

To: Fritz Gillespie, Chair, Public Defender Commission  
Public Defender Commission Members

From: Lisa S. Korchinski, Liaison, Office of Appellate Defender (OAD)

Date: February 10, 2012

RE: Commission Liaison Comment Period

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In preparation for this meeting I emailed all OAD team members and asked for input, comments, questions, or concerns for the Commission. Comments were received and further comment was made upon those comments. (Due to time limitations and availability not all team members may have been able to respond.)

*As liaison, I would like to raise the following "food for thought":*

Clarification of the OPD Staff Attorney Liaison Report (specifically, the survey of the ACLU report) submitted to the Commission for this meeting may be needed.

1. Mr. Aemisegger refers to "OPD attorneys." I would like to clarify that the Appellate Office decided not to participate in the survey, and I am unsure if management or contract attorneys were invited to participate. Therefore, what constitutes the survey group ("OPD attorneys") is unknown.
2. The survey's "% Agree" column further represents only those who participated in the survey and does not reflect the total number of attorneys *who could have* participated in the survey. Those who developed, distributed, and tabulated the survey should provide further information of the target and sample population, process and procedure, and further detailed results and comparisons so the survey could have greater credibility.

*The following comment was made by one individual, and does not represent the OAD as a whole:*

If more people in this agency quit trying to *get people* fired and stir the gossip pot and just represented people to their very best, it would be possible a lot more work would get done. Also, for all of the internal complaints that are filed, and all of the complaining that is going on with employees, I would like to make sure that my tax dollars aren't funding their time spent on doing so. Do your job, if you don't like it, leave.

- Koan Mercer responded:  
I disagree with the spirit and tone of [this] comment. I don't think the solution to OPD's deficiencies is for the people who believe that OPD can do

better to leave. Also, I would like to thank both Mr. Aemisegger and Ms. Korchinski for their conscientious and at times courageous efforts to bring information to the Commission. Open communication (including criticism and suggestion) is a strength.

- Koan Mercer's comment received additional support from Jennifer Hurley.
- Chase Rosario responded:

[I]t seems by the language [of the comment] that it is directly aimed at those who gossip and try to get people fired, so it is a clear and defined target. I think that stating it is the opinion of one person clarifies that no one else in our department has joined themselves to it.

I also think that the author is entitled to suggest that focusing on work demands might create a better work product, that time spent on gossip and seeking to get people fired is a waste of tax-payer funds, and that there is a lack of worldliness and maturity evidenced by those who engage in such behavior. I also believe that the majority of people in the agency have ideas about improving it, but that if the frustration level is so high for an individual that their ideas are not being flagshipped that they turn to destructive insubordinate behavior, than perhaps the agency is not a good fit for them.

*The following comment was made by one individual, and does not represent the OAD as a whole:*

Approximately 18 months ago, the Appellate Liaison presented a "food for thought" request from team members of the Appellate Office that the PDC "make it clear, by written policy if necessary, that no consideration will be given to 'anonymous' complaints that come from outside the proper channels." (Request for Comments in Written Form at 2 (June 30, 2010).) It was noted that attorneys in this system know how to research the law, gather evidence, and file an appropriate complaint; and that if he/she is not willing to do so, not much weight can, or should be given to anonymous allegations. *Id.*

While every individual has a right to be heard, it should occur in a proper format, with a good faith basis after a reasonable inquiry. The majority of the employees of this agency have union representation and a union grievance procedure. This Commission should require that those grievance procedures be followed, and should not allow anonymous allegations to be elevated into credible complaints.

Another request is made that this Commission make it clear by written policy that no consideration will be given to anonymous complaints that come from outside the proper grievance procedures. There is continued concern about the balance between the public's right to know and an employee's right to privacy. The lack of an "anti-anonymity" policy is contributing to poor morale and a hostile, distrustful work environment as those who do not agree wonder when their name will be publically

dragged through the mud by “anonymous” reports to the AU, the ACLU or this Commission.

It is ironic, and frankly, incredible, that anonymous sources who are not only licensed attorneys practicing at the trial level, but who also have union representation, claim to hide behind a fear of retaliation from management to explain their anonymity.

The PDC should stop giving a platform of credibility to the “anonymous,” some of whom appear to confuse being heard by a supervisor with getting their own way.

- Koan Mercer responded:

I started with OPD as a trial attorney on our opening day. Although it may be both ironic and incredible, I have at various points in that service feared retaliation and, in my opinion, have seen attorneys retaliated against in career progression and case assignments. I have seen good attorneys leave our agency in part because of OPD's culture of silence and personal loyalty. I disagree that OPD's morale problems are being cause by anonymous complaints.

But more than that, I must ask: why should OPD be afraid of information? If an anonymous complaint is inaccurate, then we can easily address it and show it lacks merit. On the other hand, if after consideration the criticism turns out to have a point, then through receiving it we can improve ourselves by fixing the identified problem. Plugging our ears to anonymous concerns would cut off a useful avenue for agency self-assessment and improvement. We do not *have* to solicit criticism (such as the AU report) and we do not *have* to consider anonymous information, but if we want to better ourselves, we will continue to *choose* to do so.