

AGENCY PERSONAL SERVICES NARRATIVE
OFFICE OF THE STATE PUBLIC DEFENDER

October 15, 2014

A-1: PAY PHILOSOPHY AND THE AGENCY PAY RULES

Agency pay rules

The agency's pay rules are posted on the Office of the State Public Defender intranet site (OPD Mine Site). They are listed under the "Human Resources" tab, "Employee Policies and Procedures," Policy 540 – Broadband Pay Plan. Section 2 of the policy states that "if this policy conflicts with collective bargaining agreements, the collective bargaining agreements take precedence." The agency has two collective bargaining agreements (CBAs) that are also posted to the OPD Mine Site under the "Union" tab.

What difficulty is the agency experiencing in following the agency rules and how did HB 13 (and/or other funding) help or hinder the implementation of the rules?

Agency Overview

The agency is supervised by an eleven-member Montana Public Defender Commission. Members are appointed by the Governor. The Governor receives nominations for certain positions from special interest groups as outlined in 2-15-1028 MCA.

The three program managers report directly to the commission—Program 1 is the public defender program, Program 2 is the appellate defender program, and Program 3 is the conflict coordinator program. The conflict coordinator program was established at the end of fiscal 2014 and will not be part of any historical discussion in this paper as it was originally part of both Programs 1 and 2. The agency has both union and non-union employees.

Program 1 provides central services to all three programs and the commission, which is also included under Program 1. The majority of the workforce is comprised of attorneys providing legal services to those that qualify by law; they are unionized except for attorneys that are also managers. The next largest part of the workforce is comprised of legal assistants and investigators, most of which are unionized. Central service employees are not unionized. Program 2 and 3 employees are not unionized.

Program 2 provides appellate services to qualifying clients and practices almost exclusively before the Montana Supreme Court and the United States Supreme Court. The majority of the workforce is comprised of attorneys providing legal services. Legal assistants comprise the remaining portion of the workforce. Program 2 does not currently employ investigators.

Rules Discussion

The agency is not able to fully comply with its rules, especially Section 3 of the policy that outlines the agency's objectives in administering pay. This section states that "[the plan is to be] ... externally competitive and sufficiently motivating to more closely reflect an employee's true value to the organization ...". The agency's non-compliance is mainly due to the fact that:

- (1) The agency is using 2012 markets for the attorney workforce and 2006 markets for the non-attorney workforce. The use of a non-current market makes it difficult to recruit and retain a skilled and stable workforce since competitors, in most cases, offer more pay; and
- (2) The agency is unable to make wage adjustments in special pay categories to reward employees, which frustrates the workforce.

Low pay on top of excess workload is the main contributing factor to the agency's turnover. The following paragraphs will provide a more detailed discussion of agency issues by the type of workforce.

ATTORNEY WORKFORCE

The agency informed the 2013 legislature that it was having difficulty recruiting and retaining an attorney workforce. During fiscal 2012 the turnover in the attorney workforce was 27% in Program 1 and 44% in Program 2. To address this issue, the legislature provided the agency with a separate and restricted appropriation to boost attorney pay from the 2006 market to the 2012 market, and to fund a pay ladder based on experience. However, they did not fund the second year of movement up the pay ladder.

The 2012 market was determined by an agency pay study that surveyed the pay rates of various county, city, and state employees providing similar services. The pay ladder was developed by the Chief Public Defender to foster recruitment and retention and was adopted by all three programs. The restricted appropriation was used to move the starting attorney pay from \$43,392 to \$50,060; midpoint pay from \$58,762 to \$67,792, and top pay from \$70,514 to \$81,350.

In fiscal 2014, the agency raised attorney pay in all programs to the 2012 market as per the study. This caused turnover in Program 1 to fall from 27% to 9%. However, Program 2 is still experiencing significant turnover – 20% in FY 14 and 40% this biennium. The Chief Appellate Defender believes that the pay of his workforce, primarily based in Helena, is too low to allow his program to compete with other agencies. He notes that most of the staff leaving his program go to other Helena-based state agencies for more pay and less work. To address this issue, the Chief Appellate Defender has developed two strategies:

- (1) He recommends that Program 2 adopt a pay structure in line with that offered by other state agencies; and
- (2) When able, he may hire attorneys to work in cities other than Helena. He notes, however, that this option will increase Program 2's rent expenditures. (The turnover rate for non-Helena based attorneys in Program 2 is zero.)

The agency intends to seek avenues to move attorneys to the most current market, address the inability to compete with other state agencies, and resume movement on the pay ladder to continue to address recruitment and retention issues.

NON-ATTORNEY WORKFORCE

During the past three fiscal years the agency's non-attorney workforce has experienced significant turnover, far above that reported as the average for Montana's executive branch agencies. Many of those departing cited low pay and excess workload as the reasons for leaving. It is challenging for the agency to serve its mission of providing effective assistance of counsel with this level of

turnover. Excessive turnover places burdens on the agency's management and retained workforce and diverts attention that should be placed on serving clients. To address this issue, the agency is requesting funding to move non-attorney pay to the 2014 markets as established by the state of Montana.

What was the agency's pay philosophy when it implemented the 2015 biennium pay adjustments?

The agency is authorized 217.50 positions for the 2015 biennium. The agency also has 23.50 modified positions to address workload issues. A significant percentage of the agency's total is represented by two CBAs. Therefore, collective bargaining is a key factor when setting the agency's pay philosophy. One CBA is with the agency's non-management attorneys and the other is for the administrative and investigative workforce. Under the attorney CBA the agency can place individuals into a pay range based upon relevant experience levels and/or complexity of work. Under the support staff and investigator agreement individuals are placed into a pay range based upon years of experience with the agency. In the attorney bargaining unit pay ranges were developed using 2012 market data as noted above. The administrative and investigative contract is using 2006 markets.

During the 2015 biennium the agency will apply the pay ladders in the CBAs as follows: members of the attorney unit will progress up the ladder during fiscal 2014, but due to lack of funding they will not progress in fiscal 2015. The members of the administrative and investigative unit will progress up the pay ladders in both fiscal years. Pay for attorney managers in Program 1 was adjusted to address compression caused by the adoption of the 2012 markets for the union attorney workforce.

Program 2 and 3 employees are not unionized but follow the union-negotiated pay ladders for their attorney workforces, and their attorneys will progress in the same manner as the union attorneys. Program 2 adopted the 2012 market for administrative staff to address its 150% turnover rate.

All employees received the 3% pay adjustment for fiscal 2014 and will receive the 5% adjustment for fiscal 2015. Executive management pay is controlled by the Montana Public Defender Commission.

What will be the agency's pay philosophy for the 2015 biennium and beyond?

The agency intends to adopt a pay philosophy to make pay competitive for all positions within the labor markets in which it operates. This action should attract the right level of employee skill sets to allow the agency to meet its mission. Using competitive pay rates will allow the agency to retain these employees once hired.

As noted, the agency has both union and non-union employees. Before finalizing the budget submission to the Governor's Budget Office, agency management worked with the union leadership to conduct an attorney salary survey of government attorneys, including cities and counties where the agency has public defender offices, and certain other state agency attorneys. The agency also reviewed information for all employees about the average pay in other state agencies. Finally, the agency reviewed the 2014 market study provided by the Department of

Administration Human Resources Division for all employees. The agency will use these three sources of information to set pay targets and seek funding to pay at these levels. The agency will request funding to move all administrative and investigative bargaining unit and all non-union non-attorney workforce pay to the 2014 markets.

A-2: AGENCY ISSUES ON RECRUITMENT AND RETENTION

Describe the agency's experience in effectively competing for qualified applicants to fill vacant positions.

The agency has an on-going recruitment effort to establish an attorney applicant pool to be used as openings occur statewide. During the agency's history, new employees have generally come in at the entry level of the position. This lowers the overall experience level of the agency, which puts a strain on the ability to effectively serve clients.

Past factors contributing to attorney turnover include: salaries are not competitive; many attorneys view public defender positions as temporary jobs on their career path; the work is stressful and caseloads are high; and, some attorneys find working with indigent clients difficult. Pay freezes due to lack of funding for career ladder movement does not allow employees to be paid for the experience they've attained, and they use this increased experience to move to other jobs that pay more. During fiscal 2014, some candidates for attorney positions rejected the agency's job offers because they had other opportunities with cities, counties or the private sector with substantially higher salary and benefits.

Due to the improved economy in Montana, the agency has seen an increase in support staff turnover (legal assistants, investigators, and administrative staff). Recruiting is conducted as vacancies occur, resulting in a delay in filling positions of 6 – 8 weeks from start to finish. During the past two fiscal years, the number of qualified applicants for any posted job has decreased significantly from prior years.

The lack of available housing and other services has created even more difficulty in recruiting and retaining a workforce in eastern Montana, and in keeping up with the growth and changes happening in that part of the state.

Are there any occupations with high turnover rates or high rates of vacancies because of factors other than keeping positions open to manage applied vacancy savings?

As mentioned above, the attorney turnover rate in Program 1 fell from 27% during fiscal 2012 to 9% during fiscal 2014 due to adjustments in pay provided by the 2013 legislature. However, attorney turnover in Program 2 continues to be high at 20% for FY 2014 and 40% for the biennium, even with the increase in the level of pay. Non-attorney turnover in Program 1 continues to be excessive. During fiscal 2012 it was reported to be 36% and during fiscal 2014 it was 21%. Program 2 experienced a 33% turnover rate in FY 14 and a 66% turnover rate thus far this biennium. Many departing cited low pay and excessive workload as the reasons for departure.

What actions have been taken to address the factors that are causing turnover or frequent vacancies?

The agency has developed budget requests for the next legislative session that addresses pay parity issues for both the attorney and non-attorney workforces.

How did these vacancies affect agency operations?

When an attorney or non-attorney staff leaves the agency, their work must be either distributed to the remaining workforce or given to a contractor, resulting in increased contract costs. The agency is under strict judicial time limits to handle a case and must assign them to a staff or contract attorney while waiting for a vacancy to be filled. Although there may be some vacancy savings in payroll, the result of excessive turnover is increased contract expenses and an overburdened workforce. Vacancies increase overtime for the remaining employees trying to service more clients. Payouts of unused leave balances to departing employees increase expenditures and divert funding from serving the client.

A-3: RETIREMENTS

Discuss the agency pay plan to address pending retirements.

Nearly one-third of the agency workforce may retire during the 2017 biennium, including individuals in key positions with specialized skill sets. Currently, the agency does not have the funding to double-fill positions to create a transfer of knowledge in these key positions. Many individuals have significant leave balances due to the lack of personnel to cover for absences, and the agency does not have funding to pay out these balances.

What portion of the agency workforce is eligible for early or regular retirement in the 2017 biennium?

At the date of this writing, the agency has 29.4 percent of its current workforce that will be eligible for early or regular retirement at some point during the 2017 biennium.

Does the agency anticipate retirements between now and the end of the 2017 biennium that could impact operations?

Some of the agency's key people and/or some with specialized skill sets are part of the calculation noted above for early or regular retirement during the 2017 biennium. The agency expects to conduct succession planning before the end of the current biennium to help develop a plan to cover possible retirements in these positions.

A-4: FTE REDUCTIONS

How did the reduction in FTE impact the agency?

The agency cannot comply with FTE reductions as it does not have vacant positions. In fact, the agency has 23.50 modified FTE to cover caseloads. If the agency were forced to comply, it would need to first take steps to eliminate all 23.50 modified FTE and then lay off part of the permanent workforce to meet the FTE reduction.