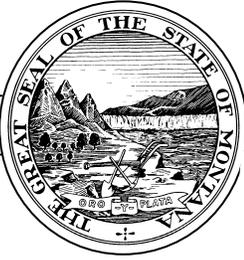


OFFICE OF THE STATE PUBLIC DEFENDER



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July 15, 2013

To: Montana Public Defender Commission
From: Kristina Neal, Conflict Coordinator
RE: Report to the Commission

UPDATES

Conflict cases: For FY 2013, I appointed counsel in an estimated 5,000 cases, or approximately 400 plus cases per month. Actual numbers will be released after the agency closes its books and records.

Standards: I have proposed to the commission changes in the standards involving stand-by counsel (see attached). My proposed changes to the standards reflect language from case precedent and the ABA standards and clarifies that stand-by counsel's obligation is to the appointing tribunal. Therefore, the traditional attorney-client relationship does not exist and stand-by counsel does not have the same duties to a self-represented client. Thus, the client is obligated to file his own motions and conduct his own defense.

Support Staff: My assistant, Amy Clark, has taken over the entry of all of the conflict claim forms. Therefore, attorneys and providers are now sending their conflict bills directly to my office and processed by Amy and me before being sent to the Central Office for accounting and payment.

Proposed Staffing: I have been working with executive members to determine the benefit of hiring an attorney that could handle certain conflict cases and also be able to serve as a back-up for me for when I am out of the office for any extended period of time. I will continue to flush out ideas of where this position would most benefit the agency.

Training: I have been working with Eric Olson to put together a short postconviction relief training that will be held in conjunction with the appellate training. The postconviction training will be held Tuesday, July 9. Melissa Hartigan, the federal habeas clerk, will be discussing the interplay between state postconviction relief proceedings and federal habeas.

VII. STANDBY COUNSEL IN CRIMINAL CASES

Goal: To provide standby assistance to criminal defendants who are proceeding pro se while insuring their individual dignity and autonomy. Standby counsel's participation shall never destroy the jury's perception that the defendant is representing himself and the defendant shall personally manage and conduct his own defense. Attorneys providing standby assistance shall comply with the general standards for public defenders as well as these specific standards.

1. Defense counsel acting as stand-by counsel shall:

- A. Permit the accused to make the final decision on all matters, including strategic and tactical matters relating to the conduct of the case.
- B. If the defendant requests assistance, bring to the attention of the defendant matters beneficial to him.
- C. Not actively participate in the conduct of the defense unless specifically asked to do so by the defendant.
- D. Assist the defendant in overcoming routine procedural or evidentiary obstacles that the defendant has clearly shown he wishes to complete.
- E. Help to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.
- F. *Provide advice without interfering with the Defendant's presentation of his defense.*

2. Standby counsel shall be prepared to assume representation of the Defendant at any stage of the proceedings.

3. Standby counsel shall recognize that they are appointed by the Court and that they do not have the same duties that arise out of the client-lawyer relationship. There is no client-lawyer relationship until and unless the client defendant accepts representation. Thus, the pro se defendant must be allowed to control the organization and content of his own defense and must make his own motions, make his own oral arguments, participate in voire dire, and address the judge and jury.