

Operating Statutes: Conflict Coordinator Office

The Conflict Coordinator Office was created in the 2011 legislative session.¹ The Public Defender Commission appoints the Conflict Coordinator.² The Conflict Coordinator is independent of the Chief Public Defender and the Chief Appellate Defender and reports directly to the Public Defender Commission.³ The Conflict Coordinator may not personally be assigned cases.⁴

The office was created to handle conflicts when the local public defender's office cannot represent a client due to a conflict of interest.⁵ An actual conflict of interest under the Sixth Amendment is "a conflict of interest that adversely affects counsel's performance."⁶ Examples of per se conflicts of interest are when the local office currently represents another person who is ultimately involved in the case either as a co-defendant, witness, or victim.⁷ Other potential per se conflicts might be when the investigation reveals that another person may have committed the offense, and the other person is a former client; when an employee of the public defender office is a potential witness for the prosecution or an alleged victim; or when the defendant was convicted in a previous case while represented by the local public defender's office and has a colorable claim of ineffective assistance of counsel in that case.⁸ Other situations may exist which, on a case-by-case, may be determined to be a conflict.⁹

Conflicts of interest are of paramount concern to the Office of the State Public Defender.¹⁰ Therefore, when the local public defender office discovers a potential conflict interest, the Regional Public Defender will consult with the Conflict Coordinator, and the Conflict Coordinator will make a written determination documenting the conflict.¹¹ If a conflict does exist, the Conflict Coordinator shall assign the case to a private contract attorney, to a public defender employed outside of the region or to the Major Crimes Unit.¹² The Conflict Coordinator shall assign the case based on the nature of the case and the appointed attorney's qualification and caseload.¹³ All attorneys contracted for conflict of interest cases shall report to the Conflict Coordinator.¹⁴ The Conflict Coordinator approves the claims for conflict counsel and approves costs and experts for the conflict attorneys.¹⁵

¹ Mont. Code Ann. §47-1-118

² Mont. Code Ann. §47-1-118

³ Mont. Code Ann. §47-1-118

⁴ Mont. Code Ann. §47-1-118

⁵ Mont. Code Ann. §47-1-118

⁶ *Mickens v. Taylor*, 535 U.S. 162, 172 n.5, 122 S.Ct. 1237, 1244, n.5 152 L.Ed.2d 291 (2002)

⁷ See PDC standard III, 4, pp. 8-15, <http://publicdefender.mt.gov/forms/pdf/Standards.pdf>

⁸ See PDC standard III, 4, pp. 8-15, <http://publicdefender.mt.gov/forms/pdf/Standards.pdf>

⁹ See PDC standard III, 4, pp. 8-15, <http://publicdefender.mt.gov/forms/pdf/Standards.pdf>

¹⁰ See ODP policy 116 and 119, <http://publicdefender.mt.gov/policies.asp>

¹¹ See OPD policy 116 and 119, <http://publicdefender.mt.gov/policies.asp>

¹² See OPD policy 116 and 119, <http://publicdefender.mt.gov/policies.asp>

¹³ See OPD policy 116, <http://publicdefender.mt.gov/policies.asp>

¹⁴ Mont. Code Ann. §47-1-118(3)

¹⁵ See OPD policy 116, <http://publicdefender.mt.gov/policies.asp>