

State of Montana
Office of the Governor
Executive Order No. 22-2010

REPRESENTATION OF CONTRACT PUBLIC DEFENDERS

WHEREAS, the 2005 Montana Legislature enacted the Montana Public Defender Act codified at Title 47, Montana Code Annotated, establishing a statewide public defender system that became operational on July 1, 2006.

WHEREAS, the statewide public defender system is designed to provide fair and consistent public defender services through effective assistance of counsel to indigent clients.

WHEREAS, the statewide public defender system allows for and relies upon a large pool of contract attorneys who are independent contractors and not employees of the State of Montana to provide effective assistance of counsel to indigent clients entitled by law to representation.

WHEREAS, the contract public defenders are located throughout the state and lack an organized voice in governmental decision-making on issues that impact the manner in which they provide their legal services.

WHEREAS, creating a framework for the contract public defenders to secure representation can help improve delivery of services and best assure a strong public defender system.

NOW, THEREFORE, I, Brian Schweitzer, Governor of the State of Montana, by virtue of the authority vested in me by the Constitution and the laws of the State of Montana, do hereby order as follows:

1. Contract public defenders shall be given the option to organize themselves and select representatives for the purpose of discussing with the State of Montana the structural issues with their services concerning case assignment, case costs, conflicts of interest and other issues related to performance of their services.
2. For the purposes of this Order, the State of Montana shall recognize as the representative of the contract public defenders such representative as may be designated by a majority of the contract public defenders.
3. Any prospective representative may demonstrate majority designation by submitting authorization cards approving its representation, signed within twelve months of their submission by

the majority of contract public defenders comprising the bargaining unit, to the State Board of Personnel Appeals ("BOPA") for the purpose of review. The BOPA shall review the cards and, if it determines that they constitute at least 50 percent plus one of the contract attorneys at the time of submission, shall certify the party making the application as the exclusive representative of that unit. If the BOPA determines that the cards constitute at least 30 percent of the contract public defenders at the time of submission, but not more than 50 percent, BOPA shall conduct an election consistent with its standard election procedures, to determine if the majority of members designate the prospective representative as their exclusive representative.

4. The Office of State Public Defender and any other state agencies with relevant information shall provide the BOPA with such reasonable information as is necessary for determining the current contract attorney pool, the size of any potential unit and the identity of the contract attorneys, subject to any limitations on dissemination of such information that the agency believes necessary to protect confidentiality, or as otherwise required by law.

5. The Chief Public Defender and contract manager for the Office of the State Public Defender and/or their designee(s) shall meet with designated representatives of any bargaining unit for the purpose of entering into a written agreement to the extent feasible. The agreement's primary focus shall be to address operational issues with delivery of contract public defender services concerning case assignment, case costs, conflicts of interest and other terms and conditions of the delivery of contract public defender services.

6. The exclusive representative of the contract public defenders has a right to meet and confer with the Office of Public Defender regarding budget issues, including the payment for services and costs associated with providing contract public defender services. Should management and the exclusive representative come to any tentative agreement in pre-budget negotiations that increases payments or costs, an appropriation from the legislature must be approved before any such provision is binding. If appropriations are not passed approving any increased payments or costs to the contract public defenders, those sections of the tentative agreement requiring budget approval shall be null and void. All other terms of the agreement not requiring legislative approval shall remain enforceable as provided herein.

7. If any provisions of the tentative agreement require legislative action, the parties will jointly seek legislation. If any provisions of the tentative agreement require the adoption or modification of rules and regulations of any department or agency of State government in order to be effective, the department or agency shall seek the adoption or modification of such rules or

regulations through appropriate regulatory action, as consistent with the Montana Administrative Procedure Act and other applicable laws.

8. Nothing in this Order shall require that an agreement be reached on any matter.

9. In the event of impasse during negotiations or any dispute arises under the terms of this Order, the parties shall hire a mediator to engage in non-binding mediation.

10. Any agreement reached and approved by the parties shall be binding on the State and the exclusive representative, contingent upon any required legislative or administrative action as provided herein. Any agreement will be enforceable for the term of the agreement and either party may utilize procedures available under the agreement, State law and the BOPA for enforcement or resolution of contract disputes.

11. Either party may utilize the procedures available under the BOPA for all other matters.

12. Nothing in this Order shall:

a. permit contract public defenders collectively to engage in any strike or work action to secure any right or privilege from the State or any of its agencies or political subdivisions;

b. render any contract public defender a state officer or public employee, or in any way imply any employer-employee relationship between the contract public defender and the State or its subdivisions for any purpose, including but not limited to any public retirement system, membership in any public health insurance program, unemployment insurance, workers' compensation or disability coverage;

c. alter in any way any current contract provisions, policies or procedures applicable to contract public defenders, or otherwise interfere with any policies or procedures of the Office of the State Public Defender or any other agency, unless agreed to and enacted, in accordance with the provisions of this Order;

d. interfere with any ability that contract public defenders, or any organization or bar association, may otherwise have to meet or correspond with, or otherwise appear before, state agencies in regard to any matter of relevance to the agency, including any matter under discussion or set forth in any agreement between the agency and a unit representative; or

e. create any contractual rights or obligations, unless agreed to and enacted in accordance with the provisions of this Order.

13. It is the intent of this Order that in according contract public defenders and any selected representative these rights, the "State action exemption" applicable to

federal antitrust laws be fully available to the State, contract public defenders, and their selected representative to the extent that their activities are authorized pursuant to this Executive Order.

This Order is effective immediately upon signing.

GIVEN under my hand and GREAT SEAL of the State of Montana this 2nd
day of September 2010.



BRIAN SCHWEITZER, Governor

ATTEST:



LINDA McCULLOCH, Secretary of State