

Appellate Liaison Report to the Public Defender Commission
October 2, 2015

In August, 2014, and again in October, 2014, we reported to the PDC that the appellate caseload was at a critical mass, and that with the limited resources allocated to us, we could no longer keep up. We reported on the excessive caseloads, multiple extensions of time, and orders from the Montana Supreme Court denying further extensions in some cases. We asked for assistance, explaining that “[w]e are maxed out and can do no more on an individual basis.”

While sympathetic, the PDC responded that there was no funding available to assist us. In the ensuing year, most of our excessive caseloads have grown to twice the maximum allowed by the Case Weighting System adopted by this Commission. Some cases must be extended out up to a year before an appellate attorney can start to review it, advise the client, and file an opening brief if appropriate.

Employee turnover has resumed and risks escalating. One attorney left to return to the trial division, and another submitted his resignation two weeks ago. Turnover always causes an increase in caseload for those who remain – and risks a vicious cycle of further resignations and departures as we are already overloaded beyond capacity.

For these reasons, we again respectfully request that the PDC allocate additional resources and modified positions to the Appellate Office. We are a stress point in the agency that requires additional funding for staff attorneys. Chief Justice McGrath informed the Legislative Task Force during its first meeting that the Appellate Office is “woefully behind.” Our excessive caseloads are causing unacceptable delays for the Montana Supreme Court, for our clients, and for others in the criminal justice system. The Chief Justice has previously stated that appellate attorneys are working diligently; productivity is not the issue. Excessive caseloads and inadequate resources are the issues.

Therefore, the answer to the excessive appellate caseload and unacceptable delays in resolving appeals is to add appellate attorneys. We urge the Commission to earmark some of the money appropriated to it by the Legislature for “stress points” to address the long-standing and escalating stress points in the Appellate Office.