

MONTANA PUBLIC DEFENDER COMMISSION
BUDGET COMMITTEE MEETING
Helena Regional Office
139 N. Last Chance Gulch, Helena MT 59601

September 23, 2010

MINUTES

Approved at the December 20, 2010 Meeting

Call to Order

Chairman Fritz Gillespie called the meeting of the Budget Committee to order at 1:00 p.m.

Committee Members Present

Fritz Gillespie, Helena; Caroline Fleming, Miles City; Margaret Novak, Chester; Jim Taylor, Missoula

Committee Members Absent

Jennifer Hensley, Butte

Interested Parties

Randi Hood, Chief Public Defender; Joslyn Hunt, Chief Appellate Defender, and Appellate defender staff attorneys; Harry Freebourn, Administrative Director; Niki Zupanic, American Civil Liberties Union of Montana

Approval of Minutes

Commissioner Fleming moved to approve the minutes of the July 24, 2009 meeting as submitted. Chairman Gillespie seconded and the motion carried.

American University (AU) Recommendations

#4 *Budget submission must show accomplishments*

Administrative Director Harry Freebourn discussed the budget process and the development of the three largest decision packages, all related to attorney pay. He explained the study used to design the career ladders for programs 1 and 2 and the basis for the proposed increase to the contract attorney rate.

Mr. Freebourn reviewed the current reporting on case counts, dispositions and case duration. The committee asked what other important information the agency could share with the public, leading to a discussion of the merits of additional dispositional data vs. staff time required to generate it. Chairman Gillespie suggested using the Supreme Court Administrator's data; the problem is that isn't limited just to public defender system cases, so a statistical analysis would be required. Commissioner Taylor suggested checking with the University of Montana for assistance. The committee also talked about the value of conveying the human element of what the public defender system does and how it impacts peoples' lives. Perhaps someone at the journalism department would be interested in doing a short film?

17 *Next biennium budget should begin immediately*

The budget process for the 2013 biennium began in November. The budget request includes increasing the contract attorney rate and the attorney pay ladders.

The proposal to eliminate the minimum case load requirement was not supported by the Governor's office because they felt that it had been handled through OPD policy.

During the last session, the Legislative Committee encouraged contract attorneys to participate in obtaining a rate increase with limited success. A contract attorney liaison to the Commission has not yet been identified. The committee members agreed that asking MTACDL to appoint a liaison until AFSCME's organizing effort is resolved was appropriate. Chairman Gillespie will contact Wendy Holton, the current MTACDL president, to identify a liaison.

#18 Establish a separate fund for emergency cases

Emergency funds have been identified under the Contract Manager and Chief Public Defender budget areas to cover extraordinary costs in the contract attorney and FTE areas respectively. The supplemental process is the last resort to meet emergency needs.

Mr. Freebourn wants the committee to understand that the regional and departmental budgets are not cast in stone; everyone gets what they need to provide services, and the supplemental process will be pursued if needed.

Public Comment

Chairman Gillespie invited public comment on the AU recommendations.

Assistant Appellate Defender Chase Naber said that in regards to Recommendation #4, since the ACLU suit created the statewide office of the public defender, perhaps having memories refreshed regarding the basis of that suit would be helpful, especially in showing disparity among the regions prior to inception of the statewide system.

Budget Priorities

Chairman Gillespie gave a summary of his reasoning in the draft budget priority list (exhibit 1) that he prepared. He put decision package (DP) 1 and 2 ahead of 4,5,11 and 12 based on OPD's mission to provide effective assistance of counsel to clients. He would like to put all six together, because FTE and contractor rates should have equal weight; it's not fair to put one ahead of the other. He said that ranking of the other DPs are self explanatory. He ranked DP 14 last because he thinks that the Central Office is providing great support to the Commission. He invited the committee members to give their thoughts.

Commissioner Taylor would make priority numbers one and two (DPs 1, 2, 4, 5, 11 and 12) all a number one priority. He would also move the secretary to the commission to the number two priority because the Commission will need their own staff person if they are going to do more oversight.

Chairman Gillespie asked Mr. Freebourn to comment on how the governor's budget office and the legislature would view merging priorities one and two. Mr. Freebourn said that we have only two programs (public defender and appellate) which means greater flexibility in moving dollars where they are needed. Also, the budget differentiates between items that are currently supporting the mission (present law) and new proposals to support the mission. The current number one priority is to support present law, and the number two priorities are adjustments to present law. He said that it is okay to prioritize all as number one, but the Commission may want to think about how to split it up if required to do so.

Public Comment

Chairman Gillespie invited public comment on the budget priorities.

Eileen Larkin, Assistant Appellate Defender, said that she is appearing on behalf of the entire ADO staff as a united voice. She requested that the committee separate the ADO pay ladder from the Program 1 pay ladder and the increase in contract attorney rates, and make it the top priority. There is significant internal disparity between similarly situated trial and appellate attorneys (approximately \$8-10,000 per year). Ms. Larkin said that this is an indefensible discrepancy, especially when 15% of an appellate defender's job description is training trial attorneys; furthermore, appellate attorneys litigate daily in the highest court of the state. The cost to implement this would be small, since there are so few appellate defenders. The appellate office will continue to experience high turnover without parity.

Chief Hunt said that she has the utmost support for Ms. Larkin's statement. The Supreme Court has expressed pride in work of her staff; they are getting charges dismissed, reversing involuntary commitment orders, and making changes in the law. She is proud to be managing this team, but she won't have them for long if they continue to be the lowest paid attorneys in the state. Chief Hunt hopes the Commission will right the wrong that has existed since the original trial attorney pay ladder was implemented, and asked the Commission to separate and give a higher ranking to the Appellate pay ladder.

Old Business/New Business (*Action Items)

Commissioner Taylor moved that the 2013 Budget Priorities to be recommended to the full Commission be amended to move the Appellate career pay ladder to the number 1 priority, followed closely by decision packages 1, 2, 4, 11 and 12; and that the secretary to the Commission be moved to the number 3 priority. Commissioner Fleming seconded, and the motion carried.

The meeting adjourned at 2:35 p.m.