



HON. JAMES A. HAYNES  
DISTRICT COURT JUDGE  
DEPARTMENT TWO

RAVALLI COUNTY COURTHOUSE  
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STATE OF MONTANA  
TWENTY-FIRST JUDICIAL DISTRICT  
RAVALLI COUNTY

September 14, 2006

Senator Jim Shockley  
Montana Senate  
PO Box 200500  
Helena, MT 59620-0500

EXHIBIT - 2

RE: Public Defender Eligibility / Reimbursement

Dear Senator Shockley:

This letter requests your views on approaching the Public Defender Commissioner, or the Legislature, to ensure proper eligibility and recoupment protocols and procedures are in place and utilized. In my view, those protocols and procedures would include

- a) specific statutory authorization to recoup public monies expended on behalf of a criminal defendant at sentencing (assuming ability to pay exists).

As well, full recoupment or sliding scale co-payment could be statutorily required when

- b) An applicant later has the assignment of a public defender rescinded, under §47-1-111(i)(c); or
- c) An applicant's "substantial hardship" ends, §47-1-111(3)(b).

An example of potential for abuse – with apparently no current recourse – occurred last week in my Court in *State v. Harris*, DC 06-161.

Linda Harris stands charged with felony DUI (6<sup>th</sup> offense). Justice Court initially set bail at \$25,000. Ms. Harris applied to post a property bond. I reviewed the property bond application. She listed ownership in a 20 acre piece of real property appraised at approximately \$250,000, held jointly with her husband. I questioned Ms. Harris' attorney. He represented she had other valuable assets. He then argued the Court has no business re-evaluating Ms. Harris' eligibility for a public defender; that determining eligibility responsibility rests solely with the regional public defender's office.

Filed  
9/14/06

September 14, 2006  
Page 2

When queried by the Court about oversight, protocols, potential of abuse, recoupment, potential for misuse of the taxpayer's money, Ms. Harris' attorney suggested these *issues should* be of no concern to the Court; the responsibility rests with the Public Defender Commission, rather than the Court. Does adequate oversight exist? What about eligibility and recoupment protocols? Let's discuss this, please.

(Ms. Harris then promptly put in a Motion for Substitution of Judge.)

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Haynes", written over a horizontal line.

James A. Haynes, District Judge  
Department No. 2

JAH/bk