



## **STATEWIDE OFFICE OF PUBLIC DEFENDERS/AUTHORITY**

The Statewide Public Defender is established by law in Title 47, MCA. The Purpose of the Office of the Public Defender, as listed in 47-1-102, MCA, as (1) *Establishing a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense.* The section also list in part (4)...*establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests;* Part (6) states that the Office of the Public Defender ..... *to ensure that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the client's financial ability to pay.*

A **Commission** is established in 47-1-105, MCA, to overlook the Statewide Office of the Public Defender. The Commission has the responsibility to supervise and direct the system. The Commission also has the responsibility in 47-1-105(2) (b), MCA, to ...*establish acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable.*

The position of **Chief Public Defender** and duties are established in 47-1-202, MCA, which states very clearly in part (1) In addition to the duties provided in 47-1-201, the chief public defender *shall: (c) develop and present for the commission's approval a regional strategic plan for the delivery of public defender services; (f) establish procedures for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel;*

A **Deputy Public Defender** is created in 47-1-215, MCA. The Deputy Public Defender is responsible for a specific region and is hired and assigned by the Chief Public Defender. 47-1-215(2) states that; *Each Deputy Public Defender shall: (e) contract for services as provided in 47-1-216 and authorized by the chief public defender according to the strategic plan approved by the commission;*

More authority for the supervision of the Office of the Public Defender is found in 5-5-226, MCA, which outlines the Duties of the Legislature and specifically the **Law and Justice Interim Committee**. 5-5-226 MCA states that the *Law and Justice Interim Committee has administrative rule review, draft legislation review, program evaluation and monitoring functions of the office of the State Public Defender and that ....the committee shall act as a liaison with the judiciary on their behalf by anticipating and planning needs and future legislation.*

### **JUSTICE COURT AUTHORITY AND JURISDICTION**

Article VII, Section 5, of the Montana State Constitution establishes the office of the Justices of the Peace. Section 5, (2) *states that Justice Courts shall have such original jurisdiction as may be provided by law.* That jurisdiction is found in 3-10-111, MCA. Further, the Justice Court of Lewis and Clark County is an established Court of Record, the authority for which is established in 3-10-118, MCA, which states ....” *..the justice of the peace in a justice’s court of record has, in matters within its jurisdiction, all the powers and duties of district judges in like cases.”* Criminal jurisdiction of a Justice of the Peace is established in 3-10-303, MCA and states that the Court has *(1)(a) jurisdiction of all misdemeanors punishable by a fine not exceeding \$500 or imprisonment not exceeding 6 months, or both;..(d), concurrent jurisdiction with district courts of all misdemeanor violations punishable by a fine exceeding \$500 or imprisonment exceeding 6 months, or both; And (e) jurisdiction to act as examining and committing courts and for that purpose to conduct preliminary hearings;*

This section of law outlines and clearly establishes the Justice Court's duty to conduct initial hearings with original jurisdiction over misdemeanors punishable by imprisonment of 6 months or more and as examining courts for felonies, some of which carry the possibility of up to life in prison or imposition of the death penalty. A main portion of the right of the accused at the initial appearance is the right to ask for counsel.

The motion filed by the Public Defender's Office, also ask the Court to select private attorneys and have their bills for representation paid by the State. Justice Courts in Montana have Civil Jurisdiction granted in 3-10-301 MCA, and in part (2) of that code, they are specifically barred from any civil actions that might result in a judgment against the State for the payment of money. Therefore, this Court does not have the authority to order the State to pay.

Title 27, Chapter 8, states that A Justice Court of Record... *shall have the power to declare rights, status and other legal relations whether or not further relief is or could be claimed.* This Court does have the right to rule on this motion by declaratory judgment at this time and do so without objection from either party.

Further, under 27-8-301, MCA, the Office of the Public Defender is required to name the necessary parties, and in this case, due to the State being a party and/or certain statutes named or implied that the Court would cease to follow, the Attorney General of the State of Montana would have to be served a copy of the proceeding and be entitled to be heard. This Court has no information that this was followed.

More to the point, 27-8-206 MCA gives the court the right to refuse to render a judgment where the issue would not terminate the uncertainty or controversy giving rise to the proceeding. Even if the Justice Court had the authority to grant the motion, it would only be in effect in Lewis and Clark County and as the Office of the Public Defender is a statewide agency, facing the same issues in all of its regions, any ruling by this court would not affect the status of their cases and business in other jurisdictions.

## RIGHT TO COUNSEL

Montana Code Annotated, 46-8-101, Right to Counsel, states in part (1) *During the initial appearance before the Court, every defendant must be informed of the right to have counsel and MUST be asked if the aid of counsel is desired. Part (2) states ...if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court SHALL order the office of the public defender, provided for in 47-1-201, to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.* Therefore, the Justice Court is bound to make available, counsel to all defendants at the initial appearance, and order counsel appointed by the Office of the Public Defender.

Further, the Justice Court is bound by not only the United States Constitution, Amendment VI, but the Constitution of the State of Montana, Article II, Sec., 24. Both of which guarantee a defendant in a criminal case the right to counsel and to be appointed one by the Court, if the defendant is not able to afford one. These two constitutional requirements require no further explanation as to their plain meaning.

## FINDINGS OF FACT

On September 3, 2013, the defendant in this case, David Shannon Phillips, was cited by the Lewis and Clark County Sheriff's Office with the offense of Partner Family Member Assault. This offense carries with it the possibility of incarceration of up to one year in jail. Therefore, as required by law, the Court offered counsel to the defendant, who requested the same. The Court completed the order for a public defender and sent it to that office as required. Assistant Public Defender Jonathan King was assigned to the defendant, Phillips. The Chief Public Defender, William Hooks then filed a the motion and brief in question, asking the Court to not only rescind the appointment to Mr. Phillips, but to halt the appointment of public defenders to new defendants. The State subsequently submitted a brief in opposition.

The Office of the Public Defender then filed a nearly identical motion and brief in the Municipal Court of Helena, the Honorable Judge Wood presiding. The motion filed by the Office of the Public Defender, outlines in great detail the challenges faced by their office, due to excessive caseloads, inability to provide effective counsel and alleged damage to defendants. The motion request that the Court take into account State Bar Association requirements and rules, case law from other states and opinions of the American Bar Association. The motion request that the Court provide *Systemic Relief* to the Office of the Public Defender by halting the appointment of court appointed counsel all together, immediately, rather than taking the appointments case by case for a determination of individual financial qualifications of defendants.

### **CONCLUSIONS OF LAW**

Although the Court sympathizes with the Office of the Public Defender and agrees that its attorneys face a growing caseload, the Court believes the law is very clear as to the jurisdiction of the Justice Court and the Court's responsibilities and duties. As stated above, the Montana Constitution, State Law, and Administrative Rules of Montana, pertaining to the oversight of the Justice Court by the Montana Supreme Court and its Commission on Courts of Lower Jurisdiction, dictate the power and authority of the Justice Courts and Justice Courts of Record. This court can find no authority of any kind, within those statutes or rules that allows the Court to grant the motion filed by the Office of the Public Defender. No authority exist that grants the Justice Court the power to supersede the Legislature of the State of Montana or to declare the law, as written, as unconstitutional. This Court has a significant amount of power, authority and jurisdiction over the issues and cases, both civil and criminal, given it by the State Constitution and Montana Code Annotated. However, the Court is not able to regulate the Office of the Public Defender, beyond ordering it to provide counsel at the request of a defendant.

The Court has the authority to overrule the Office of the Public Defender and appoint counsel to a defendant, if, after a hearing, it is determined by the Court that the defendant qualifies under 47-1-111, MCA for counsel. The motion by the Public Defender's Office would have the Court halting the appointment to all new defendants at their initial appearance, including those with mental illness, language issues or other disabilities. This Court, by its conscience, will not cease giving counsel to those individuals.

The U.S. Constitution, Montana Constitution and Montana Code annotated clearly requires the Justice Court, and all courts within Montana, to make available a court appointed attorney to indigent defendants facing the possibility of incarceration, or those who are incarcerated at the time of the initial appearance. Montana Code Annotated, 46-8-101, stands alone on its face and does not give the Court discretion to deny the appointment of a court appointed attorney out of hand.

Even if the Court was to entertain the notion of accepting the motion and brief submitted by the Office of the Public Defender, it would have to question the validity of the assertion that defendants are not receiving adequate representation by the Office of the Public Defender or its attorneys. The motion and brief do not list or raise the issue of ineffective counsel for even one named defendant, cause number or case. The Office of the Public Defender simply claims that the possibility of ineffective representation exist due to the high number of cases, high turnover of attorneys and continuing lack of funding. It would be difficult for the Court to grant a motion that is based on the supposition of a defendant not being represented adequately. No actual case has been brought forward or any defendant damaged, as far as the Court can determine. In the motion to rescind the appointment of David Shannon Phillips, the defendant listed in this motion, the OPD was unable to show any damage to this defendant, and in fact he was represented by Attorney Jonathan King throughout the case, pleaded guilty and was sentenced all with the assistance of counsel.



Mr. Phillips suffered no loss of due process and the question of ineffective counsel has not been raised by him. This Court also believes this motion moot, as Mr. Phillips has been appointed a public defender and his case has been adjudicated to a conclusion. There seems to be no further reason for this motion.

### CONCLUSION

As noted above, the Office of the Public Defender has solutions provided by the Legislature in Title 47, MCA, which clearly gives that office the right to contract additional attorneys to handle case loads. Further, Title 47, list the duties and responsibilities of the Commission overseeing the Office of the Public Defender, the Law and Justice Interim Committee of the Legislative branch, the duties of the Deputy Chief Public Defender and Chief Public Defender to manage the district offices and statewide implementation of the Statewide Public Defender System, to contract for additional attorneys, manage case loads, bill the courts for client time, gain the assistance of support and administrative staff and to secure additional funding and personnel through the legislative process. The intent of the Legislature and the laws enacted by it, in regards to the Office of the Public Defender and the authority of the courts is clear.

**IT IS THE ORDER OF THIS COURT** that the motion is denied.

**IT IS FURTHER THE ORDER OF THIS COURT** that court appointed counsel will continue to be offered to defendants at the time of the initial appearance and appointed by the Office of the Public Defender, State of Montana, until this court is ordered by a higher court to cease, or placed under supervisory control by the Montana Supreme Court and told by that court to cease the appointment of public defenders.

DATED: October 10th, 2013

  
MICHAEL G SWINGLEY  
Justice of the Peace

Copies of this Notice were mailed as follows on October 11th, 2013.