



Montana Legislative Services Division
Office of Research and Policy Analysis
David D. Bohyer, Director

May 12, 2016

TO: Members of the Task Force on State Public Defender Operations

FROM: Dave Bohyer, LSD Research Director

RE: Survey of Stakeholders in State Public Defender Operations

The Task Force on State Public Defender Operations has asked for a summary of responses to the survey of stakeholders in Montana's State Office of Public Defender (OPD) operations. This memorandum responds to the request.

Introduction

The Task Force requested staff to conduct a survey of various stakeholders in OPD operations. Staff responded by opening the survey instrument¹ to voluntary respondents in January 2016 and closing the survey at end of business on February 29, 2016. All told, approximately 160 responses were submitted. A complete list of the responses is attached as an appendix.²

Summary of Responses to Survey Questions 1 and 2: What is and what is not working well with the Office of the State Public Defender?

There really is no way to objectively summarize the responses to the first two survey questions, "(1) What is working and (2) not working in OPD operations?" Some of the comments are highly critical of OPD while significantly more are highly complimentary of OPD. Some are from individuals who seem to have personal knowledge or experience working with or even within OPD and some are from individuals who have little or no personal experience. At least one responder seems to have an affinity for cowbells while another is unusually vexed. Consequently, Task Force members will be best served by reading for themselves the responses to the first two survey questions.

Summary of Responses to Survey Question 3: What changes could improve functioning of the Office of the State Public Defender?

As with Questions 1 and 2, Task Force members would benefit the most by reading the survey responses. However, the responses to Question 3 seem to fall into a handful of broad categories of ideas to improve OPD. In no particular order, the categories of potential improvements could be labeled "management", "administration", "training", and "staffing".

¹ The survey was comprised of three questions: (1) What is working well with the Office of State Public Defender? (2) What is not working well with the Office of State Public Defender? (3) What changes could improve functioning of the Office of State Public Defender?

² To address constitutional privacy concerns, information that is potentially libelous or that names or identifies by job title/function an individual employee of or contractor with the OPD has been redacted from the responses.

Under the *management* category, comments suggest that OPD operations would benefit from:

- hiring one or more highly trained, nonattorney manager(s) with MBA/MPA-type credentials and given expanded authority;
- a more highly structured organization (e.g., a CEO-type boss who has operational authority over the trial public defender operations, the appellate public defender operations, the conflict coordinator operations, and all administrative operations);
- black and white, hard-and-fast performance measures that employees and contractors must meet or exceed on a regular and ongoing basis. Implied in the comments is that if an employee or contractor does not meet or exceed performance measures, the employee/contractor must be terminated posthaste;
- better/faster/more and more frequent communication between OPD attorneys (employees and contract) with indigent clients;
- reassignment from OPD attorneys to paralegals (or to anyone other than an attorney) of lower-level, routine tasks, e.g., drafting routine motions;
- better communication between OPD attorneys (employees and contractors) with prosecutors and judges (district and lower courts) and with law enforcement.

Under the *administration* category, comments indicate that OPD operations would improve from:

- stricter adherence to existing "policies" established by the Commission, the chief public and appellate defenders, the conflict coordinator, and the chief administrative officer;
- developing new/better/more policies and procedures that all staff must follow, especially in regard to OPD's management software applications, e.g., FullCourt and Justware. The responses imply that anyone who doesn't strictly adhere to the policies/procedures should be disciplined, up to and including termination of employment or contract.
- better contract management. Unfortunately, responses addressing contract management are vague, but they seem to imply that (some) contractors' claims are not scrutinized sufficiently to uncover some type of perceived fraud being committed, i.e., hours or expenses being padded.
- more efficient tracking/forwarding of client files, apparently between OPD attorneys and between OPD and contract attorneys;
- faster, better, and more extensive eligibility determinations and reviews;
- better, more effective mechanisms or procedures to collect "public defender fees" from clients of OPD attorneys (employees and contractors). [NOTE: *The imposition of the \$250 or \$800 "public defender fees" imposed under section 46-8-113, MCA, is imposed by the presiding judge or magistrate as a judgment against a convicted person and, as such, is the duty and responsibility of the respective clerks of court to collect, not the Office of Public Defender. The Office of Public Defender or the Public Defender Commission has no authority over the clerks of court or the procedure followed to collect the fee.*]

Under the *training* category, comments propose that OPD operations would improve from:

- initiating or improving an attorney mentorship program, whereby an effective, efficient, and experienced OPD trial attorney regularly interacts with and accompanies at trial a less effective, less efficient, or less experienced OPD trial attorney. The same would reasonably apply to OPD appellate attorneys.

- allowing or requiring region-specific training for regional attorneys (or other staff) on relevant topics. Such topics could include management matters, administrative matters, and internal/external communications, as well as topics that are specific to providing legal assistance.
- initiating or enhancing "management" training. A number of survey respondents note or allege "poor management" and point to the fact or perception that OPD "managers", especially managing attorneys, have little or no management training or experience, that knowing the law and trial procedure doesn't necessarily translate to knowing how to manage lawyers, an office, support staff, budgets, contracts, and the like.
- initiating or enhancing training on the "tools" available to OPD staff, from efficiently using the FullCourt software to effectively using the "brief bank".

Under the *staffing* category, comments suggest that OPD operations would improve from:

- hiring more attorneys and pay them better;
- hiring more paralegals;
- hiring more investigators;
- hiring more support staff and pay them better;
- increasing the contract rate and the \$25 monthly stipend payable to contract attorneys as a means to expanding the contractor pool;
- hiring more social workers and perhaps others, e.g. mental health professionals;
- developing plans and securing the means to increase retention, reduce turnover;
- effectively training all new personnel hired and all personnel transferred between regional offices and all contract personnel;
- following national guidelines and Commission policies regarding caseloads.

Respectfully submitted.

Attachment: Appendix

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