

**OFFICE OF THE APPELLATE DEFENDER**  
**REPORT TO THE MONTANA PUBLIC DEFENDER COMMISSION**

**January 1 through February 1, 2010**

**UPDATES:**

Pay Plan: I met with Barb Kain and Harry Freebourn regarding the appellate attorneys' pay plan. A formal proposal from Randi Hood is expected to be distributed to the appellate attorneys for their review and continued discussion.

Policy Manual: The policy manual continues to evolve. I have added policies regarding contracts, conflicts, and district court file retention. Any finalization will occur after Barb Kain reviews and discusses the manual contents with me.

Caseloads: All of the appellate attorneys are carrying around five cases that require opening briefing and around five cases that require reply briefing. They consistently respond to inquiries from trial attorneys and provide feedback on any potential writ of supervisory control questions we receive. ADO's caseload continues to grow, but the caseload is proceeding at a steady pace--one that we have been able to manage.

As a manager, my caseload is substantially lower. I just had oral argument on a case and will handle another oral argument case in February. I am working on an amicus brief with the Attorney General's Office in response to the St. Dennis conflict brief, as well as a potential cert petition and sentence review brief. It should be noted that our contract attorneys have been key to ADO's ability to manage its caseload.

Standards: A draft of new standards for the appellate attorneys is almost complete. Upon further review and discussion with the appellate attorneys, I will ask the Commission for its comments on the changed standards.

Conflict Issue: Colin Stephens filed a brief on behalf of St. Dennis, in short, arguing that the Office of the State Public Defender is one large law firm. Much the same argument was made on behalf of Sellers with regard to the ADO. The ACLU filed an amicus brief in St. Dennis as well. At this stage, the Attorney General's Office is drafting its response brief in St. Dennis. I will file an amicus brief on behalf of ADO in St. Dennis--the contents of which I will discuss further with the Commission once the brief is more fully developed. The Montana Supreme Court has yet to order a response from the Attorney

General's Office or ADO regarding the motion and brief in support in the Sellers case.

On a separate note, Eileen Larkin joined ADO in December, 2009, and Chase Naber transferred to ADO from OPD in January, 2010. Ms. Larkin formerly clerked for Judge Haynes from 2003 to 2009. Ms. Naber formerly clerked for Judge Sandefur between 2003 to 2007.

Rule 1.12 of the Professional Rules of Conduct contemplates screening a law clerk only from those cases on which he or she participated personally and substantially for the specific judge served *and* providing notice to affected parties of the screening procedure. This screening and notice procedure has been developed and is occurring.

### **CASES:**

The spreadsheet showing the case count for the appellate office for fiscal year 2009 is attached as an exhibit. Noteworthy is the fact that our base is growing each month, which again explains the backlog that the ADO has. However, that backlog is lessening and we are proceeding at a steady--but manageable--pace.