



Steve Bullock
Governor

OFFICE OF THE APPELLATE DEFENDER
STATE OF MONTANA

EXHIBIT # 3

DATE 2/9/2015
HB Jhd Subcommittee Approps

Wade Zolynski
Chief Appellate Defender

February 5, 2015

Members of the Appropriations Subcommittee for the Judicial Branch, Law Enforcement, and Justice:

Below is a short summary of the law regarding the necessity of appointed counsel for indigent persons on appeal.

The right to appellate counsel is rooted in the due process clause and the equal protection clause of the United States Constitution. The seminal case addressing the right to appellate counsel is *Douglas v. People of State of Cal.*, 372 U.S. 353 (1963). In *Douglas*, the United States Supreme Court said, “[W]here the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor.”¹ “[T]here can be no equal justice where the kind of an appeal a man enjoys ‘depends on the amount of money he has.’”² This right to counsel on appeal for indigent persons has been affirmed in numerous cases since *Douglas*.³ It is now well-settled that “A first appeal as of right therefore is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney.”⁴

The State of Montana, and every other state, “must guarantee the minimum rights set forth by the United States Constitution.”⁵ Accordingly, Montana created a statewide public defender system as codified in Title 47. Mont. Code Ann. § 47-1-205 created the Office of the Appellate Defender (OAD). OAD receives its cases by operation of Mont. Code Ann. § 46-8-103(1), which provides that assignment of counsel “is effective until final judgment, *including any proceeding upon direct appeal to the Montana supreme court.*” Appellate counsel can be removed if appellate counsel requests dismissal pursuant to *Anders v. California*, 386 U.S. 738

¹ *Douglas*, 372 U.S. at 357.

² *Douglas*, 372 U.S. at 355.

³ *Anders v. California*, 386 U.S. 739 (1967); *Entsminger v. Iowa*, 386 U.S. 748 (1967); *Evitts v. Lucey*, 469 U.S. 387 (1985).

⁴ *Evitts*, 469 U.S. at 396.

⁵ *State v. Stewart*, 2012 MT 317, ¶ 34, 291 P.3d 1187.

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(1967), or if the client agrees to voluntarily dismiss the appeal pursuant to Rule 16(4) of the Montana Rules of Appellate Procedure.

Therefore, the State of Montana must offer indigent individuals counsel on appeal. The OAD provides those services, otherwise constitutional and statutory violations would occur for which the State of Montana would be liable.

Should you have any questions, please call me at 444-0393 (office) or at 565-1332.

Sincerely,



Wade Zolynski
CHIEF APPELLATE DEFENDER