



MONTANA LEGISLATIVE BRANCH

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Director
AMY CARLSON

DATE: September 20, 2013

TO: Legislative Finance Committee

FROM: Greg DeWitt, Senior Fiscal Analyst, Legislative Fiscal Division

RE: Office of State Public Defender Motion to Rescind Appointment in Pending Cases and in Additional Cases

On September 5, 2013 the Chief Public Defender filed motions in public defender region 4 courts (Lewis and Clark, Jefferson, and Broadwater Counties) to revoke or rescind the court's orders or notices appointing the state public defender to represent defendants in new and additional cases. This action has fiscal implications for the State Office of Public Defender that the committee may wish to follow and consider.

BASIS FOR THE MOTION

The motions are based on the presumption that the current caseloads of attorneys in region 4 are at or above the level where additional case assignments would adversely impact the ability to provide effective assistance of counsel for defendants who are entitled to such assistance at public expense. According to the motion, 3,053 new cases were assigned to region four in FY 2012. Over 1,900 of these cases carried over into the first quarter of FY 2013 and 774 new cases have been assigned in that quarter. Of the first quarter cases 1,300 were carried over into the second quarter and 650 new cases have been assigned. Of the second quarter cases 1,721 were carried over into the third quarter. Although the FY 2013 case numbers are not finalized, the motion states that approximately 2,900 cases were opened in FY 2013.

REGION 4 RESOURCES

The office has a regional deputy, ten staff attorneys, four support staff, and one investigator. To augment state FTE the office contracts with a pool of local attorneys willing to work for the office under the terms and reimbursement rates authorized by the Public Defender Commission. The motion states that the combined legal resources of state FTE and contract attorneys in not adequate to address the caseloads in region 4.

FISCAL IMPLICATIONS

If the motions are accepted by the courts, the judges for each case would make the determination of attorney assignment and who would be responsible for funding attorney costs and at what rate for those eligible for public funded assistance. Currently the office reimburses contract attorneys at a rate of \$60 per hour plus a stipend of up to \$25 per month to help defray office costs such as telephone, postage, and copies. The judges would not be bound by these commission approved reimbursement rates. The office is funded for hourly rate of \$61.20 for FY 2014 and the commission anticipates addressing contractor rates at its October meeting. If the judges specify reimbursement rates higher than the current commission approved rates, the budget for contract attorneys would be depleted much faster than anticipated by the legislature. Furthermore, attorneys in the pool could decide to stop contracting with the office in favor of potentially receiving higher rates via the courts assignment of counsel.

COMMITTEE CONSIDERATION

Staff will continue to follow this situation and will keep the committee apprised. For the time being, the committee may wish to request that the Office of State Public Defender track and report on cases and costs associated with court assignment of counsel should the motion be accepted.