



# OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

September 24, 2015

To: Montana Public Defender Commission

From: Peter Ohman, Training Coordinator

Re: Training Report (2/1/2015 – 9/30/2015)

Since the last report we have conducted several training events.

On February 27, OPD conducted a webinar training entitled *PREA – The Prison Rape Elimination Act*. The training focused on how our practitioners should be aware of the federal Prison Rape Elimination Act, how it applies to our clients and how we can use it to help them. Topics included background and history of the legislation, development of standards, data gathered by the Bureau of Justice Assistance, high risk populations, and perhaps most importantly how PREA can be used in dispositions for both juveniles and adults.

On March 24, OPD conducted a webinar entitled *Case Update Training*. Koan Mercer, staff attorney in the Office of the Appellate Defender, presented the material. The topics he covered were significant rulings from the Montana Supreme Court since October 2014 – the date of OPD's last annual conference. Mr. Mercer also discussed recent cases from the Montana Supreme Court. The webinar's focus was on criminal cases, however, abuse and neglect and civil commitment opinions were also discussed.

On April 23, OPD conducted a webinar training entitled *ICWA: A Guide to Best Practices*. Natalie Wicklund, staff attorney in the Office of the Appellate Defender, led the presentation along with Roger Renville, assistant public defender in the Helena Office. Topics included the history of the Indian Child Welfare Act (ICWA), in what proceedings ICWA applies, jurisdiction in ICWA cases, transfer procedures between different courts, burdens of proof and standards, ICWA implications in termination of parental rights proceedings, qualified expert witnesses, considerations for when to transfer an ICWA case to the tribe, and federal rules and guidelines specific to ICWA.

The Support Staff Conference in Billings was held April 30-May. Training was provided in the areas of JustWare, legislative updates, working with clients with personality disorders, eligibility screening, Outlook, Word and case weights. Various mental health professionals, attorneys and staff assisted with the presentations.

On May 14-15, OPD conducted a two-day training in Bozeman entitled *Zealous Advocacy and Defense in Sex Crimes*. OPD was very lucky to have two preeminent national trainers lead the program. Andre Vitale, the training director for the Monroe County Public Defender's Office in Rochester, New York, and Dehlia Ummana, Professor at Harvard Law School, came all the way out to Montana to put on the program. The agenda utilized the active learning method of teaching which requires attendees to be on their feet speaking for significant portions of the program. More than one experienced attorney said it was the best CLE they had attended.

On May 21, assistant public defender Jennifer Streano presented a webinar training entitled *Stacking Offenses*. The topics she covered included the many criminal offenses that may be charged as felonies provided there are prior convictions, how the timing of convictions works for stacking purposes, cases where prior out-of-state offenses have and have not counted for stacking purposes, constitutionality of prior convictions, timing of prior convictions, the effect of deferred sentences, and what offenses are “similar” under a stacking analysis.

On June 25 William Managhan, staff attorney in the Kalispell office, presented a webinar entitled *Crossing the Cop in a DUI*. The topics he covered included signs of impairment, vehicle in motion, cases where his cross examination would and would not work, jury selection, challenging the Intoxylizer 8000, standardized field sobriety testing, challenging blood tests, basics of cross examination, manuals, documents and reports needed for effective cross, and how to address the horizontal gaze nystagmus test.

From August 11-13 we conducted the annual Boot Camp Trial Skills training at the Lubrecht Forestry Center outside of Bonner, Montana. Approximately 19 attorneys including three contract attorneys participated. The training focuses on building trial skills and included practice sessions on interviewing clients, voir dire, opening statements, cross examination and closings. Presentations included sessions on bail practice and procedure, client interview techniques, managing high caseloads and a potpourri of DN, DI, pretrial motions and motions in limine tips. Lawyers brought their own cases for the voir dire, opening and closing exercises. So far four attorneys who brought their cases have obtained acquittals or dismissals in the same. Trainers included Hank Branom from the Federal Defenders, Bill Hooks, Annie DeWolf, Lisa Kauffman, Brian Smith, Nick Aemisegger and Jennifer Streano.

On September 3, OPD co-sponsored a training with the Montana Association of Criminal Defense Lawyers in Great Falls. The training was well attended by both OPD attorneys and the private bar. Top quality speakers from Seattle and Tennessee presented on trial skills, the Intoxylizer 8000, ethics, and lab samplings from a chemist’s perspective.

A number of OPD attorneys attended the annual ICWA training in Polson. The event is sponsored in part by the Supreme Court Administrator’s Office and they have generously included our people, providing free training and lodging in this important area of DN work.

Two attorneys are scheduled to attend the National Juvenile Defender Center’s Leadership Summit in Salt Lake City in late October.

With respect to operations, Jennifer Streano recently completed and won an extraordinarily challenging deliberate homicide so is now available full time to work in the training office. She will remain in Missoula and will work on sentence review cases in addition to helping develop a stronger internship program with the University of Montana, and assisting the office’s developing orientation program.

Future training events include monthly webinars, the annual conference at the beginning of October, management training in December, another Boot Camp before the end of the fiscal year depending on demand, a mental health training and continued orientation for new attorneys.

**TENTH ANNUAL CONFERENCE  
OFFICE OF THE STATE PUBLIC DEFENDER  
OCTOBER 14-15, 2015, RED LION COLONIAL HOTEL, HELENA, MONTANA**

**October 14, 2015**

**7:00 – 8:00: Lawyer Assistance Program – *Gallery Room***

**8:00 – 8:30: Registration – *Ballroom Entry***

**8:45 – 9:45: Internet Secrets and Social Media Intelligence Revealed – Kevin W. McClain – Board Certified Criminal Defense Investigator, Illinois – *Ballroom***

**9:45 – 10:45: Prosecutorial Misconduct in Closing Argument – Tony Bornstein, Assistant Federal Defender, Oregon – *Ballroom***

**11:00 – 12:00: Breakouts**

**Victimology – Kevin W. McLain – *Ballroom (Executive/Legislative)***

**Managing Your Caseload with Justware: Timetracking, Templates and Using Justware on Your Mobile Device – Marsha Parr – *State Room***

**SORNA and Tier Designations – Michael Donahoe, Senior Litigator, Federal Defenders of Montana – *Capitol Room***

**DN Practice in 2015 and Beyond – Kelli Sather, Assistant Public Defender, Missoula; Roger Renville, Assistant Public Defender, Helena – *Gallery Room***

**12:15 – 1:30: Annual Awards Luncheon – *Ballroom***

**1:30 – 2:15: The Foundation of Montana's Criminal Justice System – Dan Thyer, Montana Heritage Commission – *Ballroom***

**2:30 – 3:30: Breakouts**

**Effective Written Advocacy – Tony Bornstein, Assistant Public Defender, Oregon – *Ballroom (Executive/Legislative)***

**Suspended License? The Ins and Outs of Suspensions, Revocations and Reinstatement – Michele Snowberger, Records and Driver Control Bureau – *Capitol Room***

**Managing Your Caseload with Justware: Timetracking, Templates and Using Justware on Your Mobile Device – Marsha Parr – *State Room***

**Preserving the Record for Appeal – Wade Zolynski, Chief Appellate Defender – *Judicial Room***

**[2:30 – 5:00: Investigators Only: Bring Your Own Case- Small Groups & Discussion – *Gallery Room*]**

**3:45 - 5:00: Jury Issues – Nullification, Allen and Removal – Michael Donahoe, Senior Litigator, Federal Defenders of Montana – *Ballroom***

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**October 15, 2015**

**7:00 – 8:00: Lawyer Assistance Program – *Gallery Room***

**8:15 – 9:45: The ACE's Study – Adverse Childhood Experiences – Todd Garrison, Childwise Institute, Helena, Montana – *Ballroom***

**10:00 – 11:00: Breakouts**

**Self Defense in a Murder Case, What Would You Do – Kevin McLain – *Ballroom(Executive/Legislative)***

**Constitutional Objections and Motions – Before During and After Trial – Tony Bornstein – *Capitol Room***

**Latest Developments in Sex Offender Risk, and Treatment Research - Andy Hudak, LCPC – *Gallery Room***

**Managing Your Caseload with Justware: Timetracking, Templates and Using Justware on Your Mobile Device – Marsha Parr – *State Room***

**11:15 – 12:15: Historical Trauma in Native American Populations – Gyda Swaney, Associate Professor of Psychology, University of Montana [Ethics] – *Ballroom***

**12:15 – 1:15: Lunch [Provided] – *Ballroom***

**1:30 – 2:30: Trauma and Native American Clients – Implications for Representation Roundtable: Prof. Gyda Swaney; Ann Sherwood; Kristina Lucero; Jason Smith; Prof. Maylinn Smith [Ethics] – *Ballroom***

**2:45 – 3:45: Breakouts**

**Deconstructing the SANE Nurse Exam – Natalie Wicklund, Assistant Appellate Defender, Helena – *State Room***

**A Review of Restitution, PSIs and Sentencing – Brent Getty, Assistant Public Defender, Kalispell – *Ballroom (Executive/Legislative)***

**DJ Breakout – Funding, Placements and Process – Bob Peake, Bureau Chief, Youth Court Services – *Gallery Room***

**Breath Testing in Montana: Admissibility and Functionality – Ben Vetter, Montana Forensic Science Division – *Capitol Room***

**3:45 – 5:00: Montana Case Summary – Koan Mercer, Assistant Appellate Defender – *Ballroom***

***Conference Adjourns***