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DISTRICT COURT
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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

DEPUTY

28012

IN RE THE OFFICE OF STATE
PUBLIC DEFENDER,

CAUSE NO. SB 2021-1

JUDGE DONALD L. HARRIS

ORDER RE: CONTEMPT AND
SANCTIONS

On September 13, 2021 the Court conducted a show cause hearing in this matter. The Director of the State Office of the Public Defender (OPD), Rhonda Lindquist, appeared and was represented by counsel. After considering the testimony presented at the hearing, together with the arguments and briefing from counsel, the Court announced its ruling in open court. This Order sets forth the Court's ruling.

Mont. Code Ann. § 47-1-104(3) requires the immediate assignment of qualified counsel to all cases in which the court has ordered the assignment of a public defender. The statute further mandates that, "The director shall establish protocols to ensure that the offices make appropriate assignments in a timely manner."

On August 17, 2021, the Court issued an Order to Show Cause that included a partial list of cases from Department No. 2 in which a public defender had not been immediately assigned as required by Mont. Code Ann. § 47-1-104(3). During the hearing, Brian Smith, Public Defender Division Administrator for the OPD, acknowledged that the immediate appointment of

1 a public defender had not been made in a number of the cases listed. For other cases, Mr. Smith
2 stated that he lacked sufficient information to determine whether an immediate assignment had
3 been made. Finally, in a number of cases, Mr. Smith took the position that no assignment was
4 necessary because bench warrants had been issued for the defendant and the OPD considers
5 those cases to be closed.
6

7 In announcing its ruling the Court found Director Lindquist in contempt for OPD's
8 failure to immediately assign counsel in those cases in which Mr. Smith acknowledged that
9 counsel had not been immediately assigned. For those cases in which Mr. Smith lacked
10 sufficient information, the Court stated it would carefully review the court record to verify that a
11 public defender had not been immediately assigned. For those cases which the OPD considered
12 closed, the Court stated it would remove those cases listed in the Order to Show Cause.
13

14 Attached to this Order as Exhibit 1 is the final list of cases in which the Court finds that
15 the OPD failed to immediately assign a public defender after being ordered to do so. Exhibit 1
16 shows the number of days that elapsed between the order assigning a public defender and when
17 the assignment and/or notice of appearance was filed. There are a total of 31 cases.
18

19 At the hearing the OPD explained that it is not able to immediately assign public
20 defenders to 13th Judicial District cases in Yellowstone County because: (1) the OPD's budget is
21 insufficient; (2) its public defenders already have too many cases; (3) it cannot attract sufficient
22 contract counsel because the pay is too low; (4) the Billings OPD office suffers from high
23 turnover and currently has eight full time vacancies; and (5) the Legislature has refused to
24 adequately fund the OPD. Though acknowledging that the OPD has failed to immediately assign
25 public defenders despite being ordered to do so for months, Director Lindquist could provide no
26 assurances that the situation would improve anytime soon, if at all.
27

1 While the Court understands the OPD's explanation, it is no defense to the constitutional
2 and statutory requirements that public defenders be immediately assigned to defendants when
3 ordered to do so by a court. Montana's Constitution guarantees that, "Right and justice shall be
4 administered without sale, denial or delay." Mont. Const. art. II, § 16. Montana's Constitution
5 guarantees a defendant the right to counsel and to a speedy trial. Mont. Const. art. II, § 24. To
6 preserve those fundamental rights, Mont. Code Ann. § 47-1-104(3) requires the immediate
7 assignment of public defenders in criminal cases when the assignment is ordered by a court.
8 These constitutional guarantees and statutory mandates are not contingent upon the OPD's
9 success in securing an adequate budget or upon the OPD's decision on how to allocate its
10 existing funds.
11

12
13 The OPD does not dispute the critical importance of immediately assigning qualified
14 public defenders. For example, failing to immediately assign public defenders could prejudice a
15 defendant's right: (1) to substitute the judge within ten calendar days of arraignment; (2) to a
16 prompt bond hearing; (3) to conduct a prompt investigation and preserve evidence; (4) to file
17 pretrial motions; (5) to meaningfully prepare for and participate in an omnibus hearing which is
18 typically conducted in Department No. 2 within 60 days of arraignment; (6) to a speedy trial
19 which is typically set in Department No. 2 within 120 days of arraignment; (7) to engage in early
20 plea negotiations; and (8) to promptly engage in treatment and other rehabilitation programs. As
21 Exhibit 1 demonstrates, the OPD often takes 50 or more days to assign public defenders. The
22 OPD recognizes, however, that it should assign public defenders within two to three days. The
23 OPD acknowledges that taking several weeks to assign counsel is not acceptable.
24

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26 The OPD's failure to immediately assign public defenders delays trials, sentencings, and
27 dispositions, the net effect of which increases incarceration and supervision costs, causes

1 overcrowding at the Yellowstone County Detention Facility, and contributes to the soaring crime
2 rate in Yellowstone County. Of particular concern to this Court is that constitutional violations
3 of a defendant's rights to counsel or to a speedy trial may require the dismissal of charges even
4 for those defendants accused of violent crimes. The failure to immediately assign public
5 defenders directly threatens the public's safety.
6

7 The immediate assignment of public defenders is critically important to the
8 administration of justice. The OPD has failed to obey this Court's orders mandating the
9 immediate assignment of a public defender in each of the 31 cases listed on Exhibit 1. As
10 announced in open court, the Court imposed a \$500.00 fine for each case in which the OPD
11 failed to immediately assign a public defender as ordered by this Court. These fines are imposed
12 as sanctions for the failure to obey this Court's orders. The total amount of the fine is
13 \$15,500.00.
14

15 In its ruling, the Court also ordered the OPD to assign a public defender to cases within
16 three (3) working days of any order issued by a Court presiding over a Department No. 2 case.
17 Failure to obey this order shall be sanctioned through future contempt proceedings.
18


19 **IT IS HEREBY ORDERED:**

20 1. That the Director of the State Office of Public Defender, Rhonda Lindquist, is in
21 contempt of this Court's orders for failing to immediately assign a public defender in each of the
22 31 cases listed on Exhibit 1 attached;

23 2. That, as a sanction for failing to obey this Court's orders, Rhonda Lindquist, as
24 Director of the State Office of Public Defender, shall pay a fine of \$500.00 per case for a total of
25 \$15,500.00 which amount shall be paid to the Yellowstone County Clerk of Court within 30 days of
26 the date of this Order; and
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1 3. That the State Office of Public Defender shall assign public defenders to
2 Department No. 2 cases within three (3) working days of being ordered to do so.

3 DATED this 15th day of September, 2021.

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7 DONALD L. HARRIS, District Court Judge

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9 cc: Peter Habein (via email)
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EXHIBIT 1 - DEPT. 2 CASES

Cause No.	Name	# of Days from OPD Order Req. Appointment → to Assignment of Counsel	Notes
DC 21-770	Alexis Ricker	96	
DC 21-853	Michael Elkshoulder	52	
DC 21-936	Michael Elkshoulder	30	
DC 21-717	Anthony Demontiney	106	
DC 14-1028	Michael Downing	60	
DC 17-1417	Herman K. Horse	56	
DC 17-1418	Herman K. Horse	56	
DC 20-436	Mark Gallaway	34	
DC 20-1318	Stacey Roberts	53	
DC 13-73	Scott Williams	35	
DC 13-999	Scott Williams	35	
DC 18-512	Justin Gansel	55	
DC 21-206	Joshua Sharp	55	
DC 21-255	Charlena Blaine	55	
DC 21-796	Tyson Betz	9	
DC 21-914	Amanda George	61+	Still Unassigned
DC 21-1021	Houston Shephard	34	
DC 16-1143	Preston Baumann	60	
DC 16-1167	Preston Baumann	60	
DC 17-169	Preston Baumann	60	
DC 18-377	Preston Baumann	60	
DC 20-1468	Preston Baumann	60	
DC 20-1666	Preston Baumann	60	
DC 21-1003	Preston Baumann	47+	Still Unassigned
DC 20-295	Sealmer Redstar III	49	
DC 20-685	Sealmer Redstar III	49	
DC 20-686	Sealmer Redstar III	49	
DC 20-756	Sealmer Redstar III	49	
DC 20-801	Sealmer Redstar III	49	
DC 20-1236	Sealmer Redstar III	49	
DC 20-1542	Sealmer Redstar III	49	

TOTAL: 31 Cases