

TO: Richard E. "Fritz" Gillespie, Chair
and Members of the Montana Public Defender Commission

FROM: Ann Sherwood, Larry Mansch, Maylinn Smith

DATE: November 21, 2016

In light of last week's Commission meeting and considering Scott Cruse's resignation, we are writing this Memorandum to offer suggestions toward implementation of the Mitigation Plan and the resulting crisis within the Office of the State Public Defender.

We agree with comments made at the meeting that the Commission should take responsibility for decisions made to address the shortfall. We should prepare a statement, signed by all Commissioners, and shared with judges and prosecutors so our line attorneys and regional managers are not left to explain case backlog because OPD is replacing contract attorneys with modified positions.

We believe that if our line attorneys and managers are facing complaints before the Office of Disciplinary Counsel due to the shortfall, we should support those attorneys and prepare a response, as a Commission, to the ODC.

We believe the Commission must increase the frequency of our telephone meetings until the hard budgetary decisions are made. We believe the meetings should be made accessible to the public by telephone access offered at regional offices where that can be arranged. We should seek input from all regional managers, and from Bill Hooks, and discuss specifically how they will implement the mitigation plan. We should also immediately advise the Governor and legislative leaders that a budgetary crisis looms, and judges are likely to take the position that, adequate funding or not, they will continue to make public defender appointment in qualifying cases.

If we are not going to be able to sufficiently meet the shortfall with the mitigation plan the Commission approved, we should implement a priority plan as suggested by Chief Hooks when we faced this situation before.

Finally, we offer the following statement regarding DN cases and in support of rescinding appointment in new cases:

The Office of the State Public Defender (OPD) has evaluated the reasons for increased caseloads and costs of representing indigent individuals in the state court system. OPD's dependency and neglect caseload has increased by 77% since 2011 and 30% since 2014. The current budgetary shortfall is significantly related to the increase in dependency and neglect proceedings. Absent steps by the Department of Public Health and Human Services to offer alternatives to litigating these cases and therefore reducing the need for public defender representation, the caseload will only increase. OPD has no more resources than those available in 2014. Therefore, OPD will reduce its dependency neglect caseload by 30% with motions to rescind representation in new dependency neglect appointments so the dependency and neglect caseload reflects the 2014 numbers.