



Steve Bullock
Governor

OFFICE OF THE APPELLATE DEFENDER STATE OF MONTANA

Chad Wright
Chief Appellate Defender

Date: October 6, 2016

To: Montana Public Defender Commission

From: Chad Wright, Chief Appellate Defender

RE: Office of the Appellate Defender Report to the Commission

1. OAD status

For the first time in my short tenure, the OAD is fully staffed with eleven full-time assistant appellate defenders, one half-time assistant appellate defender, three support staff, and the Chief Appellate Defender. OAD's two newest hires, Danny Tenenbaum and Debbie Smith are doing well and will be able to assume a full caseload shortly. The support staff has adjusted to the increased volume of briefs being filed, but it is clear that an additional staff person will be necessary in the future.

2. Strategic Plan Goals

OAD reports on the following goals applicable to the OAD as identified in the Strategic Plan:

Goal 1.4.1: Develop Strategic Relationships with Stakeholders.

Along with Peter Ohman, I remain on the Criminal Jury Instruction Committee where I work with prosecutors, a law professor and district court judges to review and update Montana pattern criminal jury instructions.

Goal 1.5: Develop Internship and Training Programs.

Koan Mercer is supervising an appellate intern from the Blewitt School of Law for this semester. In August, OAD attorneys attended specialized instruction on appeal briefing techniques arranged by the OPD training office and held at the U of M Lubrecht center.

Goal 2.2.2: Establish regular strategic planning meetings.

Kristina Neal, Bill Hooks, Scott Cruse and I have been meeting on a weekly basis to hash out issues with regard to the structural transition and budget questions.

As with previous reports, the following sections report case outcomes consistent with the goals of the Strategic Plan.

3. Opened Cases and Filed Briefs

a. Opened/Closed Cases

For this quarter, 60 new appeal cases were opened in the office. OAD and contract attorneys closed 37 cases.

b. Filed Briefs

The FTE attorneys in the OAD filed 16 opening briefs submitted on the merits, 18 reply briefs, 5 *Anders* briefs (where the attorney submitted that there were no meritorious issues) and 10 motions for voluntary dismissal, (where the client agreed to dismiss the appeal without filing a brief). In the 63 business days in this time period our support staff edited, formatted and filed a brief meeting the strict standards and requirements of the Montana Supreme Court every day and half.

c. Case weighted information

The Commission approved a case weighting system for OAD, which takes into account the size of the district court record, the number of transcript pages and the types of briefs or extraordinary motions filed in the case. The goal is not to assign more than 22 work units to an attorney per fiscal year. My initial review shows that at least four OAD attorneys exceeded that total last year, and currently three attorneys already have assigned workloads that exceed the 22 work units. OAD continues to try to use the case weighting system to address the backlog while not creating excessive caseloads for our FTE attorneys.

4. Positive Results

In the last quarter, FTE and contract attorneys obtained relief for their clients in the following cases:

- a. *State v. Hooper*, Moses Okeyo (Court order)
- b. *State v. Brave*, Haley Jackson (State concession)
- c. *In re C.C.*, James Reavis (Court order)
- d. *State v. Weisbarth*, Jennifer Hurley (Court order)
- e. *State v. Velasquez*, Koan Mercer (Court order)
- f. *State v. Gibbs*, James Reavis (State concession)
- g. *State v. Klotz*, Jennifer Hurley (State concession)
- h. *State v. Tumlin*, Kristen Peterson (stipulated remand)
- i. *State v. Sullivan*, Koan Mercer (stipulated remand)

5. Significant Cases

In *State v. Weisbarth*, Jennifer Hurley uncovered evidence regarding the child witness that the prosecutor had submitted to the district court under seal and a heavily redacted version to defense counsel. The child's medical records revealed information that would have supported the trial defense in numerous ways, including the child's problems with lying, the child's previous allegations against others and the child's "breakdown with reality." The Montana Supreme Court

reversed Mr. Weisbarth's conviction, noting that prosecutors are in a "unique position of public trust" and their obligation is to "ensure above all else that justice is done which necessarily requires that they provide a defendant, regardless of the nature of the offense, due process of law."

I would also like the Commission to pay special attention to the speedy trial reversal in *State v. Velasquez*, issued on August 30, 2016. Mr. Velasquez was convicted of felony drug possession. He did not have the funds to post the \$5,000 bail bond. So he sat for 309 days in a mold infested jail where he was not allowed outside for five months over winter. He never asked for an extension of his trial date, but the State needed nearly 9 months because of the backlog of drug testing at the Montana State Crime Lab. On September 24, 2014, Mr. Velasquez was sentenced to 10 years in the Department of Corrections with 5 years suspended. He had served a full year in jail at the time of his sentencing.

Koan Mercer was Mr. Velasquez's assigned appeal attorney. Koan is one of OAD's most experienced attorneys. Koan carries a heavy caseload and files many briefs. It took over two years to complete the appeal and dismiss Mr. Velasquez's conviction. OAD was responsible for 11 months of that time, but delays occurred at every stage. Just like OAD, the court reporter and assistant attorney general needed more time to complete their work on appeal. Thus, from the beginning to end, Mr. Velasquez's prosecution was marked by state workers trying to do their jobs with insufficient resources. Strategic Plan Goal 2.3.2 seeks to resolve cases in a timeframe most advantageous to our client. Mr. Velasquez's case is a good example of how that goal was not met because OAD continues to be burdened with a backlog that directly harms its clients.

6. Budget

The final numbers for FY 2016 show that out of a \$1,797,479 budget OAD had \$91,543 dollars remaining at the end of FY 2016. OAD went over budget on transcript costs for the fifth year in a row, but the amount spent on transcripts was lower than the last four fiscal years. OAD needs to use its budget to retain its experienced attorney and support staff, address the current backlog and represent OAD's clients in the best manner possible. OAD is also committed to helping the anticipated overall OPD budget shortfall.