Respondent in Guardianship/Conservatorship Proceeding

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent respondents in a guardianship or conservatorship proceeding should have a thorough understanding of the law governing guardianship or conservatorship proceedings, as well as the social services, health care services, and other supports or legal arrangements, including powers of attorney, trusts, and advanced directives that, if employed, may obviate the need for guardianship or conservatorship.

B. To be eligible for assignment to represent respondents in guardianship or conservatorship proceedings, counsel shall demonstrate proficiency or receive training in the duties, skills, and ethics of the representation of respondents in involuntary commitment proceedings. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall have basic knowledge of various mental and physical illnesses and disabilities, including mental illness and developmental disabilities, the features of those disabilities and illnesses, and the available treatments. Counsel should also have the ability to read and understand medical terminology related to these disabilities. Counsel should be aware of how a particular disability, illness or condition will affect the attorney-client communications and shall recognize communications may require additional efforts on the part of counsel. Counsel should also have familiarity with people with disabilities who function independently using alternative and less intrusive supports such as powers of attorney, trustees, and payees.

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Section XVIII, Representation of Respondent in Guardianship/Conservatorship Proceeding

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the respondent's case and explore various social and health care services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on the knowledge of the range of services available to the respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options. If for any reason counsel believes that the respondent may have difficulty understanding or retaining information, counsel shall also provide this information in written format or any other alternative format that would assist the respondent to understand and retain the information and provide the same information to any advisor the ward authorizes to receive the information.

D. Counsel shall help the respondent determine his or her objectives by advising him or her about the probability of success in pursuing those options. If the respondent expresses a desire to seek social services or other support that would obviate the need for guardianship or conservatorship, or would support the respondent to the extent that only limited guardianship or conservatorship would be warranted, counsel must give the respondent the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent and not to substitute his or her judgment about what is in the best interests of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel shall advocate the position that best safeguards and advances the respondent's interests in liberty.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to a guardianship or conservatorship proceeding case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled hearings to permit effective preparation and allow pre-hearing assistance to the respondent, including but not limited to, allowing time to interview the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a healthcare or residential facility, counsel shall make it clear to the respondent that he or she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to

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preserve that attorney-client confidentiality. Counsel should inform the respondent that he or she has the right to remain silent prior to the commencement of and during any court ordered examination and that the respondent cannot be examined without the presence of counsel.

H. During the conference, counsel should obtain the respondent's version of the facts of the case, including:

- a. The circumstances surrounding the filing of a guardianship or conservatorship petition;
- b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the guardianship or conservatorship petition;
- c. Any information about past hospitalization and treatment;
- d. Information about past guardianships, conservatorships, payeeships, valid or void durable powers of attorney, or other forms of substituted judgment to which the respondent may have been subject;
- e. Information to aid the exploration of alternatives to guardianship or conservatorship;
- f. Preferences for a guardian or conservator and any past conflicts or financial relationships between the person or persons seeking to be appointed guardian or conservator and the respondent;
- g. The income and assets that the respondent is aware that he or she owns, any concerns that the respondent has about the management of those assets, any gifts or transfers in trust to the proposed guardian or conservator or others that the respondent has made at any time within the last ten years, any provisions the respondent has made for the transfer by gift or inheritance of his or her assets to anyone, any obligation or desire the ward has to support others, any wishes the ward has for the priority in the use of his or her assets and any other information that may help counsel understand the ability of the ward to understand, identify, direct the management of and select the natural successors in interest to his or her assets. If the respondent has a deteriorating condition, counsel should consider tape recording or otherwise preserving this conversation in detail, including when, where, and with whom it occurred.

I. During the conference, counsel shall also:

- a. Explain what is happening and why, including the basis on which the guardianship or conservatorship is sought, and offer a description of the court appointed physician's examination, the visitor's interview, and judicial hearing procedures;
- b. Explain the respondent's rights in the process;

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- c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender and the financial ramifications of each choice;
 - d. Explain the respondent's option to accept community services or supports as well as the legal options, including powers of attorney, use of payees, the formation of trusts, or the issuance of advance directives that may obviate the need for guardianship or conservatorship, the procedures of exercising these options and the legal consequences of these decisions;
 - e. Obtain his or her consent to enter into negotiations for settlement of the case with the petitioner if the respondent is willing and able to receive services or supports, or enter into other legal arrangements as an alternative to guardianship or conservatorship;
 - f. Discuss the desirability of a court hearing with the respondent; and,
 - g. Request the respondent's written or oral permission to obtain access to relevant records.
- J. After being formally appointed, counsel shall, in preparation of any scheduled hearing, do the following:
- a. Become thoroughly familiar with the statutory requirements governing guardianship and conservatorship in the jurisdiction as well as case law and court rules;
 - b. Thoroughly review the petition or other documents used to initiate the proceedings, the visitor's report, the court appointed physician's report, the medical records of the respondent, and any other document relevant to the proceedings;
 - c. Attempt to interview all persons who have knowledge of the circumstances surrounding the guardianship or conservatorship proceeding petition, including, but not limited to, the following:
 - i. The petitioner(s);
 - ii. The proposed guardian(s);
 - iii. The health care professionals or social workers, who have recently examined or treated the respondent;
 - iv. Previous treatment providers, if any;
 - v. The respondent's family, friends, partners, or acquaintances; and,
 - vi. Persons who may provide relevant information or who may be supporting or adverse witnesses at a hearing.
 - d. Obtain a medical examination of the respondent sufficiently thorough to rule out treatable health conditions that may be responsible for any cognitive impairments or behavioral deficits.

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Section XVIII, Representation of Respondent in Guardianship/Conservatorship Proceeding

K. Counsel must ensure that a respondent's consent to voluntary services or supports, or to entering into legal arrangements as an alternative to guardianship or conservatorship, is known and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of each as part of counsel's efforts to make the respondent aware of all options available to him or her.

L. If the respondent indicates that he or she would consent to voluntary services or supports, or to entering into legal arrangements as an alternative to guardianship or conservatorship, counsel shall:

- a. Ascertain whether the respondent was indeed aware of the consequences of electing to do so; and,
- b. Make certain that this agreement was not the product of threats, unrealistic promises, or other forms of coercion.

M. If counsel has determined that the respondent's consent to voluntary services or supports, or to entering into legal arrangements, is not knowingly and uncoerced, counsel shall immediately take steps to arrange such services or draft such legal documents and to request dismissal of the guardianship or conservatorship proceeding.

N. When, due to the respondent's disability, the effect of medication, or other factors, counsel is unable to determine that the consent to voluntary services or supports, or to entering into legal arrangements, was made knowingly and voluntarily, he or she shall investigate the circumstances of the respondent's stated desire.

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Section XVIII, Representation of Respondent in Guardianship/Conservatorship Proceeding

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the guardianship or conservatorship proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that the respondent may exercise his or her right to a jury trial. Counsel shall inform the respondent of his or her right to a jury trial and explain the benefits and detriments of a jury trial, and a hearing in front of the judge alone. Counsel shall immediately notify the court if the respondent chooses a jury trial. If the respondent waives his or her right to a jury trial, counsel shall establish that the waiver is knowing and voluntary.

C. Counsel shall ensure that a respondent actively participates in every stage of the guardianship or conservatorship proceeding. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings.

D. Counsel shall avoid using his or her authority to waive the respondent's presence at the hearing except in the following extraordinary cases:

- a. When the respondent unequivocally refuses to attend and cannot be encouraged to do so;
- b. When attending would seriously jeopardize the respondent's mental or physical condition; or,
- c. When the respondent's presence at the hearing would completely disrupt and prevent a meaningful proceeding.

E. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

F. If at any time of the hearing a respondent is under the influence of prescribed medications, counsel should consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

G. Counsel should zealously and effectively engage in all aspects of trial advocacy.

H. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in guardianship or conservatorship proceedings, such as medical records, legal records arising in attorney-client conversations,

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Section XVIII, Representation of Respondent in Guardianship/Conservatorship Proceeding

wills, advance directives, durable powers of attorney, oral gifts, transfers in trust, and financial records, among others.

I. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for incapacity of the ward have been met. Thus, counsel shall seek to bifurcate the determination of the ward's incapacity with the determination of the identity of the guardian or conservator.

J. During the guardianship or conservatorship hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

- a. Whether the case for guardianship or conservatorship is based on:
 - i. The respondent's lack of sufficient understanding or capacity to make or communicate responsible decisions concerning the respondent's personal care including safe living arrangements;
 - ii. The impairment of the respondent's judgment so that the respondent is not capable of realizing and making rational decisions regarding medical or mental health treatment or handling day to day financial matters, or complex business or contract matters; or,
 - iii. The respondent's susceptibility to exploitation.
- b. Whether there is any real factual basis for the petition;
- c. How well the respondent is currently functioning and whether any indications of poor functioning are due to the respondent's social situation, income, or factors other than the prospective incapacity;
- d. Whether possible alternatives have been explored, including community supports through Meals on Wheels, in-home care, personal care attendants, visiting nurses, durable powers of attorney, payeeship, and trusts, among others;
- e. Whether a limited or temporary guardianship or conservatorship or protective order has been explored;
- f. Whether health examinations were thorough;
- g. Whether the respondent had recently been exhibiting abnormal or unusual behavior;
- h. The factual basis of conclusory opinions about the respondent's incapacity;
 - i. Whether the proposed guardian or conservator is qualified to serve in that role;
 - j. Whether the respondent approves of the proposed guardian or conservator; and,
 - k. Whether the proposed guardian or conservator has a conflict of interest based on past gifts, transfers, disputes, financial or familial relationships, business dealings or partnerships, proposed inheritance, or otherwise.

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Section XVIII, Representation of Respondent in Guardianship/Conservatorship Proceeding

K. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the respondent's incapacity under the applicable legal standards.

L. After discussions with the respondent and with his or her consent, counsel shall present all evidence available regarding appropriate alternatives to full guardianship or conservatorship, including, but not limited to, voluntary community support and health care services and legal arrangements including powers of attorney, trusts, and advance directives.

M. Counsel shall offer all evidence available that is favorable to the respondent regarding the least restrictive guardianship, such as a limited guardianship, temporary guardianship, or protective order.

N. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of appointing a full guardian, the most restrictive guardianship available.

O. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of the limitation of any civil or political rights of the respondent, including, but not limited to, the right to make medical decisions, including end of life decisions, the right to privacy, including the right to make family decisions including marriage, parenting, and relationships, the right to association, the right of free speech and expression, the right to make or change a will, and the right to vote.

P. Counsel should consider the condition of the respondent in determining the degree to which the hearing procedures should conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel should argue strict application for the burden of proof and the law and, at all times, endeavor to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record and the law.

Q. Counsel should provide continuity in representation for the respondent throughout the guardianship or conservatorship process. If the court orders a guardianship or conservatorship, counsel shall make every attempt to ensure that the order explicitly and narrowly defines the rights restricted by the guardianship and conservatorship.

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Section XVIII, Representation of Respondent in Guardianship/Conservatorship Proceeding

R. Counsel shall also make every attempt to ensure that the guardianship or conservatorship order is fashioned to encourage the development of maximum self-reliance and independence of the respondent and is only as broad as is necessary given the respondent's actual mental and/or physical limitations.

S. Counsel shall seek to submit testimony or other evidence regarding the ward's preferred living situations, preferred treatment options, the sale or disposition of his or her home, cars, ranch, business or other assets of significant value. To the extent feasible, counsel should make the wishes of the ward clear to the court and the appointed guardian or conservator to provide direction in the future management of the ward or the ward's estate.

T. Counsel shall also request that the court calendar an immediate ninety (90) day inventory, annual accountings, guardian annual reports, and other matters, including court review and approval of any anticipated sale or dispersal of significant assets of the respondent, especially plans to "spend down" those assets to qualify the respondent for governmental benefits, to ensure that should a guardian or conservator be appointed, the guardian or conservator does not proceed without appropriate court supervision. In addition, counsel shall request that the court prohibit the guardian from receiving compensation from the ward or ward's estate unless the guardian has provided prior notice to the court and all interested parties of the rate of compensation, and for what services the compensation will be paid.

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Section XIX, Representation of Persons in Proceeding to Determine Parentage

XIX. REPRESENTATION OF PERSONS IN A PROCEEDING TO DETERMINE PARENTAGE UNDER THE UNIFORM PARENTAGE ACT (§40-6-119, MCA)

GOALS:

- A. To actively and effectively represent clients in proceedings to determine parentage under §40-6-119, MCA, in an effective and professional manner throughout all phases of the case.**
- B. To serve the interest of the client and to be independent from the court and other participants in the litigation and be unprejudiced and uncompromised in representing the client.**
- C. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf on the client.**

Practice Standards

December, 2012

Section XIX, Representation of Persons in Proceeding to Determine Parentage

1. TRAINING AND COMPETENCY:

A. Absent a knowing and intelligent waiver by the party represented, all attorneys who represent parties in proceedings under the Parentage Act must demonstrate proficiency or receive training specific to the representative of punitive parents under the Act.

B. All attorneys must have a working knowledge of the Uniform Parentage Act, statutes, and rules, as well as cases interpreting and applying them.

C. In addition to basic legal knowledge, the attorney must have and continue to develop basic trial skills, basic advocacy skills, relevant motion practice, and a sufficient understanding of writ and appellate practice to advise a client whether and how to seek such remedies and to protect the record in the District Court.

Practice Standards

December, 2012

Section XIX, Representation of Persons in Proceeding to Determine Parentage

2. HANDLING THE CASE:

A. Counsel should accept the appointment with the full understanding of the issues and functions to be performed. If counsel considers parts of the appointment to be confusing or incompatible with his or her ethical duties, counsel should inform the court of the conflict and ask the court to clarify or change the terms of the appointment.

B. Immediately after being appointed, counsel should review the file and should inform other parties and other counsel of his or her appointment, and that as counsel of record he or she should receive copies of pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

C. Immediately after being appointed, counsel should meet with the punitive parent, adapting all communications to the client's level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the client about the court system, the proceedings, and counsel's responsibilities. Counsel should illicit and assess a client's views and concerns of the case.

D. Counsel should develop a theory or strategy of the case to implement at hearings, including presentation of factual and legal issues.

E. Counsel should conduct thorough, continuing, and independent investigations, including reviewing the client's social service records, mental health records, drug and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

F. Counsel should conduct exhaustive discovery including, where necessary, depositions, written interrogatories, production of documents, subpoena *duces tecum*, physical examinations, and requests for admissions.

G. In preparation for court hearings, counsel needs to complete exhaustive trial preparation, witness preparation of both lay and expert witnesses, preparation of trial briefs and stipulations, and all evidentiary considerations.

H. Counsel should stay apprised of other court proceedings affecting the client, the parties, and other household members.

I. Counsel should attend meetings involving issues within the scope of the case and take any necessary and appropriate action to expedite the proceedings.

Practice Standards

December, 2012

Section XIX, Representation of Persons in Proceeding to Determine Parentage

J. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

K. Counsel should file or make petitions, motions, responses, or objections when necessary.

L. At any court proceedings, counsel should present and cross-examine witnesses and offer exhibits as necessary and, where appropriate, introduce evidence and make arguments on the client's behalf and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the client's decisions about the representation with respect to each issue on which the client is competent to direct counsel. Counsel should pursue the client's expressed objectives, unless the client's objectives violate counsel's ethical duties or responsibilities as an officer of the Court.

M. After the initial disposition of the case, counsel should discuss the end of the legal representation with the client and discuss all avenues of appeal and other assistance in the future on behalf of the client.

N. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

Practice Standards

December, 2012

Section XX, Representation of Parent/Guardian in Proceeding for Involuntary Commitment of Developmentally Disabled Person

XX. REPRESENTATION OF PARENTS OR A GUARDIAN IN A PROCEEDING FOR THE INVOLUNTARY COMMITMENT OF A DEVELOPMENTALLY DISABLED PERSON

GOALS:

- A. To actively and effectively represent the parents or guardian of a disabled person in a proceeding for the involuntary commitment of that person and to provide for the protection of their procedural rights pursuant to §53-20-112, MCA.**
- B. To serve the best interests of the parents or guardian and to be independent from the court and other participants in the litigation and be unprejudiced and uncompromised in representing them.**
- C. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the parents or guardian.**

Practice Standards

December, 2012

Section XX, Representation of Parent/Guardian in Proceeding for Involuntary Commitment of Developmentally Disabled Person

1. TRAINING AND COMPETENCY:

A. All attorneys representing parents or guardians of a disabled person who are the subject of a petition for involuntary commitment must demonstrate proficiency or receive training in involuntary commitments and developmentally disabled respondents, before being assigned the representation of such parents/or guardian.

B. Counsel should be familiar with all relevant statutes, rules, and case laws regarding and related to involuntary commitments in Montana.

C. In addition to basic legal knowledge, the attorneys must have and continue to develop basic trial skills, basic advocacy skills, relevant motion practice, and a sufficient understanding of writ and appellate practice to advise the parents or guardians whether and how to seek such remedies and to protect the record in the District Court.

D. Counsel should be familiar with the public defender standards for representation of a respondent in a proceeding for involuntary commitment.

Practice Standards

December, 2012

Section XX, Representation of Parent/Guardian in Proceeding for Involuntary Commitment of Developmentally Disabled Person

2. HANDLING THE CASE:

A. Counsel should accept the appointment with the full understanding of the issues and functions to be performed. If counsel considers parts of the appointment to be confusing or incompatible with his or her ethical duties, counsel should inform the court of the conflict and ask the court to clarify or change the terms of the appointment.

B. Immediately after being appointed, counsel should review the file and should inform other parties and other counsel of his or her appointment, and that as counsel of record he or she should receive copies of pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

C. Immediately after being appointed, counsel should meet with the parents or guardian of the respondent, adapting all communications to their level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the parents or guardian about the court system, the proceedings, and counsel's responsibilities. Counsel should illicit and assess the parents or guardians views and concerns of the case.

D. Counsel should be aware of and protect all of the procedural rights guaranteed under §53-20-112, MCA, including:

- a. The right to be present at any hearing held pursuant to §53-20-101;
- b. Offer evidence and cross-examine witnesses at any hearing; and,
- c. Have the respondent examined by a professional person of his or her choice.

E. Counsel should thoroughly explain to the parents or guardian the contents of the petition for commitment and discuss all practical and legal considerations that flow from the petition.

F. If the petition provides a medical report, counsel should ascertain whether the physician indicates on the report his or her qualifications and that those qualifications are appropriate to make the recommendation regarding capacity or incapacity contained in the report.

G. If counsel believes it to be appropriate, or the parents or guardian request it, counsel should seek to have a medical evaluation of the disabled person completed by a professional person of their choice, and preserve said examination for further use on behalf of the respondent.

H. Counsel should conduct thorough, continuing, and independent investigations, including reviewing the respondent's social service records, mental health records, if applicable, drug and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

Practice Standards

December, 2012

Section XX, Representation of Parent/Guardian in Proceeding for Involuntary Commitment of Developmentally Disabled Person

I. Counsel should determine whether or not the respondent has an existing trust or durable power of attorney which may be relevant.

J. Counsel should be knowledgeable about all other alternatives and types of medical treatment for the respondent's disability and of the type and duration of treatment requested by the petition.

K. In preparation for court hearings, counsel needs to complete exhaustive trial preparation, witness preparation of both lay and expert witnesses, preparation of trial briefs and stipulations, and all evidentiary considerations.

L. Counsel should stay apprised of any other court proceedings affecting the respondent, the parties, or other household members.

M. If the client is a parent whose location is unknown, all standard means, such as telephone book, internet, and punitive father registration, shall be used to locate the parent. Other parents or guardians who are available should be consulted as to the location of the missing parent. Counsel should use all due diligence in locating said missing parent.

N. At any court proceedings, counsel should present and cross-examine witnesses and offer exhibits as necessary, introduce evidence where appropriate, and make arguments on the parents' or guardian's behalf and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the parents' or guardian's decisions about the representation with respect to each issue on which the parents or guardians are competent to direct counsel. Counsel should pursue the parents or guardians expressed objectives, unless their objectives violate counsel's ethical duties or responsibilities as an officer of the court.

O. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

P. Counsel should determine and advocate for, on behalf of the parents or guardians, whatever treatment alternatives meet the wishes of the parents or guardians. If counsel has reason to believe that the parents or guardians legitimate interests require investigation, counsel should request appropriate alternatives as may be allowed by the court.

Q. After the initial disposition of the case, counsel should discuss the end of the legal representation with the parents or guardians and discuss all avenues of appeal and other assistance in the future on their behalf.

Practice Standards

December, 2012

Section XX, Representation of Parent/Guardian in Proceeding for Involuntary Commitment of Developmentally Disabled Person

- a. When counsel's representation terminates, counsel shall cooperate with the parents or guardians and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

Practice Standards

December, 2012

Section XXI, Representation of a Respondent in Proceeding for Involuntary Commitment – Alcoholism

XXI. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – ALCOHOLISM

GOALS:

- A. To actively and professionally act as a zealous advocate for the respondent who is the subject of a proceeding for commitment as an individual with alcoholism under §53-24-301 and 302, MCA.**
- B. To abide by mandatory standards of representation for Public Defenders as attorney for the respondent in a referral or an involuntary commitment proceeding.**
- C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.**
- D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the respondent.**
- E. In the following standards, an involuntary commitment refers to both involuntary commitment and recommitment proceedings.**

Practice Standards

December, 2012

Section XXI, Representation of a Respondent in Proceeding for Involuntary Commitment – Alcoholism

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent a respondent in an involuntary commitment proceeding shall have a thorough understanding of involuntary commitment law, as well as the specifics of §53-24-303 and 304, MCA, and of the chemical dependency and mental health systems.

B. To be eligible for assignment to represent respondents in involuntary commitment proceedings, counsel shall demonstrate proficiency or receive training in the duties, skills, and ethics of representing involuntary commitment respondents, including supervised on-the-job training and visits to a variety of treatment facilities including the Montana Chemical Dependency Center, community service providers, and sober living group homes within the area served by the public defender if applicable. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall have basic knowledge of alcoholism and chemical dependence and the ability to read and understand medical terminology related to chemical dependence, addiction, alcoholism, and the medical and recovery treatment models. Counsel shall be familiar with the medications used to treat alcoholism, addiction, and chemical dependence. Counsel shall be familiar with the roles of intervention, treatment, voluntary abstinence, and support groups in long-term abstinence and recovery. Counsel shall be aware of how chemical dependence, addiction, or active alcoholism will affect attorney-client communications and shall recognize that effective communication may require special efforts on the part of counsel.

D. Counsel should be familiar with other resources for persons who are addicted to alcohol or other drugs available either within the area served by the public defender or reasonably accessible by respondents. Included in these resources are recovery programs, such as twelve step recovery programs, public and private medical and treatment facilities. Counsel should be familiar with the local recovery community and locate resources and supports for respondents.

Practice Standards

December, 2012

Section XXI, Representation of a Respondent in Proceeding for Involuntary Commitment – Alcoholism

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers, chemical dependency counselors, mental health professionals, and health care professional who understand the public defender's advocacy role to investigate the respondent's case and explore treatment, self-help, and support groups, as well as social services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the respondent determine the respondent's objectives by advising the respondent about the probability of success in pursuing those options. If the respondent expresses a desire to seek voluntary treatment or related social services, counsel must given the respondent the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent alone, and not the perspective of the respondent's relatives, friends or guardians. In addition, counsel shall not substitute his or her judgment about what is in the best interests of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel must presume that respondent does not wish to be involuntarily committed.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to an involuntary commitment case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled hearing to permit effective preparation and allow pre-hearing assistance to the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation if appropriate. If the first meeting takes place in a healthcare or a detention facility, counsel shall make it clear to the respondent that he or she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that confidentiality. Counsel shall also inform the respondent that he or she has the right to remain silent prior to the commencement of any court-ordered examination and that the respondent cannot be examined without the presence of counsel.

Practice Standards

December, 2012

Section XXI, Representation of a Respondent in Proceeding for Involuntary Commitment – Alcoholism

H. During the conference, counsel shall obtain the respondent's version of the facts of the case, including:

- a. The circumstances surrounding the filing of the involuntary commitment;
- b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the petition;
- c. Information about past treatment at any public or private treatment facility, medical detoxification facility, or any past psychiatric hospitalization;
- d. Information to aid the exploration of alternatives to commitment;
- e. The name of a chemical dependency expert or addictions medicine specialist of respondent's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:

- a. Explain what is happening and why, including the basis on which the respondent's involuntary commitment is sought, and offer a description of the examination conducted by the physician and judicial hearing procedures;
- b. Explain the respondent's rights in the commitment process, including the right to treatment, the right to refuse treatment, and the right to an examination by a licensed physician of the respondent's choice;
- c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender;
- d. Explain the respondent's option to accept voluntary treatment, the procedures to exercise that option, and the legal consequences of voluntary admission to a treatment facility; discuss whether the respondent is willing to accept voluntary treatment in a treatment facility;
- e. Obtain respondent's consent to enter into negotiations for settlement of the case with the county attorney and with chemical dependency professionals if the respondent is willing and able to give informed consent to voluntary care of related social services as an alternative to involuntary commitment;
- f. Discuss the desirability of a court hearing with the respondent; and,
- g. Request the respondent's written or oral permission to obtain access to relevant records, including any facility records and incident reports.

J. After being notified of appointment to the case, counsel shall, in preparation of any scheduled hearing, do the following:

- a. Become thoroughly familiar with the statutory requirements governing involuntary commitment in the jurisdiction as well as case law and court rules;
- b. Thoroughly review the petition or other documents used to initiate the commitment proceedings, any affidavits or statements in support thereof, the certificate of the examining physician, pre-hearing examination reports, the medical records of the respondent, the facility records of any facility in which the

Practice Standards

December, 2012

Section XXI, Representation of a Respondent in Proceeding for Involuntary Commitment – Alcoholism

respondent has recently resided and any other document relevant to the proceedings.

- c. Attempt to interview all persons who have knowledge of the circumstances surrounding the involuntary commitment petition:
 - i. The petitioner(s);
 - ii. The certifying physician, facility staff, social workers, mental health professionals, and other persons who have examined or treated the respondent during the current or any known previous involuntary commitment proceedings;
 - iii. Previous service providers, if any;
 - iv. The respondent's family, guardian or acquaintances;
 - v. Any law enforcement, emergency response or intervention personnel who may have previously been involved with respondent;
 - vi. Any persons who may provide relevant information or who may be supporting or adverse witnesses at a commitment hearing.
- d. Facilitate the exercise of the respondent's right to be examined by a professional person of the respondent's choice.

K. Counsel must ensure that the respondents consent to voluntary treatment is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary treatment and care to all respondents as a part of counsel's efforts to make respondents aware of all options available to them.

L. If the respondent indicates that he or she would consent to voluntary treatment, counsel shall:

- a. Ascertain whether the respondent was indeed aware that by electing to convert to voluntary status, he or she was agreeing to enter or remain in a health care facility; and,
- b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion.

M. If counsel has determined that the respondents consent to voluntary treatment is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the involuntary commitment proceedings.

N. When, due to the respondent's disability, the effect of medication, or other factors, counsel is unable to determine that the conversion to voluntary patient status was made knowingly and voluntary, he or she shall investigate the circumstances of the respondent's stated desire to voluntarily receive treatment.

Practice Standards

December, 2012

Section XXI, Representation of a Respondent in Proceeding for Involuntary Commitment – Alcoholism

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the involuntary commitment proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the involuntary commitment proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that a respondent actively participates in every stage of the involuntary commitment proceeding. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings. Counsel shall advise the respondent of the legal basis under which the court will order discharge, commitment, or recommitment, and the length of commitment.

C. Counsel shall avoid using his or her authority to waive respondent's presence at the hearing except in the following extraordinary cases:

- a. When the respondent unequivocally refuses to attend and cannot be encouraged to do so;
- b. When attending would seriously jeopardize the respondent's mental or physical condition; or,
- c. When the respondent's presence at the hearing would completely disrupt and prevent a meaningful proceeding.

D. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

E. If, at the time of hearing, a respondent is under the influence of prescribed medications, drugs of abuse or alcohol, counsel shall consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

F. Counsel shall zealously and effectively engage in all aspects of trial advocacy.

G. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in involuntary commitment proceedings, such as hospital and medical records.

H. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for commitment have been met. Counsel shall plan objections to the admissibility of evidence regarding previous commitment and pending criminal charges, if any,

Practice Standards

December, 2012

Section XXI, Representation of a Respondent in Proceeding for Involuntary Commitment – Alcoholism

so as to preclude their consideration at least until the adjudicative issue of whether commitment is warranted has been determined.

I. During the involuntary commitment hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

- a. Whether there has been shown by clear and convincing evidence a real factual basis for determination that respondent is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages;
- b. Whether there has been shown by clear and convincing evidence real factual basis for determination that respondent has threatened, attempted, or inflicted physical harm on another and, unless committed, respondent is likely to inflict physical harm on another;
- c. Whether there has been shown by clear and convincing evidence a real factual basis for the determination or is incapacitated by alcohol of imminent danger;
- d. The factual basis of conclusory opinions about the respondent's suitability for commitment under the applicable legal standards; and,
- e. Whether there has been shown by clear and convincing evidence a real factual basis to determine that the department is able to provide adequate and appropriate treatment for the respondent and that the treatment is likely to be beneficial.

J. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses, including an impartial, independent addictions medicine expert, physician or chemical dependency counselor who has examined the respondent, if possible.

K. After discussions with the respondent and with his or her consent, counsel shall present all evidence available that is favorable to the respondent regarding appropriate alternatives to involuntary commitment, including, but not limited to, the availability of private treatment resources, the respondent's history of successful placement in the community, the availability of community-based services or other mechanisms to support the respondent in the community.

- a. Counsel shall offer evidence favorable to the respondent regarding the least restrictive placement for the commitment during the proceedings;
- b. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of committing the respondent to the most restrictive setting available, such as the Montana Chemical Dependency Center or other approved public treatment facility. Counsel shall explore and consider offering evidence of the respondent's compliance with previous treatment, success in community treatment programs, and family and other support in the community.

Practice Standards

December, 2012

Section XXI, Representation of a Respondent in Proceeding for Involuntary Commitment – Alcoholism

L. Counsel shall consider the condition of the respondent in determining the degree to which the hearing procedures shall conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel shall argue strict application for the burden of proof and the law and, at all times, endeavor to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record.

M. Counsel shall provide continuity in representation for the respondent throughout the involuntary commitment process.

N. Counsel who has represented a respondent preceding and during a court hearing shall make every effort to maintain responsibility for the respondent's legal representation so long as the respondent remains committed.

O. If counsel who represented the respondent during the commitment proceeding does not continue to represent the respondent after commitment is ordered, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the respondent's commitment. Specific objectives include:

- a. A smooth transfer of responsibility to new counsel who assumes representation in post-hearing matters, including motions for amended findings, stays of the commitment order pending appeal, appeals, petitions for writs, periodic review hearings, recommitment proceedings, and other available legal actions to contest commitment; and
- b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

Practice Standards

December, 2012

Section XXII, Representation of Children in Dependent/Neglect Cases

XXII. REPRESENTATION OF CHILDREN IN DEPENDENT/NEGLECT CASES (EXPRESSED WISHES)

GOALS:

- A. To actively and professionally advocate for children who are the subject of actions under the Child Abuse and Neglect laws of Montana and afford them every legal opportunity to state their expressed wishes in case and to protect their due process rights.**
- B. To serve the state interest of the client and be independent from the court and other participants in the litigation, including the client's parents or guardians, and be unprejudiced and uncompromised in representing the client. Attorneys representing children shall comply with the general standards for public defenders as well as specific standards.**
- C. To exercise independent and professional judgment in carrying out the duties and to participate fully in the case on behalf of the child. Attorneys representing a client subject to Child Abuse and Neglect law proceedings shall comply with the general standards for public defenders providing representation of an adult charged with violations, as well as the specific Standards contained herein.**
- D. To recognize that children are at a critical stage of development and that skilled juvenile advocacy will positively impact the course of clients' lives through holistic representation.**
- E. PARTICIPATION IN PROCEEDINGS - It is a goal that each child who is the subject of an abuse and neglect proceeding has the right to attend and fully participate in all hearings related to his or her case.**

Practice Standards

December, 2012

Section XXII, Representation of Children in Dependent/Neglect Cases

1. DEFINITIONS:

A. Abuse and neglect proceeding: a court proceeding under Title 41, Chapter 3, Part 4, MCA for the protection of a child from abuse or neglect or a court proceeding under Title 41, Chapter 3, Part 6, MCA in which termination of parental rights is at issue. These proceedings include:

- a. Abuse;
- b. Neglect
- c. Child in voluntary placement in state care;
- d. Termination of parental rights;
- e. Permanency hearings; and
- f. Post termination of parental rights through adoption or other permanency proceeding.

B. Best interest advocate: an individual, not functioning or intended to function as the child's lawyer, appointed by the court to assist the court in determining the best interests of the child.

C. Child: any person under the age of 18.

D. Child's lawyer (or lawyer for the children) : a lawyer who provides legal services for a child and who owes the same duties, including undivided loyalty, confidentiality and competent representation, to the child as is due an adult client.

E. Developmental level: a measure of the ability to communicate and understand others, taking into account such factors as age, mental capacity, level of education, cultural background, and degree of language acquisition.

Practice Standards

December, 2012

Section XXII, Representation of Children in Dependent/Neglect Cases

2. TRAINING:

- A. To be eligible for assignment to represent children in these court proceedings, counsel shall receive training in representing children including training in the Indian Child Welfare Act.
- B. Counsel shall be knowledgeable in the following areas:
- a. Legislation and case law on abuse and neglect, termination of parental rights, and adoption of children, including those with special needs;
 - b. Child and adolescent development;
 - c. Child welfare and family preservation services available in the community and the problems they are designed to address;
 - d. Services and treatment options for youth both locally and statewide;
 - e. Services the State will and won't routinely pay for;
 - f. The structure and functioning of Child and Family Services of the Department of Public Health and Human Services;
 - g. Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts to maintain or return the child to the home;
 - h. Local and state experts who can provide attorneys with consultation and testimony of the special needs of Indian children and cultural differences;
 - i. Basic knowledge of brain development and the effect of trauma on brain development;
 - j. Basic knowledge of mental health issues;
 - k. Substance abuse issues;
 - l. Special education laws, rights and remedies;
 - m. School related issues including school disciplinary procedures, zero tolerance policies, and IEP's; and
 - n. Basic knowledge of disability issues and rights. (from OPD Standards for parents and juveniles)

Practice Standards

December, 2012

Section XXII, Representation of Children in Dependent/Neglect Cases

3. QUALIFICATIONS OF THE CHILD'S LAWYER:

A. The OPD shall appoint as the child's lawyer an individual who is qualified through training and experience, according to standards established by the OPD Commission.

B. Lawyers for children shall receive initial training and annual continuing legal education that is specific to child welfare law. Lawyers for children shall be familiar with all relevant federal, state, and local applicable laws.

C. Lawyers for children shall not be appointed to new cases when their present caseload exceeds more than a reasonable number given the jurisdiction, the percent of the lawyer's practice spent on abuse and neglect cases, the complexity of the case, and other relevant factors.

Practice Standards

December, 2012

Section XXII, Representation of Children in Dependent/Neglect Cases

4. DUTIES OF CHILD’S LAWYER AND SCOPE OF REPRESENTATION:

- A. A child’s lawyer shall participate in any proceeding concerning the child with the same rights and obligations as any other lawyer for a party to the proceeding.

- B. The duties of a child’s lawyer include, but are not limited to:
 - a. Meeting with the child prior to each hearing and for at least one in-person meeting every quarter;
 - b. Taking all steps reasonably necessary to represent the client in the proceeding, including but not limited to: interviewing and counseling the client, preparing a case theory and strategy, preparing for and participating in negotiations and hearings, drafting and submitting motions, memoranda and orders, and such other steps as established by the applicable standards of practice for lawyers acting on behalf of children in this jurisdiction;
 - c. Prior to every hearing, investigating and taking necessary legal action regarding the child’s medical, mental health, social, education, and overall well-being;
 - d. Visiting the home, residence, or any prospective residence of the child, including each time the placement is changed;
 - e. Reviewing and accepting or declining, after consultation with the client, any proposed stipulation for an order affecting the child and explaining to the court the basis for any opposition;
 - f. Taking action the lawyer considers appropriate to expedite the proceeding and the resolution of contested issues;
 - g. Where appropriate, after consultation with the client, discussing the possibility of settlement or the use of alternative forms of dispute resolution and participating in such processes to the extent permitted under the law of this state;
 - h. Where appropriate and consistent with both confidentiality and the child’s legal interests, consulting with the best interests advocate;
 - i. Seeking court orders or taking any other necessary steps in accordance with the child’s direction to ensure that the child’s health, mental health, educational, developmental, cultural and placement needs are met; and
 - j. Representing the child in all proceedings affecting the issues before the court, including hearings on appeal or referring the child’s case to the appropriate appellate counsel as provided for by/mandated by law.

Practice Standards

December, 2012

Section XXII, Representation of Children in Dependent/Neglect Cases

C. When the child is capable of directing the representation by expressing his or her objectives, the child's lawyer shall maintain a normal client-lawyer relationship with the child in accordance with the rules of professional conduct. In a developmentally appropriate manner, the lawyer shall elicit the child's wishes and advise the child as to options.

D. The child's lawyer shall determine whether the child has diminished capacity pursuant to the Model Rules of Professional Conduct (Rule 1.14). In making the determination, the lawyer should consult the child and may consult other individuals or entities that can provide the child's lawyer with the information and assistance necessary to determine the child's ability to direct the representation.

- a. When a child client has diminished capacity, the child's lawyer shall make a good faith effort to determine the child's needs and wishes. The lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the child. During a temporary period or on a particular issue where a normal client-lawyer relationship is not reasonably possible to maintain, the child's lawyer shall make a substituted judgment determination which includes determining what the child would decide if he or she were capable of making an adequately considered decision, and representing the child in accordance with that determination. The lawyer should take direction from the child as the child develops the capacity to direct the lawyer. The lawyer shall advise the court of the determination of diminished capacity and any subsequent change in that determination.
- b. When the child's lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the child and, in appropriate cases, seeking the appointment of a best interest advocate or investigator to make an independent recommendation to the court with respect to the best interests of the child.
- c. When taking protective action, the lawyer is impliedly authorized under Model Rule 1.6(a) to reveal information about the child, but only to the extent reasonably necessary to protect the child's interests. Information relating to the representation of a child with diminished capacity is protected by Rule 1.6 and Rule 1.14 of the Montana Rules of Professional Conduct.

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5. CASE PREPARATION:

- A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the various health and social services that may be available to the children and families in the community.
- B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the youth.
- C. Counsel shall advise the child(ren) of all available options, as well as the practical and legal consequences of those options.
- D. Counsel shall advocate the youth's express wishes and shall not substitute his or her judgment about what is in the best interests of the youth. The primary role of counsel is to represent the perspective of the youth alone and not that of the youth's best interests, of the youth's parents or guardian, or of the Department of Public Health and Human Services. Appointment of a guardian-ad-litem to investigate the best interests of the child is a matter within the exclusive province of the court.
- E. Counsel shall ensure that children do not waive appointment of counsel. Counsel should be assigned at the earliest possible opportunity and shall actively represent the youth at all stages of the proceeding. When counsel becomes aware of the assignment, counsel shall meet with the youth as soon as possible to permit effective preparation.
- F. When meeting with the child for the first time, counsel shall identify himself or herself by name and affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall make it clear to the minor that he or she is not a member of the facility staff. Counsel shall inform the child that the conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that attorney-client confidentiality. Counsel shall also inform the child that he or she has a right to remain silent.
- G. During the conference, counsel shall:
 - a. Explain the issues and possible dispositions;
 - b. Explain the court process, timelines, and the role of all the parties involved, such as judge, prosecutor, guardian ad-litem, child and parent;

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- c. Inform the child not to make statements to anyone concerning the case without prior consultation with counsel;
- d. Obtain signed releases for medical and mental health records, education records, and other necessary records. Counsel should advise the client of the potential use of this information and the privileges that attach to this information;
- e. Obtain information from the client concerning the facts and whether there were any statements made, witnesses, and other relevant information.

H. Counsel shall maintain the attorney-client privilege with the understanding that the attorney represents the youth alone and not the youth's parents or guardians. The potential for a conflict of interest between one or both parents should be clearly recognized and acknowledged. Counsel should inform the parent that he or she is counsel for the youth and that in the event of a disagreement between a parent or guardian and the youth, counsel is required to serve exclusively the wishes of the youth.

I. If counsel is unable to communicate with the client because of language or disability, counsel shall use the experts necessary to ensure the ability to communicate with the client.

J. **DURATION OF APPOINTMENT.** Unless otherwise provided by a court order, an appointment of a child's lawyer in an abuse and neglect proceeding continues in effect until the lawyer is discharged by court order or the case is dismissed. The appointment includes all stages thereof, from removal from the home or initial appointment through all available appellate proceedings. Where appropriate, the lawyer may arrange for supplemental or separate counsel to handle proceedings at an appellate stage.

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6. HANDLING THE CASE:

- A. Counsel should seek the most expedient and timely resolution of the proceeding possible while providing effective advocacy for the client. Counsel should only seek the continuance of any phase of the proceedings if it is necessary to effectively advocate for the client.
- B. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in such proceedings, such as reports from agency employees, as well as substantive law in these proceedings.
- C. In preparation for any proceedings such as show cause, adjudicatory or termination, counsel should:
- a. Review the petition and all other evidence;
 - b. Counsel shall obtain the entire file from DPHHS;
 - c. Be fully informed of the rules of evidence, court rules, and the law with relation to all stages of the hearing process;
 - d. Be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the hearing;
 - e. Be aware of the substantive and procedural law regarding the preservation of legal error for appellate review;
 - f. Counsel shall be familiar with applicable principals of confidentiality;
 - g. Prepare the client for the proceeding, explain the issues involved, and the alternatives open to the judge;
 - h. If the child has already been removed from the home, determine the basis for the removal;
 - i. Determine the actions taken by the State to investigate other possible actions to protect the child without removal, such as locating a non-custodial parent or relative, identifying services to address the needs of the parent and child, including intensive home-based services, and other services, such as disability support services;
 - j. Familiarize himself or herself with relevant law; and,
 - k. Interview all witnesses, favorable and adverse.
- D. During any proceedings, counsel shall, where it benefits the client:

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- a. Examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence;
 - b. Offer evidence favorable to the client's case, if available; and,
 - c. Determine whether an expert is needed to assist in preparation of the parent's case.
- E. During the show cause hearing, counsel shall examine witnesses as to:
- a. Whether the agency has made all reasonable efforts to explore services that will allow the child to remain safely at home and avoid protective placement of the child;
 - b. Whether there are other responsible relatives or adults available who may be able to care of the child or provide additional supervision;
 - c. The accuracy of the facts contained in the petition or affidavit in support of intervention; and,
 - d. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.
- F. Where counsel believes that the youth's desires are not in the youth's best interest, counsel may attempt to persuade the youth to change his or her position. If the youth remains unpersuaded, however, counsel should assure the youth that counsel will advocate for the youth's expressed wishes.
- a. Counsel should make sure that the youth is carefully prepared to participate in the procedures required and used in the particular court.
- G. At the adjudicatory hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses, and challenge other non-testimonial evidence regarding:
- a. The accuracy of the facts presented by the State to prove abuse or neglect of the child;
 - b. Factual basis of opinions presented by the State to prove abuse or neglect of the child;
 - c. Whether the agency failed to provide services that would have allowed the child to stay safely in the home;

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- d. If the court grants the State's request and orders the child to be removed from the home, counsel shall investigate supervision and visitation restriction conditions and determine if a challenge is appropriate.

- H. Prior to making admissions or stipulations regarding placement or visitation counsel must:
 - a. Discuss the consequences of such a decision with the child;
 - b. Explain to the child that the ultimate decision to make the admission or voluntarily place the child has to be made by the parent;
 - c. Investigate and, where appropriate, candidly explain to the child the prospective strengths and weaknesses of the case, including the availability of the State's witnesses, concessions and benefits which are subject to negotiation, and the possible consequences of any adjudication.

- I. Counsel's recommendation on the advisability of an admission should be based on a review of the complete circumstances of the case and the child's situation.

- J. In preparation for a disposition hearing, counsel should:
 - a. Determine what actions the parent has taken since the adjudicatory proceedings to address the concerns of the State as to the safety of the child;
 - b. Investigate what the agency has done to explore services that will allow the child to remain safely at home or return to the home; and,
 - c. Determine what sort of disruption that the removal of the child has caused the child and the family.

- K. In the disposition hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:
 - a. Whether, if the agency objects to placing the child with the parent, the agency sufficiently explored and provided services that would have allowed the child to reside safely in the parent's home;
 - b. Whether the agency appropriately considered the non-custodial parent or other family members as caretakers; and,
 - c. The factual basis of the agency's recommendations for placement outside of the home.

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- L. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.
- M. In preparation for a permanency hearing, and, if parental rights have not been terminated, counsel should:
- a. Keep in contact with the child and determine what actions the parent has taken to address the concerns of the State as to the safety of the child;
 - b. Investigate what the agency has done to explore services that will allow the child to live safely with the parent; and,
 - c. Determine what sort of disruption the removal of the child has caused the child and the family.
- N. In preparation for a parental rights termination proceeding, counsel should:
- a. Determine what actions the parent has taken to address the concerns of the State as to the safety of the child;
 - b. Investigate what the agency has done to explore services that will allow the child to remain safely in the home; and,
 - c. Determine what sort of disruption that the removal of the child has caused the child and the family.
- O. In a parental rights termination proceeding, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:
- a. Whether the statutory grounds for termination have been met;
 - b. Whether termination is in the best interest of the child;
 - c. Whether the agency made reasonable efforts to prevent the need for termination and to safely reunify the family, such as identifying services available to protect the child without removal, in-home baby sitters, intensive home-based services, and other services that address the needs of the child, including disability support services;
 - d. Whether the treatment plan, if one was required, was appropriate.
- P. If counsel withdraws from representation of a youth following adjudication and disposition, counsel shall make all reasonable efforts to ensure that the youth is well represented in matters that stem from the hearing.

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XXIII. REPRESENTATION OF COURT APPOINTED SPECIAL ADVOCATES AND GUARDIANS AD LITEM IN DEPENDENT/NEGLECT CASES

GOALS:

- A. To actively, professionally advocate for the court appointed special advocate (CASA) or guardian *ad litem* (GAL) appointed to represent the best interest of the child in an abuse/neglect (DN) proceeding.**
- B. To serve expressed wishes of the CASA/GAL and be independent from other participants in the litigation, including the child's parents or guardians, and the child's attorney, in representing the CASA/GAL.**
- C. To exercise professional judgment in carrying out the duties assigned and to participate fully in the case on behalf of the CASA/GAL.**
- D. To recognize that children are at a critical stage of development and that skilled advocacy on behalf of the CASA/GAL will positively impact the course of the child's life.**

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1. TRAINING:

- A. To be eligible for assignment to represent CASA/GAL in these court proceedings, counsel shall complete all training required of CASA/GAL, or the equivalent of such training in the form of experience and/or other training as is acceptable to OPD.
- B. In addition, counsel shall complete training devoted to the Indian Child Welfare Act.
- C. Counsel shall be knowledgeable in the following areas:
 - a. Legislation and case law on abuse and neglect, termination of parental rights, and adoption of children including those with special needs;
 - b. Child and adolescent development;
 - c. Child welfare and family preservation services available in the community and the problems they are designed to address;
 - d. Services and treatment options for youth both locally and statewide;
 - e. Services the State will and won't routinely pay for;
 - f. The structure and functioning of Child and Family Services of the Department of Public Health and Human Services;
 - g. Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts to maintain or return the child to the home;
 - h. Local and state experts who can provide attorneys with consultation and testimony of the special needs of Indian children and cultural differences;
 - i. Basic knowledge of brain development and the effect of trauma on brain development
 - j. Basic knowledge of mental health issues;
 - k. Substance abuse issues;
 - l. Special education laws, rights and remedies;
 - m. School related issues including school disciplinary procedures, zero tolerance policies, and IEPs; and
 - n. Basic knowledge of disability rights and issues.
- D. Case Load
 - a. In order for OPD to effectively monitor the assignment of DN cases, counsel for CASA/GAL has an affirmative duty to promptly notify OPD any time counsel's

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case load is excessive and/or affecting counsel's ability to provide appropriate legal representation.

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2. CASE PREPARATION:

A. Duties of Counsel for CASA/GAL and Scope of Representation

- a. Counsel for a CASA/GAL shall participate in any proceeding concerning the child and which involves the CASA/GAL with the same rights and obligations as any other attorney for a party to the proceeding.
- b. The duties of counsel for a CASA/GAL include, but are not limited to:
 - i. Taking all steps reasonably necessary to represent the CASA/GAL in the proceeding, including but not limited to: preparing for and participating in negotiations and hearings, drafting and submitting motions, memoranda and orders, and such other steps as established by the applicable standards of practice for attorneys acting on behalf of CASA/GAL in this jurisdiction;
 - ii. Communicating with the CASA/GAL prior to each hearing; and
 - iii. Representing the CASA/GAL in all proceedings affecting the issues before the court.

B. Following appointment counsel shall actively represent the CASA/GAL at all stages of the proceeding. When counsel becomes aware of the assignment, counsel shall communicate with the CASA/GAL as soon as possible and sufficiently before any scheduled hearing or proceeding, including the show cause hearing, to permit effective preparation.

C. Counsel shall maintain the attorney-client privilege with the understanding that counsel represents the CASA/GAL alone and not the youth, his/her parents or guardians, or the Department of Public Health and Human Services. The potential for a conflict of interest should be clearly recognized and acknowledged. Counsel should inform all parties that he/she is counsel for the CASA/GAL and that in the event of a disagreement between a child, parent or guardian, or the Department of Public Health and Human Services, and the CASA/GAL, counsel is required to serve exclusively the interest of the CASA/GAL.

D. The Montana Rules of Professional Conduct govern the obligations of counsel for a CASA/GAL

E. Duration of Appointment:

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- a. Counsel for a CASA/GAL shall continue to represent the CASA/GAL at all stages of the proceeding, until appropriately discharged, or the case is dismissed and/or the youth at issue has aged out of the DN process.

- F. Counsel for CASA/GAL may not waive child's right to counsel at any court proceedings.

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3. HANDLING THE CASE:

A. Counsel for a CASA/GAL should seek the most expedient and timely resolution of the proceeding possible while providing effective advocacy for the CASA/GAL. Counsel should avoid seeking continuances unless it is necessary to effectively advocate for the CASA/GAL.

B. Counsel shall be familiar with the applicable court rules and rules of evidence.

C. In preparation for any hearing counsel shall:

- a. Review the petition and all other evidence;
- b. Be fully informed of the rules of evidence, court rules, and the law with relation to all stages of the hearing process; be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the hearing.
- c. Be aware of the substantive and procedural law regarding the preservation of legal error for appellate review;
- d. Preserve confidentiality in accordance with law.
- e. Prepare the CASA/GAL for the proceeding, explain the issues involved, and the review the alternatives open to the judge;
- f. Review all statements, documents, reports, and documentary evidence, including medical records, if any, and discuss these documents with the CASA/GAL;
- g. Familiarize himself/herself with relevant law; and,
- h. Interview all witnesses, favorable and adverse as directed by the CASA/GAL.

D. During any proceedings, counsel shall, when it furthers the position and recommendations of the CASA/GAL and is a necessary part of that representation:

- a. Examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence;
- b. Offer evidence favorable to the CASA/GAL's case, if available; and,
- c. Determine whether an expert is needed to assist in preparation of the CASA/GAL's case.

E. If counsel withdraws from representation at any time during the legal process, counsel shall make reasonable efforts to ensure that the CASA/GAL has replacement legal representation by filing a notice of withdrawal with the applicable court and moving that court to appoint new replacement counsel.

F. Counsel for CASA/GAL may not engage in ex parte contact with the court except as authorized by the applicable rules of professional conduct, court order, or other law.

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4. ATTORNEY WORK PRODUCT AND TESTIMONY:

A. Except as provided otherwise by the Montana Rules of Professional Conduct, court order, or statute counsel for a CASA / GAL shall not surrender to any party work product developed during the appointment absent consent by the CASA/GAL;

B. Counsel shall also ensure, whenever necessary and possible, that the CASA/GAL is present and available to provide testimony and/or be subject to cross-examination during the hearings.

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