

COMMISSIONERS APPROVAL

BURROWS JB

FOSS SF

CHILCOTT G

IMAN JR

STOLTZ R

Members Present.....Commissioner Jeff Burrows, Commissioner Suzy Foss, Commissioner Greg Chilcott, Commissioner J.R. Iman and Commissioners Ron Stoltz

Date.....May 30, 2013

► Minutes: Glenda Wiles

► At 10:00 a.m. the Board met with Attorney Michael Hayes to discuss and make a decision on renewing the contract for services for DFS cases. Also present was County Attorney Bill Fulbright. Attorney Hayes indicated he spoke with County Attorney Fulbright yesterday at length and understands his desire to transition the DFS cases over to the County Attorney's Office. Hayes Law Office has handled these cases under county contract for several years and has enjoyed his service to the community and the county. He understands the expertise necessary to handle these types of cases. He stated he will help the County Attorney's Office in the transition if that is what the Commissioners would like to do. He feels he and his staff have handled the cases in a very efficient manner and questioned if the County Attorney's Office will be able to save money if they take over the DFS cases.

Discussion included the county's upcoming lean budget and necessity to review services provided by the County Attorney. The Board complimented Michael Hayes on his services under this contract. County Attorney Fulbright addressed a transition process which would include continued services with Attorney Hayes for cases that are not completed through the court; the Montana Statute requirements; average number of cases per month.

The Board agreed not to terminate the contract with Attorney Hayes at this time, but to review the proposed transition of these cases with the County Attorney, utilize Attorney Hayes on a month to month basis due to continued and current cases, and work with the CFO on budgeted monies for Attorney Hayes services during the transition.

► The Board met with PCI Engineering at 2:00 p.m. to negotiate a contract for service regarding engineering services for the county. Commissioner Chilcott asked PCI if they could discount rates due to the expected county revenue decreases. PCI offered a 10% across the board rate cut. **Commissioner Stoltz made a motion to accept PIC's offer of a 10% across the board rate cut with a letter of confirmation from PCI Engineering. Commissioner Chilcott seconded the motion and all voted "aye". (5-0)**

30th

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JEFFREY B. HAYS**
MICHAEL L. HAYES*
*A PROFESSIONAL CORPORATION
**ALSO LICENSED IN CALIFORNIA

RECEIVED

MAY 16 2013

Ravalli County Commissioners

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May 14, 2013

Mr. Bill Fullbright
Ravalli County Attorney
205 Bedford Street, Suite C
Hamilton, Montana 59840

Re: DPHHS Contract

Dear Bill:

I understand that the County Commissioners have asked you to look at terminating the contract with my office which expires at the end of next month. This development came as a surprise to me.

If I understand correctly, the Commission wants your office to take over representation of the Department of Public Health and Human Services, Child and Family Services ("CFS") as part of a budget deal that would provide your office with another attorney and more staff. However, there is no timetable or plan in place for a new attorney in your office. It is also unclear how much of that attorney's time would be available for CFS cases. I know the Department is very concerned that the new attorney's time will be primarily applied to criminal and other county matters, leaving inadequate time for the prosecution of CFS cases (also called "Dependency Neglect" or "DN" cases).

Whatever the plan, I would like to meet with you fairly soon to review the transition issues. My contract expires on June 30. If the contract is not renewed for another year, then it automatically renews on a month-to-month basis until finally terminated by either the county or myself. As I mentioned when we visited, I am willing to assist in the transition, but both I (and the Department) will need to have clarification. Will my office remain as counsel of record on every case we are currently litigating until completed? If not, how, when and to whom will the cases be transferred? The cases which have not reached the "permanency" stage are in active litigation and have statutory deadlines which

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require attention. Who will attend to those deadlines, respond to the motions and discovery requests and prepare for evidentiary hearings after June 30? What should the Department do with new cases it needs to staff and/or file petitions on after June 30? As you can see from the Fact Sheet attached as **Exhibit "A"**, there are a number of pending "DN" cases in Ravalli County at all different levels of maturity. In addition, the Department is actively investigating more than a dozen new cases each month, many of which require timely advice from CFS counsel.

Since a final decision to terminate the contract has not been made by the County Commission, I would like to take this opportunity to provide some information that should be considered.

I have represented CFS in Ravalli County for over sixteen years, since January of 1997. During that time, I have never received any negative feedback from CFS, the County Commissioners or the Ravalli County Attorneys' Office. It has always been my understanding that given the cost of salary, benefits, retirement, health insurance, office space, and legal support staff, etc., the County Attorneys' Office did not believe it could absorb the duties that we are performing under the contract on a more cost-effective basis. Of course, one can always find a temporary savings by replacing a seasoned attorney (contract or salaried) with a new one, but you do lose the benefit of the experienced counsel.

My office billed the county \$66,582 for the last full fiscal year (July 2011 to June 2012) (see Billing Summary attached as **Exhibit "B"**). This was the entire bill for two experienced part-time attorneys and my legal assistant (she has twelve years of experience handling DN cases). As I look over the amount of work that billing represents, I am actually surprised at how low the fees have been. For your information, the hourly rate in my first contract, when I had no experience in this area of the law, was \$75.00 per hour. Today, the rate is \$102.50 per hour which does little more than cover overhead. My regular hourly rate is \$200.00 per hour.

This fiscal year we are on pace for the contract to run approximately \$75,000. The difference between the two years is primarily attributable to two consolidated cases I tried before the Honorable Karen S. Townsend in Missoula. (Our local district court judges were both substituted out of the cases by aggressive defense counsel). The cases tried in Missoula required three contested hearings (bench trials) including two multiple-day trials. The formal and informal

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discovery involved thousands of pages of documents. There were multiple motions, briefs and an Americans with Disabilities Act claim. In my experience, these two cases by themselves would have likely cost an ordinary private litigant more than \$50,000 to try. Incidentally, Judge Townsend wrote five separate detailed sets of findings of fact and conclusions of law following contested evidentiary hearings in the case. Without disclosing any confidential information, I can tell you that the Department prevailed in each decision.

Again, I have never received any complaint about our representation of CFS. I know funds are tight, but they have been tight for sixteen years. I try very hard to leverage my experience to resolve cases as efficiently as possible (despite a statutory scheme that encourages time-intensive litigation). I believe you will have a very difficult time duplicating our efficiency especially with inexperienced counsel. I have seen cases from other counties where weeks of court time are consumed litigating these cases due to what appears to be lack of witness preparation beforehand. It is surprising to me just how much time is involved just communicating with all of the parties, let alone litigating the cases. In the two cases I tried in Missoula, each of the four parents had their own separate attorney, and each of the two children had their own counsel. Thus, there were seven attorneys asking questions of witnesses in the case. The children also had a *CASA Guardian ad Litem* with whom I had to stay in contact.

Before the Commissioners make a final decision on the contract for next year, I would request that they meet with me and the appropriate representatives of CFS, including supervisor Shelly Verwolf and the Western Montana Administrator, Nicole Grossberg. I am advised that in the past sixteen years, unlike other counties in the State, cases my office has handled in Ravalli County have never failed a federal audit or been disqualified for foster care funds due to violation of the legal timelines. While our excellent judges deserve credit for this, my office has never missed a filing deadline. This has served the abused and neglected children of Ravalli County well. We have also not had a single case reversed on appeal in that time period. While the reversal rate is low for DN cases, many Termination of Parental Rights cases *are* appealed, and reversals occur (there was one recently in Missoula County).

In summary, given the timeframe we are up against, I am requesting a meeting with you, Bill, as soon as you are available so that we can develop

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contingency plans in the event my contract is not renewed. Our district judges may want to participate in that meeting or at least be consulted as they need to be aware of any transition plan. I would also request, by copy of this letter, that the County Commission schedule a meeting with myself and representatives of the Department to discuss the issues raised in this letter.

Please let me know when we can schedule these meetings.

Very truly yours,

A handwritten signature in cursive script that reads "Michael L. Hayes".

Michael L. Hayes

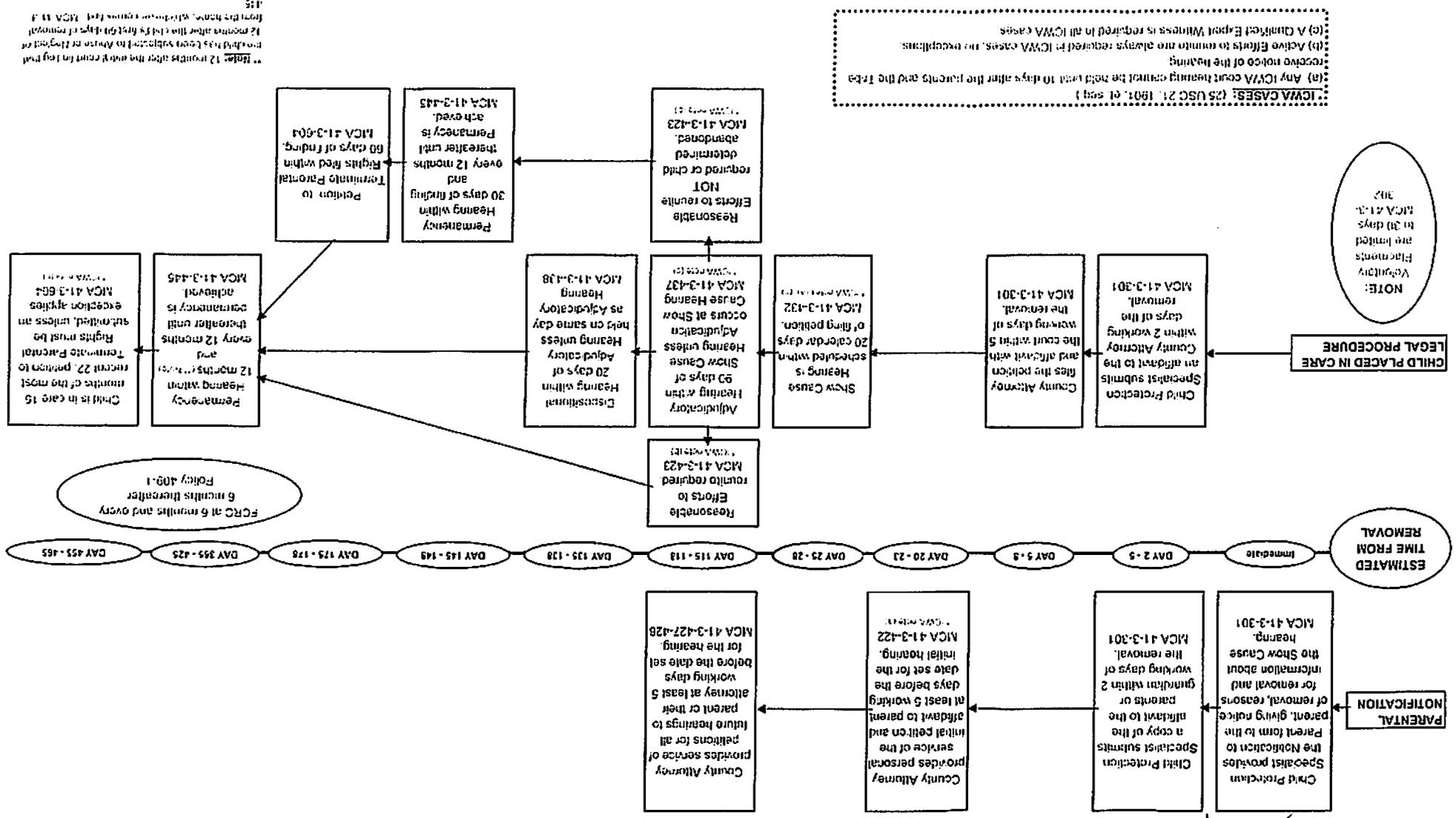
enclosures

c: Hon. Jeffrey H. Langton
Hon. James A. Haynes
Shelly Verwolf, CFS Supervisor
Ravalli County Commission

**Ravalli County DPHHS Legal Representation
Fact Sheet**

1. **Caseload.** There are currently more than thirty (30) open “DN” cases in Ravalli County involving thirty-three (33) children. Of these, twenty (20) cases are in active litigation with expiring deadlines and upcoming evidentiary hearings. In past years, my office has filed as many as 50-70 petitions a year for CFS. The number of cases has been down over the past few years as the agency has transitioned to a new Family Functioning Assessment model (also known as Safety Assessment and Management System (SAMS)) which requires substantial field work by child protective workers at the front end of a child abuse referral. As this new child welfare model has become fully implemented in Ravalli County, the demand for legal services has increased.
2. **Statutory Deadlines.** While the statutory structure under Title 41 is not as complicated as Obamacare, there are a myriad of deadlines and “tripwires” which are represented visually on the attached “Montana Statutory Timelines” Exhibit. Counsel for the Agency is responsible for managing all of these deadlines. Additional service requirements and deadlines apply to cases where the federal Indian Child Welfare Act (“ICWA”) applies.
3. **Difficulty of Prosecution.** Due to changes to Title 41 in recent years (which favor evidentiary hearings or “bench trials”) and more aggressive practices by the Public Defender’s Office, the cases have become more difficult to prosecute.
4. **Legal Training.** Over the past sixteen (16) years, my legal assistant and I have attended over one hundred (100) hours of legal training in “DN” cases at no expense to the county. We have developed a case management system that keeps track of all of the deadlines and tripwires reflected on the attached Exhibit. My legal assistant has a network of process servers all over the country in order to serve notice to non-custodial parents when a child is removed.
5. **Multiple Hearings.** Unlike most other legal cases, each new “DN” case can result in multiple “bench trials” or contested hearings. We often file and prosecute at least three (3) petitions during the life of each case, the initial petition requesting authority for court intervention (which itself can result in three separate contested evidentiary hearings: a Show Cause Hearing, an Adjudicatory Hearing and a Dispositional hearing), a petition to extend the Department’s authority, and a permanency petition which could include Termination of Parental Rights (a constitutional issue) if either parent fails their treatment plan.
6. **Collection of Costs.** At no cost to the County, my office collects thousands of dollars per year in litigation costs from the State of Montana. These costs include the costs of hiring private process servers all over the country, the costs of publication of required notices, and deposition fees.

MONTANA STATUTORY TIMELINES



** Table 12 provides after the court has found that a child has been subjected to Abuse or Neglect 12 months after the child's first 60 days of removal from his home, whichever comes first. MCA 41-3-115

-Full Legal names

Selection Criteria

A/R.Transaction Date 7/1/2011 - 6/30/2012
Clie.Selection Include: Ravalli DPHHS

Totals for	Billed	Paid/Adj	Due
July 2011	\$3,722.25	\$3,722.25	\$0.00
August 2011	\$5,129.15	\$5,129.15	\$0.00
September 2011	\$4,454.00	\$4,454.00	\$0.00
October 2011	\$5,896.14	\$5,896.14	\$0.00
November 2011	\$5,672.00	\$5,672.00	\$0.00
December 2011	\$5,506.51	\$5,506.51	\$0.00
January 2012	\$6,510.77	\$6,510.77	\$0.00
February 2012	\$9,311.51	\$9,311.51	\$0.00
March 2012	\$2,653.75	\$2,653.75	\$0.00
April 2012	\$4,630.00	\$4,630.00	\$0.00
May 2012	\$7,202.79	\$7,202.79	\$0.00
June 2012	\$5,893.66	\$5,893.66	\$0.00
Grand Total	\$66,582.53	\$66,582.53	\$0.00