

OFFICE OF THE STATE PUBLIC DEFENDER



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October 24, 2011

TO: Montana Public Defender Commission

FROM: Larry Murphy, Contract Manager

RE: Report to Commission

1. Conflict Coordinator

Kristina Neal has been performing Conflict Coordinator duties since the last meeting of the Commission. She has settled into reviewing and approving both conflict claims and pre-approvals. Kristina traveled with me to Bozeman and Great Falls during September 2011 when I did my Standards compliance interviews.

2. Standards Compliance

Since the last Commission meeting I traveled to Great Falls and Bozeman and completed 11 more Standards compliance interviews. I currently have meetings set up in Missoula and Great Falls to complete more interviews in October.

I have completed 111 interviews out of 200 contract attorneys since October 2010. There are several new contractors included in the total that are brand new and will not be evaluated until next year. A spreadsheet containing the number of interviews is attached hereto as Attachment A.

3. Proficiency Determinations

On November 24, 2010 all the regional deputies were sent the standard proficiency determination checklist for contract attorneys. They were asked to complete the same for each contract attorney assigned cases in their respective regions by May 15, 2011. Reminders were sent on February 16, May 2, and August 19, 2011. As of the date of this writing (October 13, 2011) my office has received a total of 83 completed checklists. One region has not returned any and one region has completed all. In some instances, I have received a checklist but have not completed the Standards compliance interview.

4. Audits

The performance audit has focused heavily on contract work. I have had several meetings with the auditors regarding contract attorneys and related contract work. It is my understanding that the auditors will be meeting with us towards the end of the month with their findings.

5. Mental Health Consultant

Since the Commission met last, Eric Olson, Harry Freebourn and I prepared a Request for Proposals (RFP) to fill the mental health consultant function vacated by Dr. Laura Wendlandt. The RFP was submitted to the State Procurement Bureau on October 5, 2011. There will be a 30-day time frame for qualified mental health providers to submit their proposal and any questions they may have regarding the contract. The RFP sets forth the requirements and asks for a lump-sum monthly contract amount for all services. I anticipate a contract mental health consultant to be in place by the end of this calendar year.

6. CLE Affidavit Requirements

Following the last Commission meeting I asked all contract/conflict attorneys to submit a copy of their 2010 Continuing Legal Education (CLE) affidavit in conformity with the revised proficiency determination standard adopted at that meeting. I propose that the Commission undertake a comprehensive review of the Standards particularly in relation to training requirements.

7. Client Complaints

I am continuing to monitor a number of contract attorneys due to client or judicial complaints and/or excessive billing practices.

8. Representation of Children in DN Cases

Currently there are no Standards for representation of children in DN cases, and I think it is important to develop and adopt a Standard. I also believe it is necessary for statutory changes to 41-3-425, referenced in the Public Defender Act at 47-1-104 (4)(b)(1). The changes made in SB 153 (Attachment B) giving the court discretion to appoint OPD to defend a guardian ad litem is outside the mission of the agency and should be addressed during the next legislative session.

Attachment A

STANDARDS COMPLIANCE INTERVIEWS

Region	Total # Attorneys	Proficiency Determinations Completed	Number Standards Compliance Completed	Number CLE Affidavits received
1	22	17	12	15
2	46	0	24	23
3	24	20	17	13
4	9	6	6	5
5	7	5	6	6
6	11	6	6	6
7	7	4	4	4
8	26	3	14	10
9	38	16	15	20
10	6	5	4	4
11	4	1	3	4
TOTAL	200	83	111	110



AN ACT REVISING THE APPOINTMENT OF COUNSEL IN CHILD ABUSE AND NEGLECT CASES; ALLOWING JUDGES DISCRETION IN APPOINTING COUNSEL FOR A CHILD OR YOUTH WHEN A GUARDIAN AD LITEM IS APPOINTED FOR THE CHILD OR YOUTH; AND AMENDING SECTION 41-3-425, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-425, MCA, is amended to read:

"41-3-425. Right to counsel. (1) Any party involved in a petition filed pursuant to 41-3-422 has the right to counsel in all proceedings held pursuant to the petition.

(2) Except as provided in subsection (3), the court shall immediately appoint or have counsel assigned for:

(a) any indigent parent, guardian, or other person having legal custody of a child or youth in a removal, placement, or termination proceeding pursuant to 41-3-422;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is not appointed for the child or youth; and

(c) any party entitled to counsel at public expense under the federal Indian Child Welfare Act.

(3) When appropriate, the court may appoint or have counsel assigned for:

(a) a guardian ad litem or a court-appointed special advocate involved in a proceeding under a petition filed pursuant to 41-3-422;

(b) any child or youth involved in a proceeding under a petition filed pursuant to 41-3-422 when a guardian ad litem is appointed for the child or youth.

(4) The court's action pursuant to subsection (2) ~~or (3)~~ or (3) must be to order the office of state public defender, provided for in 47-1-201, to immediately assign counsel pursuant to the Montana Public Defender Act, Title 47, chapter 1, pending a determination of eligibility pursuant to 47-1-111."

- END -

I hereby certify that the within bill,
SB 0153, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2011.

Speaker of the House

Signed this _____ day
of _____, 2011.

SENATE BILL NO. 153
INTRODUCED BY L. JENT

AN ACT REVISING THE APPOINTMENT OF COUNSEL IN CHILD ABUSE AND NEGLECT CASES; ALLOWING JUDGES DISCRETION IN APPOINTING COUNSEL FOR A CHILD OR YOUTH WHEN A GUARDIAN AD LITEM IS APPOINTED FOR THE CHILD OR YOUTH; AND AMENDING SECTION 41-3-425, MCA.