

Office of the State Public Defender

Administrative Policies

Subject:	Determining Conflicts of Interest	Policy No.:	119
Title	47	Pages:	3
Section:	1-105(5)	Last Review Date:	05/14/13
Effective Date:	10/25/11	Revision Date:	05/14/13

1.0 POLICY

- 1.1 Conflicts of interest are of paramount concern to the Public Defender Commission (PDC) and the Office of the State Public Defender (OPD). Every office within the system must be scrupulous in avoiding conflicts of interest.
- 1.2 This policy specifically recognizes that waivers of conflicts of interest are, occasionally, in the best interest of the client and should be used where appropriate, but only if in the best interest of the client.

2.0 PROCEDURES

- 2.1 When a client is qualified for OPD services under Policy 105, Determination of Indigence:
 - 2.1.1 The case information will be entered into the case management system as soon as possible.
 - 2.1.2 If the case management system flags a potential conflict of interest, the Regional Deputy Public Defender will consult with the Conflict Coordinator at the earliest possible opportunity and will do sufficient inquiry into the nature of the conflict.
 - 2.1.3 The Conflict Coordinator will make a written determination as to whether an actual conflict of interest exists.
 - 2.1.4 If a conflict of interest does exist, the Conflict Coordinator shall assign the conflict to a private contract attorney or to a public defender employed outside the region as per Policy 116, Conflict Cases.
 - 2.1.5 The determination by the Conflict Coordinator shall be distributed to the Regional Deputy Public Defender, the public defender assigned to the case if applicable, and the defendant by means appropriate under the circumstances.
- 2.2 When an attorney in a public defender office is assigned a case and, during the course of representation, a conflict of interest issue arises, the public defender shall complete the conflict of interest form (Attachment A) and submit it to the Regional Deputy Public Defender.
 - 2.2.1 The Regional Deputy Public Defender shall follow the procedure described in 2.1.2.
 - 2.2.2 If the public defender assigned to the case or the Regional Deputy Public Defender disagrees with the finding of the Conflict Coordinator, the decision may be appealed to the Public Defender

Commission's Contracts Process and Approvals Committee for assistance.

- 2.2.3** Any appeal taken to the Public Defender Commission's Contracts Process and Approvals Committee shall be in writing and set forth all relevant facts, while preserving confidentiality, related to the conflict of interest question.
- 2.2.4** The Public Defender Commission's Contracts Process and Approvals Committee shall review the materials and determine whether a conflict of interest, in fact, exists. The Public Defender Commission's Contracts Process and Approvals Committee shall make a written finding of the Conflict Coordinator's decision. The Conflict Coordinator, the Regional Deputy Public Defender, the public defender assigned to the case if applicable, and the defendant by means appropriate under the circumstances will be notified of the Committee's finding. If a conflict does exist, the Conflict Coordinator shall assign the conflict as per 2.1.4.
- 2.2.5** The written finding of the Public Defender Commission's Contracts Process and Approvals Committee shall be final.

3.0 CLOSING

Questions about this policy should be directed to:

Office of the State Public Defender
Central Services Division
44 West Park
Butte, MT 59701
(406) 496-6080

ATTACHMENT A
OFFICE OF THE STATE PUBLIC DEFENDER
CONFLICT REQUEST FORM

Date Requested: _____ Case Number: _____

Client Name: _____

Judge: _____

Attorney: _____

Type of Case: _____

Describe the Possible Conflict with Specifics: _____

Requesting Attorney: _____

Conflict: Yes No

Reasoning: _____

Is Client Incarcerated? _____

Next Court Dates (if scheduled) _____

Name of Complaining Witness or Alleged Victim: _____

Regional Deputy Public Defender: _____

If Conflicted, Date: _____

Conflict Attorney called? Yes No Date: _____

Notes: _____

Date Notice of Assignment done: _____ Date to Clerk: _____

Date entered JustWare: _____ Case List: _____

Date JustWare updated: _____ Date case updated: _____

Files were mailed or picked up by conflict counsel Date: _____