

# Contract Attorney Policy

## Purpose:

The purpose of this Policy is to require Contract Attorneys (CA) to abide by the Office of the Appellate Defender (OAD) procedure and require CA to remain on cases until they either have been referred to OAD or until the appeal time on the case has expired.

Contract Attorneys who are assigned an OPD case shall remain on said case and shall not move to withdraw from representing their clients until the case either has been referred to OAD or the appeal time on said case has expired.

The OAD procedure is located at the following website and is quoted here for ease of reference:

<http://www.publicdefender.mt.gov/forms/pdf/AppellateContractorProcedure.pdf>.

### **Please follow this procedure to appeal to the Montana Supreme Court.**

Upon final written judgment by the district court, contact the Appellate Defender Office (ADO) at 406-444-9505 and advise that you wish to proceed with an appeal. The ADO has the right to assume all appeal cases which a contract or conflict attorney handled at the District Court level.

### **As a contract/conflict attorney, it is your responsibility to:**

- Complete the Appellate Referral Form (ARF) online and submit it electronically to the ADO.
  - For criminal appeals and mental health commitments, ARF should be completed within 20 days of final judgment. The ADO will file the notice of appeal within 60 days from final judgment.
  - For Dependent Neglect cases, ARF must be completed within 7 days of final judgment. The ADO will file the notice of appeal within 30 days from final judgment.

If the ADO assumes the appeal, please take the following steps:

- Upon electronic submission of the ARF, you must file a Notice of Substitution of Counsel (Attachment A).

- Upon electronic submission of the ARF, you must send all documents filed with the district court and listed/entered in the district court case register report along with the latest version of the district court case register report to the ADO. (All documents should contain the district court clerk's file stamp.) **It is not necessary for you to send us your entire file with your case notes, etc. except in DI, DN and DJ cases.**

- To defray copying and mailing costs the ADO prefers that you provide the district court documents on CD.

- For DI, DN and DJ cases, please send your physical file along with the electronic district court case file.

- The ADO will file the notice of appeal on behalf of the Appellant and submit a request for production of transcripts.

- *It is very important to complete this process in a timely matter so the ADO has time to review the case and decide which transcripts will be needed prior to the expiration of the appeal deadline.*

If you have any questions regarding this procedure please contact Joslyn Hunt, Chief Appellate Defender or Sarah Braden, Paralegal.

After sentencing in a client's case has occurred, it is the CA's responsibility to explain to the client his/her appeal options. It is up to the client whether he/she desires to appeal his/her case. At a minimum, the CA must explain the applicable appellate timeframe during which the client must decide whether to appeal a case; the pros and cons of appealing; and how referral of the case to the OAD will occur.

For example, in a criminal case, a client who has been sentenced has 60 days upon the date of entry of judgment to appeal his case to the Montana Supreme Court. At one point within the 60-day timeframe, a client may assert that he does not want to appeal his case. However, that same client may later change his mind and want to appeal his case. If he changes his mind within the 60-day timeframe to appeal his case, it is still the CA's responsibility to follow the OAD procedure to refer the case to the OAD. A CA cannot file a motion to withdraw in client's case unless either referral of the case has occurred to the OAD or the applicable timeframe for appealing a case has expired.