



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

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May 13, 2016

TO: Members of the Task Force on State Public Defender Operations  
FROM: Dave Bohyer, LSD Research Director  
RE: Options to improve training for OPD staff and contractors

The Task Force on State Public Defender Operations has asked staff to identify options to improve training for OPD staff and contractors. Please accept this memo as my response.

The Office of Public Defender currently employs a training coordinator, Peter Ohman. Mr. Ohman, previously in person to the Task Force and in the attachments to this memo, has provided information outlining some of the training that OPD conducts. Among the training options are mentoring for new employees, mentoring for career development, and mentoring for cross training.

OPD policy requires that at least one attorney in each OPD "Region" be designated a mentor for new attorneys. OPD policy also requires that at least one employee in each OPD region be designated a mentor for new support staff, essentially all nonattorneys.

In addition to the various mentoring assignments and activities, OPD staff conduct regular and one-time-only training events for OPD-employed and contract attorneys and for support staff on a variety of topics related to the law, the practice of criminal defense, and the use of software and other tools available to staff and contractors. The two memoranda attached hereto from Mr. Ohman, one each to the Task Force and the Public Defender Commission, provide insight and details on the training that OPD has conducted and intends to conduct.

Options to improve training could include more frequent training events, training on more topics, more in-depth training on topics relevant to criminal defense in general or on topics such as courtroom demeanor, interpersonal communications, legal writing, JustWare, FullCourt, the OPD brief bank, and recent case law, among other topics. The Task Force might consider:

- recommending or statutorily requiring a minimum number of hours of annual training, in addition to continuing legal education (CLE) requirements;
- recommending to or statutorily directing the Commission to adopt requirements for a minimum number of hours of annual training, in addition to CLE requirements;
- recommending or statutorily requiring OPD attorneys (and other staff) to participate in an enhanced, OPD-designed mentoring program, as a mentoree (protege`?) when new to the Office and as a mentor after gaining sufficient knowledge and experience. A parallel approach for attorneys might be shadowing a senior attorney for a defined time period or until a certain level of knowledge and understanding of and facility with trial practice is attained.
- recommending or requiring judges to periodically, annually perhaps, conduct a seminar for public defenders (and perhaps prosecutors) on the ins and outs of practicing criminal defense *in each respective judge's court*. A parallel track could be considered to require

district court judges to mentor lower court judges. Both tracks would be in an effort to raise the level of professionalism and decorum in court, improve efficiency, and mitigate the effects, on defendants, OPD, prosecutors, the courts, and taxpayers, of appeals by indigent defendants from lower courts to district court to the state supreme court.

- providing funding for some or all OPD attorneys to attend training specifically designed for attorneys who practice criminal defense, such as the National Criminal Defense College.

Testimony given to the Task Force and responses to the stakeholder survey have indicated that OPD attorneys, especially, are fully engaged with their day-to-day work defending indigent defendants or indigent individuals involved in a several types of civil cases or juveniles and, consequently, have little time to either participate in or present training. Responses to the stakeholder survey included several that indicate nonattorney OPD staff are similarly fully involved with day to day responsibilities. That being the case, the Task Force should also consider when discussing any option for additional OPD staff or contractor training, including mentoring, whether or not additional resources might be necessary to effectuate the training. As used here, "resources" include time for staff to participate in training or to prepare and present training and, of course, money to pay for travel and per diem expenses for staff and, possibly, to bring in trainers from other Montana offices or trainers who are not associated with Montana OPD offices. Trainers from non-OPD offices could include criminal defense attorneys in private practice, faculty who teach criminal defense-related courses at accredited law schools, or retired judges, recognizing that it would be a risk to assume that very many of the potential trainers would conduct the training for free.

Respectfully submitted.

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