OFFICE OF THE PUBLIC DEFENDER

Randi M. Hood
Chief Public Defender

STATE OF MONTANA

(406) 496-6080
FAX: (406) 496-6098

44 West Park Street
Butte, MT 59701

Chief Justice Karla Gray
District Court Counsel
P.O. Box 203003
Helena, MT 59620-3001

Dear Chief Justice Gray and District Court Counsel:

Currently the Public Defender Act, Section 47-1-104, MCA, provides that the Office of Public Defender represents parents in the dependent/neglect cases. Section 41-3-425, MCA, also provides that we appoint the attorneys for the children and the guardian ad litem. This has put us in a difficult position for several reasons.

First and foremost, the potential for conflict of interest between the child and the parents is significant. The appearance of a conflict is even greater.

Additionally, the district court judges apparently have a variety of ways they handle the issue of the guardian ad litems and the attorneys for the child. Some of them combine that role. Some want a guardian ad litem and an attorney for the guardian ad litem. Some want a guardian ad litem, an attorney for the guardian ad litem, and an attorney for the child. The best efforts of the Office of Court Administrator and this office have failed in encouraging any uniformity. To further complicate matters, the Court Administrator is paying for the guardian ad litem and we are paying for the rest.

Because of these two issues, I am considering asking the legislature to continue to make it the district court's responsibility to appoint and pay for the guardian ad litem and return to the court the responsibility of appointing and paying for the attorney for the child. This change in the law would have no financial consequence since we would return to the Judiciary the appropriation which pays for the attorney for the child. Before making a final decision, I am interested in knowing how the district courts feel about this.

Sincerely,

Randi M. Hood

Cc: Lois Menzies