

MONTANA PUBLIC DEFENDER COMMISSION
CONTRACTS PROCESS COMMITTEE MEETING

Goodkind Building
139 North Last Chance Gulch, Helena, MT 59601

July 18, 2014

MINUTES

(Approved at the September 19, 2016 Meeting)

Committee Members Present:

Chuck Petaja (Chair), Helena; and Ken Olson, Great Falls. Commission Chair Fritz Gillespie, Helena, was also in attendance.

Agency Team Members Present

Bill Hooks, Chief Public Defender; Harry Freebourn, Administrative Director; Wade Zolynski, Chief Appellate Defender; Kristina Neal, Conflict Coordinator; Wendy Johnson, Contract Manager

Interested Parties

Niki Zupanic, Public Policy Director, American Civil Liberties Union of Montana

1. Call to Order

Committee Chair Chuck Petaja called the meeting of the Contracts Process Committee to order at 1:55 p.m.

2. Approval of Minutes of July 11, 2013 Meeting

Commissioner Olson moved to approve the minutes as drafted. Commissioner Petaja seconded and the motion carried.

3. Contract Program Issues

A. Update on staggered MOU process

As discussed at the February Commission meeting, Contract Manager Wendy Johnson is changing the MOU process. Instead of all contractors being on the same two-year period beginning July 1 and ending June 30 two years later, the MOU will run for two years from the date it was signed. Contractors with existing MOUs signed an amendment extending the current MOU for differing durations depending on the region. The proficiency determination will be conducted in the month that the amendment expires. The first amendments to expire will be in Region 6 (Havre). Mental health providers and investigators also signed amendments.

Ms. Johnson revamped the MOU during the extension period. She went through the changes in detail for the committee. Significant changes include removing the workers' compensation requirement; changing the language to say that the agreement can be terminated at any time, not just for cause; and requiring that contractors provide a business email account. Ms. Johnson invited suggestions before she starts using the new form. The committee supported the proposed changes.

B. Update on contract program forms and evaluation process of candidates

Ms. Johnson reviewed the changes to the summary of education and experience and the contract attorney process documents. She has included more detail on the process, and is now requiring a writing sample. It gives a good idea of what the applicant's qualifications are, and she isn't getting any push back on the new requirement.

Commissioner Petaja said that historically there has been a shortage of contract attorneys, and he asked if that is no longer true. Chief Hooks replied that the landscape has indeed changed. In some areas there are too many contractors, making it difficult to do performance evaluations and assign cases to all of them. There is still a shortage in Eastern Montanan and the Bakken. Ms. Johnson and Conflict Coordinator Kristina Neal have been doing outreach in those areas, but it is hard to compete. He has asked Ms. Johnson to look closely at who receives an MOU so that it is a more productive and collaborative process. Ms. Johnson documents all decisions related to whether or not an MOU is issued to an applicant.

C. Limiting the number of contractors in certain regions and/or creating a waiting list

The Missoula office contracts very few cases that are not conflicts, and has a surplus of contract attorneys. It is overwhelming to look at the pool in that region in terms of doing evaluations, especially if they haven't been assigned more than a couple of cases. Ms. Johnson would like to limit the number of contract attorneys in that region and maintain a waiting list for new applicants.

Chairman Gillespie said that the statute requires limiting the number of contract attorneys to the number that can be monitored. He asked Ms. Johnson to develop language related to setting limits on the number of contractors for discussion at the August 1 Commission meeting. A written policy will ensure transparency. Ms. Johnson said that it will be easy to make the information accessible on the website by noting which regions are accepting applications, and which regions have a waiting list.

Commissioner Olson moved to approve the new MOU and the other new forms as drafted. Commissioner Petaja seconded and the motion carried.

D. Proposed changes to the proficiency determination process

Commissioner Petaja is very interested in Ms. Johnson's ideas on how to improve the contractor evaluation process. She plans to put together a packet for each attorney that will include a claims review, motions obtained from the courts, and copies of the jail logs to see if they are billing appropriately for jail visits and motions practice. It's also important to get information from clients, judges and the regional deputies, as well as monitoring complaints as part of the process. Since it would be very difficult for her to actually do court observations for each attorney, she will have to rely on the regional deputies or staff attorneys who see the contractor practice in the local courts for the information. She is looking at a much more collaborative model for the evaluation process. Chairman Gillespie noted that this should be a positive process for the contract attorneys, and Ms. Johnson agreed.

E. Possibility of imposing initial soft caps on the dollars spent for different types of cases

F. Alternatives to the \$25 stipend

No action is needed on these two items, but they are on the radar. Ms. Johnson and Ms. Neal met with about 15 contract attorneys in Billings recently. They got mixed signals on the stipend issue; some contract attorneys see those type of costs as part of their overhead, and others are still complaining that it is inadequate.

Soft caps are a starting point to get an idea of what the contractor costs might be on a month to month basis. They can also be an indicator to ask why a given case is taking so long. This is still in the discussion stage.

4. Public Comment

Ms. Zupanic was asked to comment on the idea of soft caps. She said that the ACLU won't have a problem with the concept as long as the contract attorney is not limited in their ability to continue to be zealous advocates once they hit the limit.

5. Adjourn

The meeting adjourned at 2:50 p.m.