

MONTANA PUBLIC DEFENDER COMMISSION
BUDGET COMMITTEE MEETING
139 North Last Chance Gulch, Helena, MT 59601
March 22, 2012

MINUTES

(Approved at the March 27, 2014 Meeting)

Call to Order

Committee Chair Fritz Gillespie called the meeting of the Budget Committee to order at 9:05 a.m.

Committee Members Present

Fritz Gillespie, Helena; Ken Olson, Great Falls

Committee Members Absent

Chris Daem, Billings; Margaret Novak, Chester

Agency Team Members Present

Joslyn Hunt, Chief Appellate Defender; Bill Hooks, Chief Public Defender; Harry Freebourn, Administrative Director

Interested Parties

Carleen Green, Accounting Supervisor; Larry Murphy, Contract Manager; Kristina Neal, Conflict Coordinator; Greg DeWitt, Legislative Fiscal Division; Timm Twardoski, Executive Director, American Federation of State County and Municipal Employees (AFSCME)

Approval of Minutes of March 12, 2012 meeting (*Action Item)

This item was deferred.

Executive Planning Process for 2015 Biennium (EPP)

Review Updates to Decision Packages (DPs)

Mr. Freebourn led the Committee through the changes made to the DPs following the March 12 meeting.

DP 1-1c

No changes were made to these DPs, but Commissioner Olson asked whether the 5 FTE administrative positions in DP 1 are tied to the number of attorney positions that are needed to cover the excess caseload. Mr. Freebourn said that an additional 3-7 people are needed to do data entry. He and Chairman Gillespie have discussed a paralegal program, which is not addressed anywhere in the DPs. Chairman Gillespie is looking at workforce hours as part of the response he is preparing to the American University (AU) and American Civil Liberties Union of Montana (ACLU) reports. The American Bar Association has published a study that shows that a maximum of 1700 productive hours annually can be expected from staff (*Securing Reasonable Caseloads* by Norman Lefstein). Chairman Gillespie has estimated the number of hours available by job type and concludes that OPD is grossly understaffed. A paralegal program that follows another agency's model of 1 paralegal for every 3 attorneys would result in a request for 40 additional FTE, which would be a hard sell.

Mr. Freebourn noted that DP 1a to make modified positions permanent is in addition to the positions requested in DP 1 and is not listing duplicate positions. The same applies to DP 1b (new positions) and 1c (modified) for Program 2.

Chairman Gillespie asked Chief Hunt if 1 FTE in DP 1b is really adequate given the ABA's recommended caseload for appellate attorneys of 25 non-capital appeals per year. Chief Hunt replied that one would cover the current caseload, but they probably would not keep pace if the caseload continues to grow at the present rate. Chairman Gillespie believes the Commission has been overly fiscally responsible at the expense of clients and encouraged Chief Hunt to let Mr. Freebourn know if additional FTE are needed to provide effective assistance of counsel and comply with standards.

DP 2 – 2a

An attorney salary survey including prosecutorial and state agency workforces is underway and will be complete by July 27. The resulting changes to the attorney pay ladder will be the basis for adjustments to DP 2. The appellate pay ladder is currently aligned with the trial attorney pay ladder, but Chief Hunt is still having recruitment and retention problems and she wants to compete directly with the Attorney General's office. DP 2a reflects wage adjustments based on those pay levels. The fallback position would be to retain alignment with the Program 1 career ladder. Mr. Twardoski would like to see consistency in the Program 1 and Program 2 pay ladders due to morale issues. Chairman Gillespie assured Mr. Twardoski that the Commission will do everything possible to make pay equitable across the board.

DP 7 – 7a

Investigator Supervisor Mori Woods joined the meeting to discuss the investigator DPs. DP 7 increases investigator support in Regions 1 (Kalispell) and 9 (Billings) to comply with agency Policy 121.

DP 7a would add FTE to provide investigative services for major misdemeanor cases (e.g. DUI, assault, PFMA). Chairman Gillespie requested that the calculation for the number of FTEs required be based on the 1700 hour figure discussed earlier. Ms. Woods and Mr. Freebourn will look at the figures again from that perspective.

DP 9

Missoula Regional Deputy Public Defender Dave Stenerson joined the meeting to discuss the social worker program. He provided a handout demonstrating the success of other social work/public defender programs nationwide. They not only provide a holistic approach to helping clients, but save taxpayer money, especially in jail costs. Mr. Stenerson pointed out that even though local mental health centers might do jail visits, there is a trust issue similar to when a judge used to ask why a public defender needed an investigator when law enforcement already had the facts. Although the Missoula program has not been in existence long enough to provide substantive data, Mr. Stenerson hopes to find alternative funding to continue the program when the grant expires in June and generate good information to provide to the Commission and the legislature in support of expanding to other regions.

DP 12

Option 2 shows reduced caseloads for managers based on 1700 available hours. The total number of new FTE required (3.07) would be in bits and pieces around the system, so Mr. Freebourn increased all partial FTEs to at least .5 FTE. This is more realistic in terms of the actual workforce and increases the total needed to 6.5 FTE. Chairman Gillespie asked Mr. Freebourn to compare sections of his draft response to see how their calculations mesh.

DP 14

Option 2 has been amended to include the addition of 1 FTE to handle postconviction relief (PCR) cases. It also includes the cost of moving the conflict office out of the Goodkind Building and into a separate space. The dollar amount of the DP could decrease after offsetting the current cost of contracting the PCR cases. Creating a separate program for the conflict function is a strategic planning/administrative process that will shift money from Programs 1 and 2 and will not involve adding a lot of new money.

DP 15

A second option has been added, pending information from Chief Hunt to develop costs. Her thought is to request 1 FTE for the next biennium to establish trial notebooks and an appellate brief bank. This FTE could also provide consultation to trial attorneys, which would reduce the workload for the rest of the Program 2 staff. Chairman Gillespie suggested exploring the grant field to see if funds, personnel or sample trial notebooks might be available to assist in creating trial notebooks.

DP 17 – 17a

DP 17 provides for a secretary to the Commission as recommended by the AU report. DP 17a provides different staff for the Commission per Chairman Gillespie's request. It provides for one attorney and one field auditor. Chairman Gillespie said they would need at least one support staff and asked that DPs 17 and 17a be combined. Mr. Freebourn noted that the Commission is already authorized for one FTE, but Chairman Gillespie does not want these positions to come from special revenue funds. If they are funded through general funds there will be no question of the ongoing availability of funding.

DP 18

IT Supervisor Kyle Belcher joined the meeting to discuss software solutions to facilitate contractor claim processing. Mr. Murphy described the advantages and drawbacks of the current electronic claim processing system. He would like to expand the ability to process claims electronically, especially for Ms. Neal.

The estimated cost of the DP is based on an Adobe product that the agency has been exploring for some time. Unfortunately, the original estimate of about \$80,000 doubled when training and consulting hours were added to the package. Mr. Belcher is now looking at a service with a lower initial investment. The agency would pay an annual fee to a company that hosts the software and provides upgrades, etc. instead of the agency purchasing the software. He expects to have more information soon. Mr. Freebourn said that either solution would involve an RFP process. He recommends putting a range of \$80-160,000 in the DP.

DP 19

Chairman Gillespie asked if there is any idea of what the anticipated increase in eastern Montana will be yet. Mr. Freebourn said that so far caseloads haven't increased, but contract attorneys are less willing to take cases, so the travel demands for FTE have skyrocketed. The new VisionNet equipment in Regions 9, 10 and 11 (Billings, Glendive and Miles City) will help because a contract attorney in Billings can take DNs in Miles City without excessive travel. There is currently a large, very well-paid temporary workforce in the eastern part of the state and they do not qualify for OPD services. However, as Sidney and Glendive grow, caseloads will increase as poorer people providing support services arrive. Chairman Gillespie advised adjusting the case weight for travel time in the Case Weighting System. Mr. Freebourn agreed that the CWS is currently inadequate in that category.

DP 20

Mr. Freebourn said that if the attorney pay ladders are adjusted in the way he expects, there will be serious wage compression. Once the pay study is complete, the numbers for this DP will become clearer.

Other Issues

Chief Hunt asked if she needs to address space issues if she gets the number of FTEs she is requesting. Yes, Mr. Freebourn will address that in the next round of estimates.

Chief Hunt noted that they have been experiencing a large increase in transcript costs. They should be addressed separately if they are not part of the base.

Recommendations for Full Commission's Consideration, including Priority for each DP

Mr. Freebourn asked the Committee if they are ready to prioritize the DPs or if they preferred to let the full Commission prioritize them. Aside from the need to emphasize equitable pay for all FTE, managers, and contractors, the Committee is not ready to make a recommendation. Chairman Gillespie would like his response to the ACLU/AU reports to be considered when they start setting priorities. His perspective has changed somewhat since he began drafting the response, and when he started looking at the issues identified by the ACLU and AU from the viewpoint of the availability of workforce hours, he was shocked. He would like each Committee member to create their own priority list and submit it to the Central Office so that they can compile a report for the Committee to present to the full Commission as a beginning point for discussion.

Public Comment

Mr. Twardoski asked if the attorney salary survey that is being conducted will have its own DP. No, it will be included in DP 2 and the numbers will be adjusted to reflect the revised pay ladder. Mr. Twardoski wondered why the pay ladder DPs for Programs 1 and 2 were separate and if they could be combined? Mr. Freebourn said that the salary survey includes attorneys working for cities, counties and state agencies. The result of that is an average around the state, and the competition varies by location. Program 2 competes only with other state agencies for their attorney workforce, specifically with the Attorney General's office, three of whom make more than the Chief Public Defender. Mr. Twardoski favors one pay ladder for both programs, addressing the disparity in what people do through the position description to set a higher salary for the appellate office if appropriate. He said that obviously more FTE and more money will fix a lot of problems, including recruitment, retention, and morale issues. Mr. Twardoski said that

Human Resource Officer Barb Kain advised him that there would not be a support staff survey to adjust their pay ladder because the turnover doesn't warrant it. Chairman Gillespie countermands that decision. Staff need to be recognized as part of team, and deserve the same benefits and treatment as lawyers. Mr. Twardoski's office has conducted a support staff salary survey and would like to share it. Chairman Gillespie also supports the reclassification of support staff to ensure that they are doing what is actually in their job description and they are put in an appropriate classification to be rewarded for their experience.

Old Business/New Business (*Action Items)

There was no additional business to discuss.

Adjourn

The meeting adjourned at 11:10 a.m.