

**Members**

Barnes H. Ellis, Chair  
Shaun S. McCrea, Vice-Chair  
Henry H. Lazenby, Jr.  
John R. Potter  
Per A. Ramfjord  
Janet C. Stevens  
Honorable Elizabeth Welch



**Ex-Officio Member**

Chief Justice Thomas Balmer

**Executive Director**

Nancy Cozine

**PUBLIC DEFENSE SERVICES COMMISSION**

Thursday, March 19, 2015  
1:00 p.m. – 4:00 p.m.  
Oregon Civic Justice Building  
790 State Street  
Salem, Oregon 97301

**MEETING AGENDA**

- 1. **Action Item:** Approval of minutes - PDSC meeting held on January 22 and February 11, 2015  
(Attachments 1 & 2) Chair Ellis
- 2. Report on Annual Statewide Public Defense Survey  
(Attachment 3) Paul Levy
- 3. Marion County Service Delivery Review  
Commission discussion and adoption of Service Delivery Plan (Attachment 4) Commission
- 4. Senate Bill 471 – Right to Court Appointed Counsel In Guardianship and Conservatorship Cases  
(Attachment 5) Commissioner Welch  
Amy Miller
- 5. **Action Item:** Commission approval of Request for proposals – contract services  
(Attachment 6) Caroline Meyer
- 6. PDSC Training: Oregon Government Ethics Law  
(Attachment 7) Paul Levy
- 7. Budget Update Nancy Cozine
- 8. OPDS Monthly Report OPDS Staff

**Following the meeting, there will be a reception honoring Peter Gartlan, Chief Defender, who is retiring after over 27 years of service to the state and public defense clients.**

**Please note: The meeting location is accessible to persons with disabilities. Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the**

**meeting, to Laura Al'Omrani at (503) 378-3349.**

**Next meeting: June 18, 2015, 10 a.m. – 2 p.m., at the Mt. Bachelor Village, 19717 Mount Bachelor Drive, Bend, Oregon, 97702. Meeting dates, times, and locations are subject to change; future meetings dates are posted at:**

**<http://www.oregon.gov/OPDS/PDSCagendas.page>**

# Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, January 22, 2015  
10:00 a.m. – 2:00 p.m.  
Office of Public Defense Services  
1175 Court St. NE  
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis  
Shaun McCrea  
Henry Lazenby  
John Potter  
Janet Stevens (by phone)  
Hon. Elizabeth Welch  
Chief Justice Balmer

STAFF PRESENT: Nancy Cozine  
Ernie Lannet  
Caroline Meyer  
Amy Miller  
Cynthia Gregory  
Angelique Bowers

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The meeting was called to order at 10:00 a.m.

**Agenda Item No. 1 Approval of minutes – PDSC meeting held on December 12, 2014**

**MOTION:** John Potter moved to approve the minutes; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

**Agenda Item No. 2 Marion County Service Delivery Review**

Chair Ellis began by thanking everyone in Marion County for the time and effort they dedicated to the review process. Nancy Cozine then provided a summary of the Service Delivery Review Report and recommended areas of Commission inquiry.

Chair Ellis asked Judge Prall whether there was any information the court would like the Commission to consider. Judge Prall said the court shared the concerns and accolades outlined in the report, and confirmed that the introduction of a public defender office heightened the responsibility and professionalism of defense delivery in Marion County. She noted that the court shares the long-standing concerns created by the distance between the

annex and the courthouse, and problems with lawyers signing themselves up to be in two places within too short a timeframe and then being late to court. She said the eCourt implementation exacerbated the issue because some of the annex work had to be shifted back downtown, increasing the need for travel between the two locations. Chair Ellis noted the efficiency created in the public defender office by having only one lawyer responsible for taking cases each day, and asked whether a similar efficiency could be created within the MCAD group; Judge Prall thought that might reduce time conflicts.

Chair Ellis also asked questions about lawyer assignment within both entities. Judge Prall said her impression was that both providers were making an effort to assign cases based upon experience, but that efficiencies might be captured through increased specialization at MCAD.

Chair Ellis expressed his sense that the public defense providers in the county worked well together. Judge Prall agreed, saying that Marion County benefits from a very collegial bar. Chair Ellis asked whether the court has good access to both Mr. Weiner and Mr. Sermak. Judge Prall responded in the affirmative, explaining that both were very available during eCourt implementation. She commended their ability to work collaboratively and follow through with communication to their groups. Commissioner Potter asked whether there was any regular policy meeting for the defense bar, the judges, and the prosecution. Judge Prall said that a local Criminal Justice Advisory Council is on the horizon, delayed slightly because of eCourt, but starting soon. She also mentioned the Annex group, which meets regularly to address operational issues. Chair Ellis asked whether non-English-speaking populations are being well-served. Judge Prall noted that it was very helpful to have several lawyers who speak Spanish, that in other cases the attorneys are good at utilizing and accessing interpreters, and that she is satisfied that attorneys are communicating well with their clients.

Chair Ellis asked whether the Commission could do anything to improve the quality of counsel in Marion County. J. Prall commended the Commission's approach to the Service Delivery Review, and indicated that it was a helpful and important process. Chief Justice Balmer asked whether there are enough lawyers available to handle the serious felony cases. Judge Prall said both providers seem to be focused on training newer lawyers to be able to handle these cases, pairing a less experienced lawyer with a more experienced lawyer.

Chair Ellis thanked Judge Prall and invited District Attorney Beglau to share his thoughts. Mr. Beglau began by thanking the Commission for including his office in the review discussions, and emphasized the collegial nature of the practice in Marion County. He expressed strong support for having prosecutors and defense practitioners on equal footing, and appreciation for Tom Sermak's and Jon Weiner's level of involvement in policy discussions. Mr. Beglau indicated that both were present for important discussions, like new approaches in misdemeanor cases where defendants are unable to aid and assist, and diversion of prison-bound property offenders who are at a medium and high level risk rate, which is saving about 50 or 60 prison beds, and specialty courts. He acknowledged that it can be harder to get the message out to MCAD attorneys because it is a bigger, more diverse group. He also suggested that it would be helpful to have those in public defense management positions refrain from taking a caseload.

Chair Ellis asked whether the District Attorney's Office is experiencing the same level of turnover that we are told occurs at the public defender's office. Mr. Beglau said that it isn't as big a problem, but that the office is starting to lose people to jurisdictions with better salaries. Chair Ellis asked whether there is an experience disparity between lawyers in the DA's office and those in the PD and MCAD. Mr. Beglau said there is disparity, and went on to explain that as Oregon comes out of the recession, counties are starting to increase salaries. He indicated that the issue is being studied in Marion County. He again emphasized the importance of creating equal footing between the defense and prosecution. When asked about anything the Commission could do a better job of, Mr. Beglau suggested increased training and mentoring for defense lawyers, saying that the issues presented today are more complex

than ever; he also suggested increased salaries. Commissioner Potter asked about the discovery process in Marion County. Mr. Beglau indicated that it was the subject of a recent discussion and would be examined as part of the county's effort to identify ways to be more effective at resolving cases quickly.

Chair Ellis asked about the composition of the lawyers in Mr. Beglau's office. Mr. Beglau indicated that there are thirty-three lawyers, in four sections: domestic violence, child abuse and adult sexual assault, career property and the drug team. He explained that on each team there is a manager and five or six lawyers. The remaining case types are divided up, mostly the misdemeanors, and the entry level lawyers get most of those cases. He indicated that with a manager for each team, there is a lot of supervision and mentoring on the more serious cases. Mr. Beglau pointed out that it takes five years for a lawyer to know what they are doing in a child abuse case, and that he wouldn't want a brand new lawyer taking on a child abuse case or a Measure 11.

Chair Ellis thanked Mr. Beglau and invited Mr. Weiner and Mr. Sermak to present information. Mr. Weiner began by saying that he began as interim executive director in January of 2014 and that it became obvious very quickly that his mission was to understand and address concerns outlined in the peer review report. Chair Ellis asked Mr. Weiner whether he is handling a caseload. Mr. Weiner said he doesn't have daily assignments, but that he tries to co-counsel with newer lawyers in more serious cases, and that he also likes to work on murder and PCR cases.

Chair Ellis asked about the composition of the MCAD board. Mr. Weiner indicated that three of the nine are external members and that the monthly meetings are well attended. Cheryl Richardson, Chair of the MCAD board, indicated that they would soon be filling the executive director position and that Mr. Weiner would be a frontrunner given the work he has accomplished in the last year.

Chair Ellis asked about MCAD's methodology for assigning cases. Mr. Weiner explained that MCAD lawyers don't get to decide what types of cases they are qualified to handle on their own; it must be approved by MCAD. He indicated that he is working with the court to make sure that only the most qualified lawyers are taking murder and Measure 11 cases, and he is also looking at the possibility of having lawyers specialize in certain case types.

Chair Ellis asked Mr. Sermak about turnover at the PDMC. Mr. Sermak explained that the primary reason is financial, and he gave several examples of lawyers who simply could not continue to practice with the low salary. Commissioner Potter asked why lawyers from MCAD aren't applying at PDMC. Mr. Weiner speculated that it was because most of the MCAD lawyers have been their own boss for a long time, and changing now would be very difficult, and that many like the flexibility of doing a variety of case types. He estimated that out of the 38 MCAD lawyers, 20 to 25 are full-time criminal law practitioners, but the rest enjoy other private work. Vice-Chair McCrea noted that Mr. Weiner was now monitoring caseloads, and asked whether that is working out alright. Mr. Weiner indicated that it was. Vice-Chair McCrea followed up by asking whether there were any lawyers who were not taking cases regularly enough to stay current on the law. Mr. Weiner indicated that one lawyer didn't take a particular case type, but that it was not a problem, and said that the group is really working on getting newer lawyers up to speed so that they can take felony cases.

Mr. Weiner and Mr. Sermak expressed appreciation for the work of the Commission and employees at the Office of Public Defense Services. Both said the system is working well at this point. Mr. Sermak pointed out that his firm is prepared to expand when necessary, and expressed support for the idea of staffing specialty courts out of the public defender office. Chair Ellis asked whether conflicts are becoming a problem now that PDMC has been around for a longer period of time. Mr. Sermak said they are becoming more prevalent, but checking dockets in advance allows them to avoid having too many. Vice-Chair McCrea asked Mr.

Sermak whether he is still carrying a caseload, and he indicated that he stopped taking new cases several months ago and finished his last case late last week. He indicated that this change has given him time to address county policy and structure issues in his office. Vice-Chair McCrea finished her questions by asking Mr. Sermak about the challenges of practicing in Marion County. Mr. Sermak said they will be working on discovery issues – that often video tapes or other evidence are not requested from the police by the DA’s office until the defense attorney requests them, and this slows down the whole process. Mr. Sermak also noted the challenges with Measure 11 cases, saying that in Marion County there is a policy against negotiating out of Measure 11. He indicated that as a result, 20% of the Measure 11 cases in Marion County went to trial in 2012. He compared this to other counties: 27% in Clackamas County (but only 86 cases were filed during the entire year); 7% in Multnomah County; 6% in Lane County; and 12% in Washington County. He said this is a major challenge.

Chair Ellis thanked Mr. Weiner and Mr. Sermak.

**Agenda Item No. 3 Proposed Contract Revisions**

Commission members took a brief look at the proposed contract changes. Caroline Meyer noted that the contract would be part of the Request for Proposals submitted for Commission approval in March 2015.

**Agenda Item No. 4 Approval of new Contract for Sage Legal Center**

Caroline Meyer described proposed contract changes in Multnomah County, where the Native American Program, Legal Aid Services of Oregon (NAPOLS) requested that their contract for providing representation in Indian Child Welfare Act (ICWA) cases be terminated. She explained that the Commission was being asked to approve that the ICWA case representation be established with a new entity, Sage Legal Center. The Commission asked for clarification regarding the terms of the contract.

**MOTION:** Vice-Chair McCrea moved to approve the contract; Commissioner Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

**Agenda Item No. 5 Commission approval of Payment Policies and Procedures – Updated GSA rates**

Angelique Bowers requested Commission approval of recently adopted changes to the federal mileage reimbursement rate.

**MOTION:** Commissioner Potter moved to approve the adjusted schedule; Vice-Chair McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Ms. Bowers also explained to Commission members that the PDSC budget was restored to full current service level with the Co-Chair’s budget framework. Chief Justice Balmer noted that both OJD and PDSC budgets had been cut in the Governor’s Recommended Budget, and that both had been restored to full current service level as part of the Co-Chairs’ budget.

**Agenda Item No. 6 Executive Director’s Annual Report to the PDSC**

Nancy Cozine provided a very brief summary of the Executive Director’s Annual Report. Commissioner Welch requested a language change in the last section of the report, and Chair Ellis requested that the final version be shared with Oregon legislators.

**Agenda Item No. 7 OPDS Monthly Report**

Ms. Cozine introduced Ernie Lannet, Assistant Chief Defender for the Appellate Division. He provided an update regarding new lawyers in the Appellate Division. Commissioner Potter asked whether OPDS is receiving applications from out-of-state. Mr. Lannet estimated that one fifth are out-of-state candidates. He also described recent educational opportunities provided to Appellate Division lawyers. He concluded by summarizing cases now pending before the Supreme Court.

Caroline Meyer gave an update regarding the recruitment process for the vacant analyst position, noting that everyone in the office is missing Shelley Winn who left the office in early November.

**Agenda Item No. 8**

**Executive Session - Executive Director Performance Review**

Chair Ellis made the following announcement:

The Public Defense Services Commission will now meet in executive session for the purpose of conducting personnel review. The executive session is being held pursuant to statute which permits the Commission to meet in executive session for the purposes just stated. Representations of the news media and designated staff, shall be allow to attend the executive session. All other members of the audience are asked to leave the room at this point. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room.

The Commission reconvened and the meeting adjourned at 1:30 p.m.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, January 22, 2015  
10:00 a.m. – 2:00 p.m.  
Office of Public Defense Services  
1175 Court St. NE  
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis  
Shaun McCrea  
Henry Lazenby  
John Potter  
Janet Stevens (by phone)  
Hon. Elizabeth Welch  
Chief Justice Balmer

STAFF PRESENT: Nancy Cozine  
Ernie Lannet  
Caroline Meyer  
Amy Miller  
Cynthia Gregory  
Angelique Bowers

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The meeting was called to order at 10:00 a.m.

**Agenda Item No. 1 Approval of minutes – PDSC meeting held on December 12, 2014**

0:01 Chair Ellis Is Janet on the phone?

0:01 J.Stevens Yes.

0:03 Chair Ellis Alright. We will call the meeting to order. Commissioner Stevens is on the telephone. We have quorum present. So the first item is the minutes from the meeting of December 12, 2014. Are there any additions or corrections? If not, I would entertain a motion to adopt the minutes.

**MOTION:** John Potter moved to approve the minutes; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

**Agenda Item No. 2 Marion County Service Delivery Review**

- 0:41 Chair Ellis                   The next item is the Marion County Service Delivery review. I very much appreciate the number of people coming to assist in that. Nancy, do you want to introduce this and give a little background on the task force that did this review?
- 0:058 N. Cozine                   Certainly. Thank you, Chair Ellis. As our Commission we recall, we did revise our review process so that we now have a peer review, where peers go into the county and do extensive interviewing, write a report, and there is a report for each entity that is under review in this county. We had two entities under review. We had the public defender of Marion County and we also had MCAD. The report that was produced by the peer review team was very thorough and, in fact, I should give Paul Levy credit for the incredibly detailed summary of the processes and procedures in Marion County. He did a very thorough job. Much of what you see in your report is actually taken from the peer review in terms of process, procedure, description of the history in this county. You have read the report. You have probably looked at the recommended areas of inquiry. The structure of the system seems to be working very well. It does seem that the Commission's action of adding a public defender in Marion County did have an effect on the overall quality of services and that the structure is working well. There are qualities issues that the Commission may wish to inquire about. That is true of both entities. The issues for each entity are different. At the public defender's office there is a very high rate of turnover. That creates a situation where lawyers are constantly in the process of being trained. Once they are trained then they leave. That is a real challenge for PDMC. At MCAD, there are quality performance issues that have not been entirely addressed. I didn't put it in the report, but it may be worth the Commission's time to inquire about the status of the executive director. He has been in an interim status for a little over a year now. You saw his responses to the peer review and the service delivery review. He has been very responsive. As long as he is in an interim capacity, it seems that the MCAD entity is a little less able to move forward. So the Commission might want to inquire about what the plan is for MCAD's leadership on a permanent basis. The management portion of both entities is addressed in the report. For MCAD, they have an extensive database. They have been working on it and I think the Commission might want to hear some of the work they have been doing on that. At PDMC, the issue of attracting and retaining lawyers clearly seems to be a big issue. There were some system issues addressed in the report. There was the piece regarding Measure 11 and the outcomes in Marion County. There were some other pieces about distance between courthouses and challenges for lawyers that the Commission may wish to inquire about. But as I said, overall the structure appears to be working well. It seems to be a very collegial and positive county for both public defenders and, prosecution, and the court and other entities.
- 4:32 Chair Ellis                   Thank you. Judge Prall, would you like to share with us your thoughts. I understand you are here on behalf of Judge Rhoades who has grandparental duties.
- 4:47 J. Prall                       Indeed. As a brand new grandma. In reviewing the report, I think Judge Rhoades, and the bench as a whole, shared the concerns that were outlined in the report, and also the accolades that certainly have been earned by both offices. I do think, and I think Judge Rhoades and the bench would also say that the introduction of the public defender's office did heighten the responsibility and the professionalism of the defense delivery. Some of the concerns certainly are things that we have had for a long time about the annex and the courthouse being so far apart. Then you have traffic that they have to deal with and lawyers signing themselves up to be in two places at once, or not exactly the same time, but the timeline is so big that we have folks being late. We are especially having more problems with that right now with the implementation of eCourt. Our annex had to shift some of the work from the annex back downtown.
- 6:02 Chair Ellis                   Help me understand. How does eCourt impact that separate facility issue?
- 6:02 J. Prall                       So our annex handled the majority of the initial appearances for all of our criminal cases. Two judges out at the annex handling all of those matters. Most of the defense bar at the

annex, certainly in the mornings, there is a heavy docket in the mornings and then in the afternoon. That load at the annex with all the sentencing, and Marion County for the first time has gone to the Uniform Criminal Judgment which the staff is now doing. The prosecutor used to do the judgments and now the judicial staff is doing the judgments. That has slowed us down considerably. In order to take up that slack, if you will, or the extra load, we have sent some of the cases downtown to be handled rather than leaving them at the annex, so most of our diversion docket has done downtown. Well the lawyers use to be able to just schedule themselves at the annex to do multiple things. Now they have to be in multiple places. Some of the sentencing hearings have been shifted downtown because when you have a lot of judgments that takes a lot of time in the courtroom finalizing those judgments in our system. So we shifted some of those pleas and sentencing downtown, which now makes it so the lawyers have to literally be in two places at once.

7:20 Chair Ellis As I read it, it sounded like the public defender office, Mr. Sermak, takes all the assignments and then reassigns to his staff, but on the MCAD side the individual lawyers are all there.

7:38 J. Prall Yes.

7:38 Chair Ellis Is there some way to replicate for MCAD the efficiency that the public defender is getting?

7:44 J. Prall I think we have talked about that before, especially with the switching of the docket downtown. Just this small docket that we have now just on Wednesdays is when we are doing this kind of shifting of the workload to see if one lawyer could be there. Even for the public defender's office, while Mr. Sermak takes the initial appointment, he then immediately hands it off to the lawyer that is going to be on the case. So even the public defenders it is the client's lawyer that appears with them at that downtown appearance or the next appearance at the annex. So I think the public defender's office procedure, while initially for that very first appearance, I do think that it saves lawyers being in multiple places, but after that it is the same for both entities. The lawyer is appearing with their client.

8:35 Chair Ellis There is another kind of different approach that the PD office was using from MCAD, as I read the report, and that is the PD office assigns cases more in terms of expertise and experience and MCAD tends to assign cases to the one with the most capacity. From your point of view, are the cases getting assigned to the right people?

9:05 J. Prall I don't really know what their internal procedure is. I don't know what their actual policy is. I haven't read that, but I think what I have seen from both entities is really an attempt to make sure that all the lawyers that are in their entity are prepared to take on a Ballot Measure 11 case, so that they have a seasoned lawyer appearing with a not seasoned lawyer and trying to get them up to where they would be able to do Measure 11 cases or a murder. So those are things where I think both entities are trying to make sure that all of the folks in their group have adequate experience and get a wide range of experience with different cases. I haven't seen that MCAD assigns cases based on expertise. Like you just do property offenses or you just do domestic violence cases. They do everything. I do think that they probably do have a caseload issue where some attorneys are just as anything, as they are available they would take more days, if you will, at the annex. They sign up for their days at the annex and that is where they get their assignments. You might have to talk with Mr. Weiner and Mr. Sermak about how they actually divvy them up.

10:27 Chair Ellis We use to have a structure where this Commission would go to a jurisdiction and focus on, do we have the right size of entities and allocation of caseload. There are a lot of good reasons why the preferred model for us is to have both a PD and a consortium in the same area, in part from a conflict point of view because consortia are not subject to the unit rule. Now we have moved a little bit so that the task force that is doing an evaluation of a particular office we get to see that. For awhile we didn't on the theory that the respondents might feel like the police were coming. I think we have a really good attitude now that this is peer review. It is

supportive. It is collaborative. It is not intended to be horribly critical, but helpful. My question to you is do you feel we have the right balance in terms of caseload going to the consortium, caseload going to the PD, or would you rather see one or the other increase or decrease their share?

- 11:48 J. Prall Well it seems like it is working well. I haven't heard complaints from either that we have so much or we aren't getting any cases. I don't know that any of the judges are hearing that kind of feedback from the attorneys, or that we are overwhelmed by our caseloads. The public defender office is much smaller. They basically come one day and they get all the cases on that one day. Then MCAD comes the four other days.
- 12:12 Chair Ellis The report didn't have a number, but it felt to me like it is sort of 70/30, 80/20, somewhere in there.
- 12:22 J. Prall They might have to tell you what the actual ratio is. But it breaks down to be more like a 1/5 goes to the public defender office and the rest goes to MCAD just because of how many days they are there. Mondays are busy because of the weekend, so that may also be strategic. I think for the number of folks that are in the public defender's office, I think that is being evenly distributed. I don't know that trying to enhance - trying to make them equal entities, if that is what you are asking? Whether we think that they should be equal entities?
- 13:06 Chair Ellis There is no specific number. I am interested whether you feel as time goes on, we should move caseload from one to the other or not?
- 13:14 J. Prall It is a not a monopoly. So having two entities there, I think accomplishes the goal of making sure that both entities are doing well and they are at the top of their game. I don't know that they have to be equal in size to ensure that. If the public defender's office wants to grow then we can accommodate that growth. Obviously that would impact how many cases go to MCAD. Maybe as lawyers go to other places that they just kind of an attrition thing. I don't know that the judges would have a particularly say or particularly fan fest to, "gosh we wish they were equal entities, or we think the public defender's office should have more cases." I don't know that we have an overall feeling about that.
- 14:04 Chair Ellis Several of us were here in 2004 and 05, when we had hearings on Marion County. It was stressful. There was a lot of criticism at that time. MCAD was the sole provider. I do want to say that I think Judge Lipscomb was extremely helpful. I think bringing a public defender in helped everybody. I think it upped the game for all. There was a period when it wasn't clear whether the public defender was going to be welcomed by the MCAD group. My sense is those days are behind us. It is pretty collaborative now. Do you get that feeling?
- 14:54 J. Prall Yes. It could have something to do with Marion County in general. I would say the Marion County Bar as a whole, civil practitioners, domestic relations practitioners, and our criminal practitioners, they all get along very well. We have lots of organizations within our jurisdiction which encourages the lawyers to mingle. You know criminal with domestic relations or with civil lawyers, so we just have a very collegial bar as whole. I think when they come from other counties and then come to Marion County and start practicing law. They can see that the judges expect that as well. Expect the lawyers to be professional and get along. That is not just the plaintiff's bar and the defense bar. Or the DAs and the defense attorneys, but it is all the lawyers as a whole. I think that kind of atmosphere has helped to welcome in the public defender's office. I wouldn't say animosity, but some stress about what is this going to do to us and what is it going to look like. Overall they all get along very well. They are all professional to each other. They all have status conferences at the same time. They are all in the room together. There doesn't appear to be any concern about they came into our turf or anything.

- 16:13 Chair Ellis            On the quality issues, do you as a sitting judge feel that you have good access to both Mr. Weiner and Mr. Sermak?
- 16:22 J. Prall                They see me more than any other judge right now. I was the eCourt implementation judge so we have lots of meetings and I very good access to Mr. Sermak and Mr. Weiner. Probably more than they would like. I think we all are able to access them. I heard the kind of initial concern about Mr. Weiner being maybe not the official and final director, but you don't have that feeling that he is not the official head of the organization. He is very accessible. When you ask him to do things they are done. He gets the word out. He is acting very appropriately as their interim director. I am not sure if he is prepared to tell you what the next steps are there, but I have never felt like they weren't really responsive to the bench's concern. In the report there are concerns about particular lawyers. It doesn't reflect on the whole organization. I think it is easier for the public defender's office. They are a small organization. They can very quickly deal with any concerns about a particular lawyer. I do agree and I think the bench agrees that there has been a lot of turnover in that organization. I think you get that in smaller organizations. It is going to be more obvious of that turnover. Also, because they are still newer to Marion County, but MCAD has had lawyers come and go as well. Some that needs some particular attention. But those things I think they are very responsive to when the judge has concerns. Mr. Sermak or Mr. Weiner are very responsive when the court is saying we have real concerns about this person. Let's do something and they are addressing those concerns.
- 18:08 J. Potter              Nancy and Shelley and I visited, I think it was in the tail end of October, to do a little pre-site. I agree with your assessment that the collegiality of the bar seemed to be at a high level. We also heard from the judges that they sort of have an open door policy. You can step in and no one is going to bite your head off.
- 18:33 J. Prall                Right.
- 18:33 J. Potter              My memory serves me though, there wasn't an official meeting mechanism for the defense bar, the judges, and the prosecution on sort of a regular basis. Is that still the case? Is my memory correct?
- 18:47 J. Prall                Well we have several kinds of different meetings that are in place right now. There is the local Criminal Justice Advisory Council that is really something that is on the horizon of getting really up and moving. I think we have delayed a little bit because of eCourt. So right now we have what we call the eCourt Criminal Work Group. Really working on implementing the eCourt system and making sure all the partner's voices were heard. So that has been going on. That really has all the members of the Criminal Justice Advisory Group on it. Then we have an annex group. Folks that meet at the annex regularly. They are more nuts and bolts about how the process is and how we can make things run more smoothly at the annex. So I do think it important for us to implement the advisory board and get all those folks on that and move forward with it. Judge Rhoades is looking to make sure that gets implemented here fairly soon. I think that Mr. Weiner and Mr. Sermak are also ready to engage in that and make sure that we have a group that meets regularly. Either monthly or every other month is what we are hoping. Again, the group of people are meeting regularly. They are discussing a lot of various things at different meetings. We really need a place to pull it all together.
- 20:09 Chair Ellis            Marion County has a significant Hispanic population and a significant Russian population as I understand it. From your perspective do you feel that these ethic communities are getting good service and good communication?
- 20:25 J. Prall                There are several of the lawyers who speak Spanish. I think that is really helpful when we are able to get those folks together with the Spanish speaking. I don't know if there are any that speak Russian. Maybe? Not anymore. But I think that the attorneys are very good at

utilizing and accessing the interpreters. A lot of times the court has the interpreters available and allows them to stay and chat with their attorneys after a proceeding, but it appears that they utilize their own. They hire folks because I see them come with interpreters for their clients. So they are having fine conversations with them. We talk with them when we are taking a plea to make sure that they have gone over the entire document with their clients. I am satisfied that they are communicating well with their clients. I don't see a problem with that. I think the bench would like to be more diverse. It would be good if we had a diverse bench, which Marion County really doesn't. I think you would hope that from the very beginning of the system to the end of the system there is diversity that we can accommodate it. I think every organization within our system could be more diverse and that would assist folks from different cultures. Taking those culture values that also come into play. As we sit right now, I think the bench is satisfied that the bar is doing a good job communicating with their clients and making sure that their voices are really heard.

- 22:03 Chair Ellis      So any advice for us? We are trying hard from our perspective to have quality counsel in your community.
- 22:15 J. Prall      I think what you were saying about really just focusing that this is peer review. That is not you are coming to the principal's office or the police are on their way to do a shakedown. I think it is really important for us to get these reviews and for us to really critically think about how we provide the services to the public and how the defense bar is interacting with their clients and with each other and the bench. I think it is good to say that this is a peer review. Let's look at as an opportunity to do better and to focus really in that regard rather than making them feel like, okay, we are picking on you about these things and if you don't change them then we are going to shift all the work to the public defender's office, or we going to shift the work over to MCAD. I think it is better to have this not adversarial in one respect. Not adversarial but really a learning experience for them and to make the process better.
- 23:15 Chair Ellis      Okay. Other questions for Judge Prall?
- 23:14 J. Prall      I am taking up all your time.
- 23:20 Justice Balmer      Are you satisfied with the range of experience. I am particularly thinking about the serious cases, the murder cases, maybe not death penalty which is a whole other thing. It is not every criminal defense lawyer that has the experience level or skills to handle some of the really serious felonies.
- 23:41 J. Prall      And Marion County unfortunately does have a lot of those cases.
- 23:47 Justice Balmer      Yes. Right.
- 34:58 J. Prall      It is pretty clear that the same lawyers are generally involved in the very serious cases. I think they are doing a really good job of trying to bring up the younger lawyers or the newer lawyers. They are generally paired where there is a newer lawyer with the more experienced lawyer, versus in the past you would see that it was two very experienced lawyers and they are not sharing that experience. But now I am seeing pretty regularly you have the experienced lawyer with the inexperienced lawyer and they are training them up.
- 24:23 Chair Ellis      In eastern Oregon we often hear the special challenge is handling cases of prisoners. How do you do that?
- 24:35 J. Prall      How do we do that?
- 24:36 Chair Ellis      Right. In other words, do you bring them into the court, or do you go to the prison?

24:42 J. Prall We don't go to the prison. That would be fun, wouldn't it? We do have a good relationship with the Department of Corrections. A lot of times they just, literally, take them across the field to the jail and then the jail handles that prisoner. If it is a very high risk prisoner then the Department of Corrections is bringing them over. There is no hassle at all. They are just up the street. They bring the prisoners to the courthouse for their appearances. So we probably have in person appearances from prison inmates more often than other counties, because they are very local and it is easy to transport them. We do have folks who still have matters - I have a juvenile docket so I have parents that are in prison over in eastern Oregon. We generally have them by video. They have a great video system, so we will have them by video in the courtroom. If it is not a serious hearing we will just have them by phone.

25:42 Chair Ellis Okay. Other questions for Judge Prall? Thank you.

25:48 J. Prall Thank you very much.

25:48 Chair Ellis District Attorney Beglau. How are you?

25:52 W. Beglau Good morning. It is nice to be here, Mr. Chair. Mr. Chief Justice, members of the Commission. My name is Walt Beglau. I serve as the elected district attorney here in Marion County. It is great to be back. I made an environmental ....

26:07 Chair Ellis Remind me how long you have had that position?

26:07 W. Beglau Well when you said 2004, that would have been my anniversary, 10 years. So October is when I got the opportunity to step into the elected position.

26:20 Chair Ellis But you had been in the office before that?

26:20 W. Beglau Yes. My entire career. Twenty-seven something years now. I did make the mistake of printing out the email from Nancy here this morning, but I do want to thank her and the Commission for kind of having access along the way to the process. I hope that we have added to the opportunity that provides you to examine the services. I guess my starting point this morning for all of you would be that we enjoy a very strong, professional working relationship with the defense organizations in Marion County. That is kind of the sound bite of the work that we do here in Marion County. As you can see from the numbers and the workload that we have, we are kind of a heavy hitting county here in Marion County. You talk about institutions, the state hospital, the state penitentiary, and the cases that come out of there. I would just want to restate that I think that relationship reflects how important it is that representation is on equal footing, and that we can work together through some of the problems that we have. I think organizationally and personally, we are very much committed to that when I think of the leadership and the folks that are doing public defense work here in Marion County. A couple of examples of that, Tom and Jon are quite engaged in the policy discussions. I have been thinking of some of the other organizational pieces. The Marion County Public Safety Coordinating Council. There is great representation there. We are working through the implementation of 3194 and other issues that come up.

28:10 Chair Ellis The report suggests that the public defender was more engaged in those discussions than MCAD. But you are apparently saying both seem to be engaged.

28:21 W. Beglau I would say that Tom has had a better opportunity early on to get engaged and create those relationships, so that his representation there is stronger, that is correct. I think that Jon is working very hard at that. We recently had some discussion about the 370 populations. The misdemeanors who are unable to aid and assist at the state hospital. I know that both organizations engaged in that. I think there is some work to be done on the MCAD side about getting into those policy discussions so that we can kind of level out and smooth out some of the challenging areas that we are seeing in and around implementation of policy. I think there

is some work to be done there on that side. I think that is a fair observation. They have got their people connected to some of the innovational and troubleshooting areas that we are doing. The last time I came in front of you we were speaking about our 4/16 problem, which is where we are taking prison bound property offenders at a medium and high level risk rate. We are not sending them to prison and engaging a local supervision with our sheriff. We are saving about 50 or 60 prison beds with that program right now under the umbrella of 3194. As you know, it always takes everyone at the table, the court, the defense bar, the DAs, the sheriff, and community supervision to make those things work. That is one example. We are right in the heart of right now they are fully engaged in the specialty courts. We have got a little more than a year with our veteran's court. That would be our newest one. We went from a docket to a court now. Again, we have to have your folks at the table working through those decision points, not only at the team level but organizationally as well as it works through our annex and other courtrooms to kind of steer those individuals in need to that unique forum that specialty courts represent. Those are important things and they stand out in my mind. I just think that both Tom and Jon carry an open door kind of approach. We can talk about issues. Just recently we met with the presiding to talk about how we process in custody in our jail and what are some of the sticking points to make sure that we are moving along effectively, but also making sure all of the appropriate decisions are being made along the way. They were both there putting forward the issues that make things work better in our county and making it more operational. It would be great, I guess if they weren't as much working managers. I don't do any real work anymore. I can go to a lot of meetings. We don't all enjoy that.

31:43 Chair Ellis

It is hard to let go.

31:43 W. Beglau

Yes, but to get stuff done from a policy standpoint, it would be great if the managers had more time to be able to do that. I realize that is a real issue for them because they do case work. That is interesting.

32:03 Chair Ellis

Is your office experiencing the same level of turnover that we are told the public defender's office is experiencing?

32:10 W. Beglau

Probably not as much, but here is what we are seeing. This would be - not that you have asked but to continue to look at salary and compensation, the total package.

32:27 Chair Ellis

That is where I was heading.

32:27 W. Beglau

Where I am starting to lose ground at the county level, and losing people is recruitment to jurisdictions that can pay better salaries. I have lost a couple managers under that auspice recently and then recruitment as well. I have someone who wants to look at a position. It is a DDA1 entry level position, but they are making \$90k up in Tigard and they can't take a \$25,000 cut, so they are just kind of a good candidate and experience level I could give them a little bit of a bump. So those two things at the management level kind of retention and then also recruitment. I am starting to see that salary impact us. I think I am not experiencing that as much as the defense organizations are.

33:24 Chair Ellis

Is there a disparity between people in your office of comparable experience and people - it is easier to compare to the PD than to MCAD, but is there a disparity?

33:36 W. Beglau

I think there is a disparity. You might be seeing nodding behind me. The deputy district attorneys, the county salary scales, particularly the ones that are actually doing those salary studies and Marion County recently did that for our employees trying to keep compensation more competitive in the counties. As we come out of the recession they are all starting to look at that. You are starting to see the watermark rise in all the markets. So counties are following suit and doing salary studies and starting to do that. So not only do I think that they

are disparate now, but I think the counties are starting to bump up and we need to continue to examine salaries.

34:20 Chair Ellis I do want to thank you and several other of the DAs, who in the last two legislative sessions have come in and given support for compensation increase in the defense community. I think it is remarkable and commendable. We appreciate it.

34:38 W. Beglau Well thank you for that. I would continue to do that if asked. The defense attorneys in our community work just as hard as deputy district attorneys. Their workloads are extremely high. The work is the same and it is difficult. In some respects it can be more difficult to do defense work because of the personal engagement that you have to work through and all those issues. We see it on the DA side working with families, victims, and witnesses, but you have those same dynamics and that same impact. I just kind of feel that the equal footing concept can be applied to many different aspects of criminal prosecution.

35:31 Chair Ellis Let me ask you the same question that I ask Judge Prall. Any advice for us? Any suggestions how the Commission can do a better job of what we are charged with doing?

35:43 W. Beglau To the extent that the Commission can provide opportunities for - and we go through this all the time in our offices at the DA through the Oregon District Attorney's Association and in-house. Multnomah is really good at that. We are starting to do that more in training. We have got a lot of new people. In my 10 years here I have kind of got a new generation, the ones that I hired when I got started and now a younger generation. There are so many different, new legal issues now that are more complex than they ever were for us 15 years ago. *Brady* law all these different challenges, so training is imperative.

36:34 Chair Ellis Immigration law.

36:34 W. Beglau Immigration law, yeah. Within an organization that people are going around the clock and your managers are doing casework, it is hard to bring that together. If you can free up that opportunity for training. I think mentoring is really important so that you can bring those entry level people up more effectively into the heavy hitting stuff and have constant mentoring. I don't know to the extent that we do mentoring here in Marion County. I really can't speak to what is going on. I know that we kind of create a tier of mentorship within our office with constant access, so that you can get those people up to speed. I think the salary. A commitment to making sure this is a place I want to work and can stay and can afford to stay and live and raise my family. That will enhance the morale of an organization. Those are a few things that I scratched down as I thought through your question for Judge Prall. Then I really do think that managers, I mentioned this before, I think managers should be able to work policy. Where they don't feel like this is the next thing that I have got to get to. It should be the first thing that I have got to take care of. That is an organizational question, I guess.

38:07 Chair Ellis Other questions for District Attorney Beglau?

38:07 J. Potter As you know we go around the state and do these reviews in every county. One of the things that comes up almost everywhere is discovery issues. Can you talk to us about your discovery policy? How you provide discovery? Is it electronic? Is it hard copy? Both the timeliness of it.

38:34 W. Beglau Well I should have brought a lifeline with me. As I told you I am not a working DA. Where is my office manager when I need him? I guess there are a couple of aspects to that. This has been a perennial discussion probably statewide, but also internally for us. One aspect of that is the financial - how do we do that? How do we charge? How is it done? We have a policy on what we charge for what and under what conditions that it is adopted by our board of commissioners. I think we kind of revamped it a little after I came on board. It hadn't been

touched in years. That is kind of the template for that part of it. So the county board has kind of taken a little bit of the reins there. So the financial pieces and how much do we charge for a CD versus a 100 pages. That is all kind of done by the board of commissioners. I am always open to relooking at that. I think probably compared to other counties we are probably somewhere below midline now in terms of the amount that we charged. When we elevated we tried to get ourselves average, as opposed to money making kind of scenario. The second half of that is just operationally. I have one FTE that does our discovery. Things have gotten more challenging with technology. My office manager says we need another discovery person here. There is just so much with getting the regular discovery done, but then replicating the discovery and then extracting those from all the 20 cities in Marion County, or 13 police agencies. I think we are really kind of on the edge of really needing to be more effective at getting discovery out more efficiently. That is something that I would be more than willing to look at. I have had conversations with both Tom and Jon, or at least Tom and can you get it to us quicker. Is there is a way so that we can get to our client with the discovery in hand and be more effective. We could probably do better at that. I haven't really drilled down to hard on that, but again I am looking at kind of my FTE capacity. So it really doesn't answer all the detail you are looking for there. It is one that I think we could always do better at and one I am willing to have conversations with both organizations.

- 41:29 J. Potter Would this be a topic that might be on an agenda for the new Criminal Justice Advisory Group that the judge was talking about that is planned to be implemented?
- 41:34 W. Beglau Absolutely. In fact this issue came up when we met with Judge Rhoades a couple of weeks ago. Talking about if we are going to be more effective at resolving cases that can be resolved; discovery is part of the timeline, right? It is part of that connectivity that defense attorneys can have with their client in moving something out of our correctional space if they are in custody. So I absolutely think that would be a good forum for that. Another place the judge mentioned is our annex meeting. That is kind of web of connections out at our annex and how cases come in and out of there. I think there are opportunities, forums, to have those discussions.
- 42:19 J. Potter So the annex meeting, if I understand correctly, that is folks that are on the ground. That is not necessarily you, or not necessarily Jon Weiner. It is the people that are there doing the work. The lawyers doing the work would be participating?
- 42:38 W. Beglau I send a mid-level manager to that so that they can bring that back to our staff. So we have a trial team leader that is our representative there. You have got the judges at the annex. I think Judge Bennett and Judge Abar come to that occasionally. Tom, I haven't been to this meeting in a long time, but I am sure they come to that meeting. Jail folks. There are some managers there. It is kind of a mid-level. Not entry level DAs, so they can talk about the operational policy considerations of making the annex move smoothly. That is kind of the design of that meeting. It has been there a long time. It is really an effective place for you to bring up and issue and say, "How do we fix this? How do we do this differently if we need to?"
- 43:21 Chair Ellis How many deputies do you have?
- 43:29 W. Beglau Thirty-three and that includes our juvenile. I have three lawyers out there and support enforcement, which are three lawyers in that section.
- 43:39 Chair Ellis Within your office do you assign cases by seriousness and deputies with the experience in a particular area, or just who is available? How do you do it?
- 43:49 W. Beglau Absolutely. We are broken down into specialty in our criminal section. So you have four sections there with domestic violence, child abuse and adult sexual assault, career property and then the drug team. On each one of those teams there is a manager and then five or six lawyers. Then all of the cases that don't fit into those specialties are divided up, mostly the

misdemeanors, and the entry level lawyers mostly get those cases. Now the more senior lawyers on those teams handle the Measure 11 homicides and then we pair younger lawyers with those senior lawyers on those bigger cases as they get more experience along the way. So there is a lot of team supervision. Then there is a bigger umbrella of our management team, which is myself and all those leaders of those teams. All kind of eyeballing the work of those different teams.

- 44:53 Chair Ellis      So as I understand the report, the public defender office tends to replicate what you do. Trying to assign by experience and, to some degree, specialization. MCAD does not. In your perception does that lead to some, I will call it, "imbalance." When you have a specialty lawyers handling a particular area and the MCAD lawyer may be more or a generalist?
- 45:23 W. Beglau      I think it would raise questions. This is a specialty business.
- 45:34 Chair Ellis      I understand.
- 45:34 W. Beglau      I always use to say it takes five years for you to get even good at doing a child abuse case. Five years of just doing those cases before you know what you are doing. I did those for 12 years myself. So, yes, you don't want a brand new lawyer taking on a child abuse case or a Measure 11. You want the mentorship and the skill building. I always use to say the best place to train a lawyer is to send him to the annex. Just to do pleas and stand up and down in front of the court and tell them about why you don't want bail or what you think bail should be. To kind of engage in a dialogue in a courtroom so that you start getting more comfortable. I do think that should always be examined. It is not that we do it right all the times. It takes just time to get good at something. Not just talent. I was watching that ad with the quarterback from Seattle and he was saying that it is not talent, it is just repetition.
- 46:44 Chair Ellis      Or a deflated ball, whatever.
- 47:03 W. Beglau      That would be an area that as manager, I would always be looking at and asking are they ready for this? Have they had the training and the skills? Was is the complexity of the case? Those things are important.
- 47:14 Chair Ellis      Thanks for coming.
- 47:20 C. Lazenby      Walt, the Chair touched and so did the judge, and talked about the changing diversity of Marion County. Of those 33 deputies, how do you compare to the changing profile of Marion County? Are you pretty diverse? Do you have some diversity? If not, are you sending your deputies to some sort of cultural diversity training so that can be more effective in doing real justice across these different communities?
- 47:47 W. Beglau      That is a good question. A tough question because I think our community and our justice system can do far better, systemically, in addressing those concerns. As I was thinking through that question, I was thinking about our victim assistance. Our program has done a real good job at recruiting and bringing in folks who are bicultural, able to speak the language, able to step into the community and do that outreach, so we have done really well in that area. Probably not nearly as well with the lawyers, the deputy DAs, and I think everybody kind of has a hand in bringing that forward. You have got the pool of applicants and you want to make sure that you are getting a diverse pool. We can do better in that arena, particularly with the Hispanic community in Marion County. In some areas we have done real well. We have a lot of women in our office right now. In fact my entire management teams, with the exception of one, one person, are woman. I have kind of kept of eye on that as we have moved forward. Of course they are just talented, quality people and that why they got the job. I looked over and I have got an all woman management team. But I think you can be intentional around that and I think needs to be some progress made in Marion County

and other counties. I am trying to think, we have some lawyers that can speak multiple languages. That really helps. More work to be done.

49:48 Chair Ellis Other questions? Thanks for coming. I can't help to say that this is so refreshing from how things were 10 years ago. I suspect you have had a fair amount to do with that.

49:59 W. Beglau Thanks for having me here and, again, access to the process. I appreciate it.

50:12 Chair Ellis Did Sheriff Myers make it? Did not.

50:17 W. Beglau I have to be with him in Portland in one hour.

50:25 Chair Ellis I don't think he is going to be here. Jon, Jon Weiner do you want to come up?

50:32 J. Weiner Do you want us both up together?

50:32 Chair Ellis Sure. Why don't we do a duo here?

50:42 J. Weiner Chair Ellis, good morning.

50:42 Chair Ellis Good morning.

50:46 J. Weiner Thank you for the opportunity to address the board today. I don't know about Mr. Sermak, but it seems to me that you are in the question mode and you would rather not hear a monologue.

50:58 Chair Ellis Why don't you talk a little bit about your letter to Nancy and your reaction to the report and how you are doing on that. Then we do have some questions.

51:13 J. Weiner Okay. Well, just generally speaking, as I think it was referenced earlier, I was allowed to step in for Judge Lipscomb back in January. It became really obvious, really quickly, that our global mission really had to be trying to understand and address the concerns.

51:32 Chair Ellis Now are you doing casework as well as the management part?

51:32 J. Weiner I don't do attorney of the day things. What I trying to do in terms of sort of line work, if you will, is trying to co-counsel with the new people that are ready to maybe start sniffing around felonies. I usually have a murder in the hopper because I just like doing murders and I do some PCR, but I don't do the heavy caseload of day to day stuff. I hope that answers your question.

52:01 Chair Ellis You have, I think, a seven person board.

52:09 J. Weiner Nine.

52:09 Chair Ellis How many of those are practicing lawyers members of MCAD and how many of those are outside?

52:19 J. Weiner Let's see we have one from Marion County Bar Association. One from Judge Rhoades. One from Willamette. Those are our three external members.

52:28 Chair Ellis And they are not themselves MCAD members that take MCAD caseload?

52:31 J. Weiner Correct. We have one board member, Noel Grefenson, who I tend to do murders with him and that is all he does. He doesn't do any line work. He also heads up the post conviction

consortium. I believe everybody else does the daily work. Either attorney of the day or I think Phil Swogger does some of the specialty courts.

- 52:54 Chair Ellis                   And the board meets how often?
- 52:54 J. Weiner                    We meet monthly.
- 52:59 Chair Ellis                   And well attended?
- 52:59 J. Weiner                    Yes. It seems to be very well attended. Out of nine people, the attendance is probably better amongst the MCAD members. The other members have been on - one in particular has been on for a long time, Mike Weiss from Willamette. He is there almost every time. Amongst MCAD members the numbers tend to be pretty good.
- 53:21 Chair Ellis                   Where are you in the decision? I assume you are a candidate but they are taking awhile to resolve. Where does that process sit?
- 53:30 J. Weiner                    Well they haven't popped the question yet. If you would like I have the Chair from the board here. It may be more appropriate for her to address that. Cheryl Richardson, if you would like to ask her she would be in a better position.
- 53:52 Chair Ellis                   We have run out of chairs.
- 53:57 C. Richardson               I can just grab a chair. My name is Cheryl Richardson and I am Chair of the MCAD board currently. When we initially asked Jon to step in and he agreed, we anticipated that this service delivery review would be sometime early in spring or maybe early summer of last year.
- 54:30 Chair Ellis                   A few months behind.
- 54:32 C. Richardson               So what we engaged Jon specifically for was to get through this process and to help us move towards goals that were given to us, so to speak, by the service and peer review questions. The things that we needed to do to move forward. Our intent, wholeheartedly, is to offer Jon the position. Obviously, we discussed this briefly. As the board, we may put it out to interview other opportunities, but because Jon has done such an amazing job over the past year, would be the forerunner in my opinion. Obviously he serves at the pleasure of the board at this point and we anticipate that will continue for the near future.
- 55:31 Chair Ellis                   Thank you. That was more curiosity.
- 55:32 C. Richardson               There was really a method to the madness.
- 55:36 Chair Ellis                   So, Jon, one of the things the report comments on is your methodology for assigning cases. You have heard the question today. Where are you on this issue of being sure that lawyers that are assigned have the right level of experience for the seriousness and complexity of the case?
- 55:59 J. Weiner                    I guess there are a couple of facets to that answer. First off, I want the board to understand that we don't let - in order to go up a step, to go from misdemeanors to minor felonies, minor felonies to major felonies, and the other step up to Ballot Measure 11, you don't get to just make that decision on your own. That is something that you have to be approved by your workgroup. You have to be felony qualified. You have to have not just the qualification standards, but you also have to get the blessing, if you will, from the organization. We are very careful about that. I want the board to understand that we don't just let anybody take anything. One of the reasons that I am trying to co-counsel with the newer people is I don't really think that the qualification standards themselves to take felony cases really, necessarily

make you able to take felony cases. I mean I can have a couple jury trials, but I am not going to have any idea, for instance, what the sentencing grid means. I don't know what the gun minimum is and things like that. That is kind of the first half of the answer. We really do take that part very seriously. I have spoken with Judge Rhoades and our trial court administrator in terms of ensuring that the people that take murders and Ballot Measure 11s might be more near the top, if you will, of the people that are technically qualified to take those kinds of cases. Judge Rhoades just asked me rather pointedly in the beginning of 2014, we have lots of people that are murder qualified and have taken murders and Ballot Measure 11, but she not might not be super confident seeing everyone of those people taking a murder. Every one of them might not be on her "A" list of people to take a 14 count sex case. I am meeting next week with the trial court administrator to try to start with the murder level. What can we do to hone down a list that the court is really comfortable with, maybe a subset of the people to appoint as lead counsel. On the other side though, the second short of facet of this really long winded answer, is that it occurred to me several years ago that the DAs do have an inherent advantage because they tend to have a property team, a sex team. We are generalists. That is the way that it has been. I can't speak for the rest of the state but we have been at this for about a year, I think, really seriously trying to address the concerns raised by the board. That is something that I would see in the near future in the next year or so after the eCourt transition kind of dies down. Trying to figure out how we might change things a bit so that we have people taking Ballot Measure 11 sex cases that specialize in that. Maybe they can take some of the other cases like the misdemeanors as the DAs do, but try to have specialty teams. I think that is something that is an inherent advantage that we would like to address. That is going to take a little bit of time.

59:13 Chair Ellis                    So this is for both of you. This is your moment. This is your opportunity. Any comments on your interaction with staff here and anything that you would like us to know about that relationship and how that is working out, your analyst and so on?

59:37 J. Weiner                        I guess the biggest impact of staff has been - Director Cozine came out during the site review and met with the board and met with the MCAD members. As I recall John Potter was there and also I think Shelley Winn. In years past it seemed that with the attorneys we are the colonies and you are the crown. You are a scary entity to many people out there. There has been a real separation and to have the executive director come and meet with people, with the board and the membership, and to have Commissioner Potter come out, it really makes a big difference. Don't take this the wrong way, but it sort of humanizes the organization and makes it less scary.

1:00:40 Chair Ellis                    I am not quite sure how to take some of this.

1:00:40 J. Weiner                        I think it is slowly shifting, but still significantly it is feeling like this gap between the Commission and the PDSC and the line attorneys. It seems to be shrinking and it more of a feeling that we are in this together and that we have a common goal. I would say that one factor was huge in allowing me to - some of these changes that are difficult for MCAD members have been able to get some traction in large part because of this. This is an organization that they frankly trust much more than they used to and that they are far less concerned than they use to. I know that is kind of frank, but that is just the reality.

1:01:31 Chair Ellis                    Tom, how about you.

1:01:31 T. Sermak                        My experience and my history is different than Jon's. I remember back when I was with the Lane County Public Defender's office. I think Peter Ozanne, actually he was one of my professors in law school, and he was the first executive director. I have known all of them well. I knew Ms. Cozine the least. I think I didn't meet her until after she became the director. I have attended these meetings pretty regularly over the years, even long before I became the director of the Marion County Public Defender's office. I have always found it to be very open and supportive. I am mourning the loss of Shelley Winn. She has been my

analyst for the last 10 years. She was the analyst for Lane County too. I am now having to experience a whole new analyst, but my working relationship with her was always excellent. I have enjoyed an excellent working relationship with every executive director and easy access as well. In terms of the staff, a non-routine expense, before Mr. Levy came in it was a little looser how it was handled. Paul came in and tightened everything up. They were very clear about what they wanted the procedure to be. We follow the procedure. We get excellent response time. We try to minimize the number of times when we need a non-routine expense faster than normal. But every time we have had to have that happen, they have been able to come through with the money. I don't get second-guessed much on our non-routine expenses. I do get called to explain exactly why you need this particular thing every once in awhile, but by and large it is a very smooth working operation. I am actually very pleased with the support that my firm has been able to get, through not only the board, but also OPDS.

1:03:41 Chair Ellis

So you have had quite a lot of turnover in the last year.

1:03:42 T. Sermak

Yes.

1:03:42 Chair Ellis

I am curious where those individuals went and is compensation what drove it? What is going on?

1:03:56 T. Sermak

There are different reasons. One lawyer that I had left me recently because he just couldn't do criminal law anymore. As far as I know he has left the practice of the law. Mostly it is financial. A kid that started out as a law clerk with me, helped me open the office, as a matter of fact, and when I interviewed him I said, "What are your career plans?" He said, "I want your job." I looked at him a little askance and he said, "In 10 years of so." He wanted to be a career public defender. That lasted right up until SAIF offered him \$30,000 more than I could pay him and now he is now with him anymore. I do still see him occasionally. He talks about coming back. I have lost three, I think, employees to other public defender offices because they offer them a little more money. Basically I think what is happening is Tom Crabtree lost one of his higher end people, so he took one of my middle people and bumped them up. I couldn't match the salary. I take pride in that. I take pride in that. I have had other public defender offices tell me when they have an opening the first place they look is PDMC, because I think they respect the training that we do and the experience that we gain. Marion County is kind of a tough place to practice criminal law. If you can make it here, as the song says, you can make it anywhere. The move on for that reason, but most of the time it is financial. That is my goal. We just expanded our office to 10 with the support of OPDS. We have increased our office space considerably. We are building our infrastructure. We have got to buy another copier and all that kind of stuff. But my next goal is to stabilize my finances to where I can, within the structure of the contract. The way we have it now as long as it is case based practice it is going to be difficult for me to do this. I need to find the money to be able to pay higher wages to my lawyers so that I can retain them. Fortunately, the people at the very top are committed public defenders. I have been able to give them enough money to hold them. The people that I lose are middle level. You kind of expect that. As Mr. Beglau pointed out, the practice of criminal law now is becoming so specialized and intensified, really, that it is now more important than ever for a public defender's office to hang on to those middle level people for a little bit longer. I think recently my turnover is unusually high, but I need to take steps to make sure that does not continue to happen. We have good people. When Walt said his people they are making \$90,000 in Portland and would have to take a \$25,000 cut. It would be a \$40,000 to come to my office.

1:07:10 Chair Ellis

Where are you getting your replacements? Straight out of law school or some people with experience?

1:07:18 T. Sermak

Both. My most recent hire, for example, applied for the job. He was in a public defender's office in Arizona, but his family had moved up here and he wanted to move up here as well. So I have experienced public defender who knows trial work really well. He doesn't know

Oregon law that well, and he doesn't know the sentencing guidelines. So he very soon will be able to take a felony case on his own. At this point I am bringing him along. I like to get people right out of law school. We do very hands on training process in my office. I like to get people that are open to doing things the way I think they need to be done. If I hire somebody from another jurisdiction, I hear that is not the way we do it there. A lot of times it is in the context of, "Oh my God. This is the way you do it here in Marion County." There is sort of an unlearning curve that I can avoid if I get them right out of law school. That is the way I prefer to do it.

1:08:21 Chair Ellis

I was estimating it is probably 80/20 ratio caseload in Marion County. It may have moved more towards 70/30 recently.

1:08:32 T. Sermak

When we started out we were probably 80/20, in 2007, when the office got started. Right now I would estimate it is about 70/30. But keep in mind that my contract is to take a certain number of cases per year. That may or may not, depending on what the caseload is and the filings are in Marion County that may or may not be more or less than that. I think Jon's contract is also for a certain number of cases. My caseload was down. We are in the middle of contract period right now and my caseload was down near the end of December. Jon and I worked out where we were able to take more cases, more case days, and get more cases up. I would say that we do about 30% of the cases here.

1:09:23 Chair Ellis

So now this next question, I know what your one worded answer would be. Each of you would rather have a higher percentage than you have now, but what I want to ask analytically from our point of view, are there issues that we should be thinking of in terms of the allocation of caseloads between the two models and the two organizations? You are welcome to make a pitch.

1:09:56 J. Weiner

I guess at this point, what I would say is it seems that the mix is working well in the county. I think things were a little rough in the beginning between the two organizations. But for several years now it looks like there has been collegiality and cooperation. I think homeostasis is good. I think maybe examining that in the future might make some sense, but I would think that at this point, given some of the things we talked about today, it might make sense. The problems with the PD office and MCAD are kind of opposite. Maybe we should have a little more turnover and maybe they should have a little less, right? Until that is maybe squared away and flushed out, maybe it makes sense to just leave things the way they are. The status quo is pretty good. Things are working pretty well. I am not saying it has to be that way forever. But right now I can't see where there would be a real constructive reason to change for at least the next few years.

1:11:19 Chair Ellis

How about you, Tom?

1:11:19 T. Sermak

We opened our doors in July of 2007. At that time I projected a certain measured growth rate. We are just about on target to do that. The increase that we have managed to have now to 10 lawyers puts us at a place where my projected plan for the office is to sort of consolidate our gains at this point and to build efficiencies into the system that we have now. As far as taking a higher percentage of the caseload, I stand ready to do that as it becomes necessary. I would have to hire more people. My office would have to expand. I would hope to be able to continue to do that. I think the chief gain for the system, and Jon may or may not agree with this, to me it makes more sense to have these specialty courts run out of a public defender's office. You can centralize the location. You can centralize the services. Phil Swogger does do the specialty court, both drug court and mental health court, for the entire county. When we have somebody who goes into mental health court, generally there is a handoff to Phil. Sometimes we can keep the case if we have a particular relationship with the client. Drug court cases, even if it is my case day, if that person has been identified by the district attorney to go drug court, then Phil is appointed to that.

1:12:47 Chair Ellis As you get larger and the time you have been here gets longer, I assume conflicts become an issue for you. Have we reached that point yet?

1:12:54 T. Sermak They are becoming more prevalent. I have a practice which I have done from the very beginning. Every week we get a docket for the out of custody arraignments, which are at 9:30 in the morning. We get another docket at noon for the in custody arraignments. So we know who the clients are, or who the defendants are on those two dockets. I have a procedure in my office where my staff runs those names through our database to detect conflicts ahead of time. We can't always identify whether or not they are going to be a drug court case.

1:13:34 Chair Ellis Have you had much substitution issues?

1:13:32 T. Sermak We catch a lot of them in the beginning because of that process. We do have to substitute off of a case, where in a later police report we discover that one of our clients is named as a witness in that case. It is happening more and more. It is not the severe problem that it was in Lane County, which is a much larger and more established office.

1:40:00 Chair Ellis And with a higher percentage of the caseload.

1:40:00 T. Sermak Yes. I would say I have to look at conflict issues - not all of them come to me, but if they are the least bit unusual they go through me. I would say I look at conflict issues maybe four or five times a week. I would say on average we might have to get off of seven or eight case because of a conflict that we didn't catch at the initial screening.

1:14:24 Chair Ellis Other questions?

1:14:24 J. Potter I just want to follow up on your line of questioning. If I understand it from both of you, you are not hiring people that are coming out of Jon's shop? Is that right? You are not taking MCAD lawyers and they are not becoming full-time public defenders?

1:14:42 T. Sermak I have had one lawyer join me from MCAD and that was very early on. We don't discourage them from doing that. As a matter of fact, I recruited that person because I wanted somebody, when I was new to the county. I wanted somebody who had some ....

1:15:05 Chair Ellis Well there was a period when you were shunned. I remember that.

1:15:12 T. Sermak Historically, Steve Gorham was the executive director of MCAD.

1:15:19 Chair Ellis He was here. I think he still is.

1:15:19 T. Sermak My first phone call when I was offered and accepted the appointment, my first phone call was to Steve. He was getting ready for a murder case as I recall, but he still talked to me for about an hour about what it was going to be like to practice law in Marion County. He and I developed a very good working relationship from the first. I was advised that there were certain judges that were hostile to the public defender's office, or reputedly hostile to that. One of the other things that I did was schedule appointments with each one of the judges. I will admit that I met with some skepticism from some of them. I got a, "we will just see attitude" from one or two, but by and large they accepted us. They gave us a fair chance to prove that we could do what we had set out to do. This board may recall that I had a little bumpy phase in there. The criteria for indigent defense is sort of a vertical representation. You get assigned a lawyer and that lawyer stays with the case until the end. I tried to duplicate that in a county that because of the logistics makes that virtually impossible. As a result there was a lot of trouble with lawyers being where they were supposed to be. The judges called me on the carpet for that and ultimately I came before the Commission to try to explain exactly why I was doing what I was doing. In the meantime, one of the little skeptical judges took me aside and gave me a little lecture on a better way to do that. I took his advice.

We schedule things a little bit differently now. That is an example of the sort of support that the office has gotten. Maybe a little grudgingly in the beginning. It has never been a hostile environment as such. I count on my thumb the number of MCAD lawyers that I have had a confrontation with about our taking cases or them taking cases. Literally, in eight years I have had one confrontation.

- 1:17:28 Chair Ellis We are going to have to wind this up. I did want to ask of your lawyers, how many of them would you say are full-time defenders, and how many have a significant private caseload separate and apart from their defense work.
- 1:17:45 J. Weiner If I include in the first group people that maybe get a couple of retained a year, but say 95 to 100%.
- 1:17:52 Chair Ellis Well if they are doing criminal retained that counts as full time criminal lawyer.
- 1:17:59 J. Weiner With some of the personnel changes, I think we have had three attorneys that we have had to terminate our relation. I think we are down to about 38. Out of that I would say probably right around low 20s. Maybe 25, something like that, are full time criminal defenders. The others would do other things, whether it family law, personal injury, employment law, things like that.
- 1:18:33 J. Potter That is where I was trying to go here and Tom gave a great answer that went beyond my question. I am trying to figure out if you have got all these trained lawyers that are doing this work, but they are not applying for jobs as public defenders, what the reason is for that? Is it because they are not paying money? You can actually do better doing work for MCAD than you can working for the public defender.
- 1:19:00 J. Weiner I can't say what the motivations have been. Why people haven't applied. It may be that having your own law office. If I tried to go work at somebody law's office, I am pretty sure I would be fired immediately. I have had my own ship for a long time. It is a different kind of a mindset. I think that is part of it. Also, if you are working for the public defender's office, those of us who do other kinds of work you couldn't do that. I couldn't go do employment law which I like. I think you benefit a lot. One of the things about different kinds of law, as well as even doing criminal law in different counties, is I think it keeps you fresh. I really think that I am a much lawyer having done lots of criminal cases. Lots of employment cases and federal law, you know cases in federal court rather than cases all over the state. I think you can kind of get stale if you do the same thing over and over.
- 1:19:58 Chair Ellis It is always a balance though. Criminal law has become so specialized that the one who dabbles in it probably doesn't do well.
- 1:20:06 J. Weiner Dabbling is not a good idea. I wouldn't want anybody to dabble with any of my loved ones. I think you can branch off and broaden your litigation experience and viewpoint, without losing the ability to represent people in criminal cases. If you done it long enough, I am not likely to forget what I need to know to go to trial. However, I have learned to be a lot more vigorous in civil cases. A lot of civil attorneys work cases just the way you wish all people in criminal law would do it. It is a little more adversarial. You know have the good collegiality, but those are good experiences. You have to be careful. You are right. I agree. We are too specialized. It is too tight to dabble.
- 1:20:52 J. Potter But did I not hear you say that 25 of the lawyers, of the 38 or so, are 100% or close to 100% criminal law?
- 1:21:03 J. Weiner No. What I meant to say is I don't know the exact answer. I think I said 20 to 25. I would probably say half, but if I had to err I would go above half. That is kind of what I was shooting at is the one-half or a bit more than that. Maybe two-thirds.

1:21:21 J. Potter Are doing nothing but criminal law?

1:21:21 J. Weiner I think probably something like that. That is me doing a guesstimate. That is an interesting to know. I just don't know the precise answer to that. It could be 19. I don't know for sure.

1:21:39 Chair Ellis Other questions?

1:21:39 S. McCrea Yeah, I have a couple of questions, Mr. Chair. Jon, I want to follow up on that and I am looking at the letter that you sent that talks about changes in the case assignment process. MCAD has taken steps to de-randomize this process and flatten out the distribution curve as much as possible, in order to inhibit the ability of its member attorneys to garner huge caseloads. Does that seem to be working given that you have maybe almost half of the lawyers, or maybe a little less that aren't doing full time criminal cases? Does that seem to be helping in terms of them having enough volume and interest?

1:22:25 J. Weiner I believe so. I think if you sort of curve it out if you will. Maybe that is another way to look at it rather than me trying to guess who is doing divorces or things. I can sort of look at the number of attorneys that handled a certain number of cases, or made a certain amount of money. For instance, I can tell you from just looking at people's tax documents that we send out. Probably two-thirds of the people made \$70,000 or more. That is somebody you can guess, given what we do, that is about a full time load.

1:23:00 S. McCrea I see Cheryl back there nodding back there. I know historically that has been a concern with the federal panel. Making sure that the members of the panel get enough cases to be able to stay current in the area of the law. Of course we want to do that here but we don't want to be giving cases who don't want to be doing cases. That is the other concern. If you have people who are like I don't want this case, or I don't want to be doing these kinds of cases.

1:23:27 J. Weiner We have a few people who just don't like to take sex cases. One person in particular and that is just a personal thing and that is not an issue. I haven't seen that we have had to beg people to take felony days. I don't see that we are having to really recruit super hard to get certain kinds of cases done. Sometimes in the EDP docket it can be hard. That is the really the only place where we have had an issue. We have always met our contractual obligation, but they are probably less popular. One of things that I was trying to do when I took on five new attorneys was to get them up and running so they could take some of those felony cases. I would like to see it evened out a little bit more. The way we have changed, de-randomized if you will, the available pool of cases it really has helped keep the ceiling down. But I really like to see more people taking felonies. The way to do that is try to get those people competent to do them as soon as possible. It is almost the opposite problem.

1:24:38 S. McCrea Okay. Tom, do you carry a caseload?

1:24:41 T. Sermak Not anymore. I haven't assigned a case to myself in several months. I am finishing them out. I may have finished my last case late last week.

1:24:52 S. McCrea Do you think that is helping in your ability to be able to handle the policy issues in your office?

1:24:59 T. Sermak Absolutely. In addition to the eCourt workgroup that Judge Prall has, there is a pilot project for aid and assist issues where we go to the Oregon State Hospital to talk with them about that problem that exists. It is pilot project that may be implemented in other counties in the state. I am part of that. The number of meetings as well as the administrative responsibilities for an office. It is just now big enough. That was my goal was to get to 10 lawyers. At that point you have the staff to be able to have somebody who can devote themselves to administration,

more or less full time, and training. It also makes you financially viable to do that. That was the reason to get to this point, but it also means that there is more to administrate.

1:25:53 S. McCrea My last question is you mentioned earlier in your comments that Marion County is a tough place to practice. We have the example both from Judge Prall and from the two of you about the difficulties between the annex and downtown. Can you give us some other examples of what Marion County a tough place to practice?

1:26:18 T. Sermak Yes. The discovery issue that the Chair inquired about, I think it was the Chair.

1:26:21 Chair Ellis I think it was John Potter.

1:26:21 T. Sermak Mr. Potter. That is a systematic problem. That is why I am so glad that we have finally persuaded Judge Rhoades to have a Criminal Justice Advisory Council. They don't get the discovery from the police agencies for some reason. You get the initial discovery if it is photographs or videotapes, or anything other than the police officer's report. They don't ask for it until we ask for it. That slows the whole process down. It seems in the murder cases to be particularly slow in getting there. We have had a murder case in the officer for three weeks before we see anything more than the probable cause statement, even though we ask for it repeatedly. That is an issue that makes it difficult here. They have a policy on Measure 11 cases. I was just talking with Walt about it today. They don't like to negotiate out of Measure 11. That is a different policy than most other counties. In most counties you charge Measure 11 and negotiate out of it as a settlement device. They don't do that. They can get pretty creative about it, but we have to try 20% of our Measure 11 cases. In 2012, when I looked at the statistics, we tried 20% of our Measure 11 cases. Clackamas County tried 27% of their Measure 11 cases, but they only had 86 of them for the entire year. We had 170 filed. Multnomah County tries 7%. Lane County tries 6%. We try 20%. Washington County tries 12% and they are considered to be an aggressive prosecutor's office. That is one of the things that makes it hard. We have to try more cases here.

1:28:13 S. McCrea Thank you.

1:28:13 Chair Ellis Thank you both. Not just for your appearance, but what you are doing.

1:28:21 J. Weiner Thank you.

1:28:26 T. Sermak Thank you.

1:28:26 Chair Ellis I think that concludes who I understood wanted to speak on Marion County. Is there anyone I have missed? If not, you will supplement the report with the testimony from today and will have a discussion at the March meeting.

**Agenda Item No. 3 Proposed Contract Revisions**

1:28:48 Chair Ellis Moving along to Item 3. Proposed Contract Revisions. Caroline.

1:29:02 C. Meyer So no Paul today.

1:29:07 Chair Ellis I understand he is sparing us all the flu.

1:29:07 C. Meyer Based on how he sounded yesterday I think that was a wise choice. Good morning. I am here to talk to you about the next two items. Attachment 3, are the proposed contract revisions. I am concerned that you might get tired of seeing these. This is now the third meeting. There is no action item on these today. We will eventually be asking you to approve them in conjunction with 2015 RFP that we issue. That will be at the March meeting.

1:29:39 Chair Ellis I am not suggesting that my colleagues haven't read every word of this and studied in carefully, but are there particular pieces of it that you think we ought to focus on?

1:29:53 C. Meyer Section 7. Paul did a good job of framing it at the last meeting. It is more housekeeping changes than anything. We had not taken a look at the contract for many years. Paul did a really good job of going through with a really fine toothed comb and really pointing out some simply changes that needed to be made in terms of bolding, underlining, that type of thing. If you were to go through every page you would see plenty of that. It has been discussed amongst our contract groups with Nancy. It was also brought to the Public Defense Advisory Group in November for discussion.

1:30:31 Chair Ellis Is there anything at what I will call a "policy" level that you think we ought to address?

1:30:34 C. Meyer Yes. Section 7. That has sort of been rewritten to read better. It is the contractor obligations. You will see lots of changes in there. Again, it doesn't substantially change the requirements. It makes it easier for them to read and understand.

1:30:59 Chair Ellis Is there any part of it that is controversial?

1:31:01 C. Meyer Not that I am aware. We have received very little input from contractors. Dan Bouck from the Umpqua Valley Public Defender is here today. He had expressed some concerns. Billy and I are going to be talking with him tomorrow in more detail, but I believe those concerns are more how to implement as opposed to anything that would require additional changes.

**Agenda Item No. 4 Approval of new Contract for Sage Legal Center**

1:31:20 Chair Ellis Alright. How about the new contract for Sage Legal Center.

1:31:27 C. Meyer Moving right along, alright. So Sage Legal is a new entity. But it is really a restructuring of an existing contract, or certainly existing caseload. The Native American Program has been a contractor with us for many years. As long as I have been here, which is 14 years, providing specifically - and Judge Welch is shaking her head. She knows them well. They provide specifically services to Indian child welfare clients. About a year ago I started having conversations with Kristy Barrett, who has been the contract administrator for many years, about her interest in going out on her own. It was not at all a controversial thing with her organization. In fact I have spoken with Janice Morgan from their organization and they were fine with that. So essentially it is taking the public defense portion of the work that they do. They are still going to exist. They are still going to do the legal aid side of things. Christy is essentially taking the public defense portion of their work and taking it out on her own.

1:32:30 Chair Ellis And you are recommending that we approve that?

1:32:36 C. Meyer Yes.

1:32:36 Chair Ellis Any questions? Is there a motion?

1:32:36 J. Potter I just have question. The cases, there is 592 cases. Can you explain a little bit to me about what these cases look like? What is a case in this contract?

1:32:46 C. Meyer It is a dependency case and also the reviews that go with that. It is two full caseloads. Kristy Barrett will have a full time caseload and then Emily Meyer, the attorney she is taking with her. Two full-time attorneys.

1:32:59 J. Potter Okay.

1:32:59 C. Meyer           The value is the services. The legal assistants and the staff they will need to bring on as well as office overhead.

1:33:09 Hon. Elizabeth Welch           That is a lot of cases. Do we have other people with that level of dependency cases?

1:33:19 C. Meyer           We do.

1:33:19 Hon. Elizabeth Welch           Three hundred a lawyer.

1:33:27 C. Meyer           The reviews are the largest number there. So that is 34 dependencies per lawyer. The number that Commissioner Potter quoted was the total including the reviews. That is 516 reviews.

1:33:48 Hon. Elizabeth Welch           It is "hearings" is what you are saying. Not cases.

1:33:48 C. Meyer           We refer to them as cases because it is a case credit system. It is confusing. If you were to use the definition under the pilot program it would not be cases. It would be more like 32 cases per lawyer.

1:34:07 Chair Ellis           Is there a motion to approve?

1:34:07 C. Lazenby           So is it a clean break between Sage and NAPLES? Or are there agreements between them that might affect their performance?

1:34:18 C. Meyer           The whole reason we are doing a new contract is so that we can make it a clean break. We could have done a reassignment, but Janice Morgan, from legal aid, was concerned about having this assignment within a contract. I wanted to make it clear. We wouldn't normally be doing a new contract mid-cycle. That makes it a clean break. Janice has been great to work with. They have paid back their storage. They have made that all current as of the end of the year. She and Kristy have a very good working relationship. She is supportive of Kristy doing this. I feel very good about this. I think it is the right way for us to approach it.

1:34:57 Chair Ellis           Is there a motion regarding Sage?  
**MOTION:** Shaun McCrea moved to approve the contract; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

**(Break)**

**Agenda Item No. 5           Commission approval of Payment Policies and Procedures – Updated GSA rates**

0:12 A. Bowers           Okay. With Attachment 5, the federal government has increased the mileage rates and so with our payment policy, the guideline amounts, I have just gone ahead and increased ours as well to match those rates. On the second page of the guidelines, the shaded area is the new rate of 57.5 cents per mile. So today I am just here to get your approval.

0:37 Chair Ellis           Okay. Any questions? If not, is there a motion?

0:38 J. Potter           I was just going to ask, do these get adjusted every year or every six months? What is their adjustment schedule?

0:47 A. Bowers           Yearly.

0:48 J. Potter The gas prices have just dropped. I was just wondering. I would move to approve the adjusted schedule; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

1:12 Chair Ellis So anything else we need from you, Angelique?

1:16 A. Bowers I was going to talk about the co-chair's budget later on in the monthly updates. I don't know if you prefer I do that now?

1:25 Chair Ellis Go ahead.

1:25 A. Bowers So last week the co-chair's budget came out. For PDSC and for the Judicial Branch as a whole, our current service level budget is what was put in the co-chair's budgets. One thing that I did want to note with that is there is a package in our current service level budget. It is not for new money, but it is to fund some other fund expenditures with general fund that shift in funding was part of the co-chair's budget.

2:10 J. Potter Run that by me again.

2:10 A. Bowers It is a package so for our other funds with the application contribution program, the revenue is coming in under what we need to cover all those expenditures. So we had a package that is more just an technical adjustment to shift it to general fund.

2:28 Chair Ellis And the co-chairs are? Who are the two co-chairs?

2:33 N. Cozine Senator Devlin and Representative Buckley.

2:39 Chief Justice  
Balmer This is done with the approval of the Speaker and the President of the Senate. So you have got the four sort of heavy hitters. I think for you folks as well as for OJD, it is an improvement over the Governor's budget.

2:58 A. Bowers It is. The Governor's budget had a 2.2 percent reduction to our CSL, so this is an improvement.

3:02 Chair Ellis Okay. Good. Nancy, are we ready for your report?

**Agenda Item No. 6 Executive Director's Annual Report to the PDSC**

3:14 N. Cozine Chair Ellis, members of the Commission, you will see as Attachment 6, the Executive Director's Annual Report to the PDSC. As in past years it was not listed as an action item because it is simply my report to you. However, as in past years, I invite your comments and suggestions. It is not yet a necessarily finished product if there are things that you think happened this year that I have not captured that you would like captured, I could add those.

3:52 Chair Ellis Do you distribute this to others?

3:52 N. Cozine We always put it on our website. Last year I did distribute to certain legislators, most legislators, especially the ones who were engaged significantly with our office. So I could do that again. I think last year you specifically instructed me to go ahead and send it to legislators. We had quite a bit of change last year. We are continuing to move through the process of change.

4:24 Chair Ellis I would urge it again. I like to get as much visibility with the Legislature that we are going to deal with before we end up testifying.

- 4:37 N. Cozine                    Alright. I would be happy to circulate it. Last year I didn't summarize it. I am somewhat inclined not to summarize it again because I suspect you have read it. There are, of course, so many exciting things happening with the parent/child representation program. The fact that we got a great response in our diversity survey this year. You may recall that the first time this office sent out a diversity survey, we had approximately, I believe, about a 50% response rate. We were in the 90% range this time which was wonderful. We learned a lot about our provider community and about the work that we need to do moving forward. The work of this Commission has continued to be very consistent. The engagement of the Commission has been wonderful. All of the quality assurance efforts and the changes we have envisioned for the 2015 year are also exciting.
- 5:36 Chair Ellis                    I was very curious with your comment on the top of page 3. On the age distribution of attorneys that we are dealing with and twenty-five years ago I think it would have been more likely that you would have had a bunch of young lawyers 25 to 30. Then some long standing lawyers at the top end and not so many in the middle range. I thought it was very interesting that you are lamenting the absence of young lawyers, but you are citing that there are quite a few in the middle age range. I don't know what is driving that. I am curious.
- 6:28 N. Cozine                    I am curious as well. I wonder if part of it has to do with the fact that during the recession period of time, there was such a slowdown in hiring that everyone just kind of cling to where they were. So you ended up with a bigger percentage in that middle half because there really wasn't anywhere to go. We heard that from providers. That people were staying in their offices longer than they had expected. They were afraid of what would happen when the economy rebounded. We will do this survey again in another two years and we will see where we land. The low percentage of lawyers, 6%, who are under age 30, is a very low percentage. Hopefully what we will see when we take the next survey is that we have increased that age range. That is the population ...
- 7:14 Chair Ellis                    My own instinct is that is easier range to fill than some of the others. Okay. Any other comments or observations?
- 7:28 Hon. Elizabeth  
Welch                                I have a few little issues. I am going to find the page on it. Page 11, challenges for 2015. I particularly want to raise this because of your answer to the Chair's question about your circulation of this document. In about the fifth line of the challenges you use the term "the ripple effect." I think that is a little mild. I think that term means something kind of gentle. I don't know exactly what it should say, but I think that is such an important part of our concerns. Maybe make that a little stronger.
- 8:24 N. Cozine                    Absolutely.
- Agenda Item No. 7                OPDS Monthly Report**
- 8:23 Chair Ellis                    Shall we move on to the OPDS staff monthly report. We have a new appellate leader.
- 8:37 N. Cozine                    Yes. We have our new assistant chief defender. That is Ernie's title as he begins the transition into the full-fledged chief defender role, which will happen at the end of March when Mr. Gartlan.
- 8:51 Chair Ellis                    Returns from the Virgin Islands. Someday you will get to go to France, the Virgin Islands, and all the places. Congratulations.
- 9:05 E. Lannet                    Thank you. I think the most recent time I appeared before last spring, I think, giving you an update on our caseload. This is me filling in for Pete while he is away. I like to think that I am assistant to the chief defender at this point. The last update you received was in October. At that point Pete was telling you that we were going through our hiring decisions for entry

level positions. We subsequently filled three of those positions. Anna Melichar is a Lewis & Clark graduate in the evening program. She graduated about a year ago. She spent time clerking with the Federal Public Defenders and clerking and also being a volunteer attorney for Metropolitan Public Defender. We also hired Brett Allin who is a more recent graduate from Lewis & Clark College. He also clerked at the Federal Public Defenders and who also clerked with Metropolitan Public Defender. Those are two great additions. We had a third addition, Jeremy Macriganis. He had a substantial practice as a PD. He was with us here for a little over two months and then he decided that it wasn't a good fit for him. He preferred the trial work instead. He is actually leaving at the end of this week. A lost for us because he seemed like he would have a great addition to the office.

10:42 Chair Ellis

Does it still continue to be kind of a buyer's market?

10:51 E. Lannet

Yes. We are getting good, qualified applicants and have many to go through and select from. We still feel very lucky.

11:06 J. Potter

Are these candidates coming from in state or out of state?

11:07 E. Lannet

Two of these were in state. They went to Lewis & Clark.

11:12 J. Potter

Not the ones you hired, but folks you are getting applications from?

11:14 E. Lannet

It is a mix. I would say probably a fifth are out of state candidates. It is minority. Mostly it is people looking for work that are here. Pete has mentioned that we had arranged to have Bryan Gardner visit us for an all-day CLE. That happened in October. The title of the presentation was "The Winning Brief." We hope that carries over to our practice. It was an excellent presentation by Bryan Gardner. If you are interested in writing and you get a chance to go to one of his presentations, I would certainly recommend it. At the end of October we released the annual update to the manual. As you know this is kind of an evolving document that Pete and the chief deputies have a series of meetings throughout the end of the year and decide where policies and practices have changed. We try to update that and try to make it a very user friendly manual for the attorneys in our office. We hope it is one of those sources that they can go to and get answers to 80% of the issues that come up. We had Justice Brewer visit us also for one of our sessions where we invite a judge or a justice to come over and share some insights with the court and insights into our practice and our office.

12:42 Chair Ellis

He was on the study commission that created this Commission. He has deep roots.

12:51 E. Lannet

He is everywhere. His is a force of nature. He has a lot of energy. We had the Holiday CLE to close out the end of year. We had staff from the State Law Library. We had Steve Wax and Bobbin Singh from the Oregon Innocence Project and OJRC come and talk to us and try to start a dialogue between our office and (inaudible). That brings us up into the new year. We are currently going through our annual evaluation process. We have adjusted it a bit from what we have done before. Up until two years ago we were doing a performance evaluation of everyone, every attorney. We decided where we are at the point where we have gotten big enough and we have people that have stayed long enough that we are seeing diminished returns on meeting with them every year. We are meeting with new attorneys who are in their trial service period during the last calendar year, every senior attorney this year. We did not evaluate the seniors last year. These are the team leaders. We are evaluating anyone who has less than five years of experience in the office. Next year we will rotate that and we will not be evaluating the seniors. We will be evaluating the people who have the five years of experience. We are trying to cut down a little bit. We try to do a very substantive evaluation. It takes a lot of time and a lot of resources. We want to do it right, so rather than water it down across the board, we have decided to focus on the people and make sure they get seen regularly.

14:50 Chair Ellis                   That is so important psychically for younger lawyers to have someone actually take the time and work with them on how they are doing.

15:03 E. Lannet                    Absolutely. We consistently hear that our attorneys want more feedback. We are trying to find ways to build that into the team structure we have. We have the senior attorneys work with the attorneys on their team. It is all about recognizing the efforts that they have made and trying to identify a path to build development. I certainly think it has been a critical piece in kind of bringing up the practice over the last eight to 10 years that we have been doing reviews. I know Pete usually gives you a view of what we have going on in the Oregon Supreme Court. It looks like we have about seven cases that are in the briefing.

15:54 Chair Ellis                    In the Supreme Court.

15:55 E. Lannet                    In the Oregon Supreme Court. Several are sentencing issues, which I think may be of limited interest to the Commission. One that was mentioned before is being argued in January. That is on the scope of the identify theft statute, which maybe has a little bit more appeal. I emphasis a little bit more there. Then we have also been asked to file briefs as *Amicus* in several cases.

16:30 Chair Ellis                    These are *Amicus* briefs in the Supreme Court of privately retained cases?

16:38 E. Lannet                    Privately retained, yes. We have also done them in post conviction reviews where those are up on direct appeal. Because they have a systematic impact we have been asked to ....

16:58 Chair Ellis                    I think that is good.

16:58 E. Lannet                    It is excellent. There are only a limited number of cases for the office. We have attorneys that need to keep on building their experience.

17:12 Chair Ellis                    Of the seven cases, how many different lawyer within your group will argue?

17:19 E. Lannet                    I am trying to think if we have any overlap right now. I don't think we do. I think it is seven different attorneys. The *Amicus* briefs, we won't be arguing in those two cases. So we have five attorneys making appearances between now and the end of March.

17:45 Chair Ellis                    I have said this to Pete many times, but I commend how your office shares that opportunity.

17:52 E. Lannet                    We think it is a very important piece of development. We don't get that many opportunities to appear in front of the Supreme Court, but it really enhances people's practice in the Court of Appeals too. You come out of that process of briefing and arguing as a better appellate attorney for all the cases that you are doing.

18:15 Chair Ellis                    Okay. Any other questions for Ernie?

18:23 C. Meyer                    A really brief update on our open analyst position. As Tom Sermak said, he really misses Shelley Winn. We all miss Shelley and are certainly feeling the loss. She left us in early November, so it has been a little over two months. We interviewed last week and we are doing second interviews this week. We actually have someone with us today who is visiting and we will be meeting with him after the Commission meeting. We hope to make a decision very soon and get someone on board. I don't know if we mentioned this, but instead of hiring for a contract analyst, we sort of redesigned the position to be sort of a research analyst working more with data. Really helping us to go to the next level with our research abilities and working with Amy Miller in the pilot program. Then possibly helping us move into that next – as we start examining whether to change our funding structure to move away from the per case model. We are excited.

19:17 Chair Ellis

Anyone else? Cecily?

**Agenda Item No. 8**

**Executive Session\* - Executive Director Performance Review**

19:35 Chair Ellis

Paul is not here so what you are about to hear is my best rendition of what he would have had me say if he had been here. The Public Defense Services Commission will now meet in executive session for the purpose of conducting personnel review. The executive session is being held pursuant to statute which permits the Commission to meet in executive session for the purposes just stated. Representations of the news media and designated staff, shall be allow to attend the executive session. All other members of the audience are asked to leave the room at this point. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room. I am going to suggest that Cynthia, obviously, be treated as invited staff and help us through this process.

The Commission reconvened and the meeting adjourned at 1:30 p.m.

# Attachment 2

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Wednesday, February 11, 2015  
12:00 p.m. – 2:00 p.m.  
Multnomah Building  
Commissioners Board Room  
501 SE Hawthorne Blvd.  
Portland, Oregon 97214

MEMBERS PRESENT:

Barnes Ellis  
Chip Lazenby  
John Potter  
Per Ramfjord  
Hon. Elizabeth Welch

STAFF PRESENT:

Nancy Cozine  
Paul Levy  
Amy Miller

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The meeting was called to order at 10:00 a.m.

**Agenda Item No. 1**

**Report on the Multnomah County Courthouse Project**

Chair Ellis called the meeting to order and asked JD Deschamps and Mike Day to present information regarding the Multnomah County Courthouse Project. Judge Waller also joined the panel. Mr. Deschamps, project manager, indicated that the \$250 million project would consume his time for the next five years. Mike Day, with Day CPM Services, explained that his role is to support the Oregon Judicial Department, the county, the state, and all stakeholders through the development process. Mr. Deschamps began working through a series of slides, explaining the age of the current courthouse and the deficits. He explained that the courthouse is unlikely to withstand a seismic event of any significant magnitude, and described the safety risks and functional limits of the current structure.

Mr. Day described the basic structure and plan for the new courthouse, which will include satellite space for both prosecution and defense. He shared that the plans would include separate spaces for transport of defendants to and from the courtrooms, so that they are not shackled in the elevator or hallways, in view of jurors, witnesses, and other court visitors. Judge Waller added information about the importance of having separate areas for the allegedly mentally ill to enter and exit the courthouse, so that they are not taken through the

public halls of the courthouse. She also explained that the courtroom for those hearings would be specially structured to accommodate those individuals. Mr. Day continued with a review of how the building could be configured and organized, floor by floor, explaining that this “reference design” was not the final plan, but simply an example of how things could look. Judge Waller also talked about the entrance, which would prevent people from accessing the building without going through security screening. She also noted that there would be a Probation Referral and Assessment Center to prevent defendants from getting lost between sentencing and intake, which in its current location is often too difficult for defendants to locate following sentencing. Mr. Day then showed where the Public Defense Resource Center could be located. Judge Waller explained the importance of this component, saying that it avoided the current problem of lawyers and clients trying to have confidential conversations in courtrooms and hallways, and expressed full support for having dedicated space for public defenders in the courthouse. Ms. Cozine talked about the details of the space, which will include a conference room, a client waiting area, and office space for appellate and trial lawyers.

Chair Ellis asked about timing of the project, and when OPDS would need to have resources to furnish the space. Judge Waller indicated that it would be 2019. Chair Ellis asked for confirmation that there would not be any leasing charges. Ms. Cozine said the county had committed to no leasing charges during the life of the bond, which Mr. Deschamps said would be for a period of 30 years. The Commission, Mr. Deschamps, and Judge Waller discussed the colocation 50% match, and the critical nature of that match for the Multnomah County project. Mr. Deschamps indicated that the building was being designed and sized to last 100 years. He then went on to provide details regarding possible site locations, and indicated that site selection would be finalized in April. The request for proposals for an architecting contractor will also issue in April, with the goal of having a firm on board by end of July, with work on the final design starting in August. He said the goal is to begin construction at the end of the 2016, with heavy construction starting in the summer of 2017, finishing construction at the end of 2019 and open April 20, 2020.

Chair Ellis asked whether resources would be available for this kind of project in other counties. Judge Waller explained that it would have to meet the statutory criteria, which is somewhat narrowed by the need for health and safety issues. She listed other counties that are pursuing funding or have expressed interest, including Jefferson, Coos, and Lane.

Judge Waller concluded her remarks by asking for the Commission’s support, indicating that it would be very helpful in further discussions with the Legislature regarding the project.

## **Agenda Item No. 2**

### **Discussion of New Courthouse Proposal**

Commissioner Lazenby asked whether the size allocated would be sufficient to sustain growth over the next five years. Ms. Cozine explained that indicated that it should be a significant improvement from what lawyers experience now, but that it would not entirely relieve the need for more space in Salem. Chair Ellis noted the importance of public defense lawyers having a space to engage in confidential conversations with their clients that is outside of the courthouse hallways and courtrooms.

Commissioner Welch asked whether contract providers might want to comment on the space, and Chair Ellis invited comments. Ms. Cozine circulated an email received from a contractor in Douglas County. Lane Borg, Executive Director at Metropolitan Public Defenders, expressed his view that if PDSC weren’t on board with this project, the Multnomah County Courthouse would likely not be replaced. He noted that the colocation component was bringing \$62.5 million to the project, and suggested that given the significant value gained by the county, the Commission should ensure that provider’s needs are being met. He stressed the importance of having equal access to the building along with other regular users, like court employees and district attorneys, and talked about the benefits of having regular access

to appellate lawyers. He also felt the space could be very helpful to lawyers between hearings and during breaks in trials.

Commissioner Lazenby suggested that the PDSC should consider entering into something like a memorandum of understanding with the county, documenting the commitment to dedicated, lease-free space, and access cards, and suggested that such an agreement should be negotiated sooner than later. Commissioner Ramfjord agreed, and suggested that the resolution include more information about defense provider needs in the new building.

Joe Calhoun, who has practiced as an indigent defense lawyer for 28 eight years, spoke in favor of the project. He said it would be amazing to have a quiet, private place to talk with clients, and talked about the difficulties of trying to work in the current courthouse. He also expressed support for having appellate lawyers in the space.

Keith Rogers also expressed enthusiasm for the space. He pointed out that lawyers are sometimes waiting for a jury late at night and that, especially for woman, walking back and forth, with no place to wait and no place for the clients to wait, creates security issues. He also talked about the time wasted when lawyers spend significant amounts of time walking back and forth between the courthouse and their offices. Mr. Borg and Mr. Calhoun agreed.

Commission members shared some concerns. Commissioner Potter expressed his fear that the space could be insufficient after 30 years. Commissioner Ramfjord asked whether the project could impact PDSC's ability to get funding for its other priorities. Ms. Cozine said that while no legislator has suggested that, it is a risk, but that our part in the discussion has always been as a supporter of the county's request. Chair Ellis asked whether there was any possibility that the PDSC wouldn't qualify as a colocating state agency. Judge Waller said that this was discussed with the Department of Administrative Services and OJD in multiple meetings over the last two years, and there has never been any question about Public Defense Services meeting the needs for the 50 percent match. Chair Ellis asked whether Judge Waller would support access cards without a fee for public defense providers. She said that she would. Chair Ellis asked whether the space would be protected for PDSC use. Judge Waller said she would do absolutely everything possible to protect the space.

Chair Ellis expressed his view that colocation would significantly enhance the Commission's ability to perform its mission, with real savings to our Multnomah County contractors. Judge Waller agreed, saying it will enhance the practice of law in Multnomah County to have resources readily available.

**Agenda Item No. 3**

**Approval of Resolution in Support of the Multnomah County Courthouse Project**

Commissioner Welch moved to approve the resolution with the addition of information about needs in the new space; Commissioner Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

**Agenda Item No. 4**

**SB 471 – Right to Counsel in Conservatorship and Guardianship proceedings**

Nancy Cozine summarized SB 471, which creates the right to court appointed counsel in conservatorship and guardianship cases when certain circumstances are present. She went on to describe the steps OPDS would need to take in order to assume responsibilities for these appointments statewide, and explained that current providers are likely not well-equipped for this case type. Chair Ellis asked whether OPDS would need to determine eligibility; Ms. Cozine indicated that the courts would have that responsibility, as they do now in other cases where there is a right to counsel at state expense. Commissioner Welch explained that 47 other states provide counsel in these cases when the protected person is indigent. She explained the origins of the bill, and the importance of the effort. Chair Ellis questioned whether the PDSC was the right entity to be providing counsel in these cases, and

Commissioner Welch made the point that there isn't another entity in the state with this kind of expertise. Commissioner Lazenby shared his view that the appointment of counsel in guardianship cases can be very appropriate. Following Commission discussion, members agreed that OPDS should continue to track the bill, not take a policy position, and submit a fiscal impact statement that as accurately as possible estimates the additional cost associated with the work required by SB 471.

**MOTION:** Commissioner Potter moved to adjourn the meeting; Commissioner Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

**Meeting adjourned**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Wednesday, February 11, 2015  
12:00 p.m. – 2:00 p.m.  
Multnomah Building  
Commissioners Board Room  
501 SE Hawthorne Blvd.  
Portland, Oregon 97214

MEMBERS PRESENT: Barnes Ellis  
Chip Lazenby  
John Potter  
Per Ramfjord  
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine  
Paul Levy  
Amy Miller

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The meeting was called to order at 12:00 p.m.

**Agenda Item No. 1 Report on the Multnomah County Courthouse Project**

- 2:05 Chair Ellis      Alright. I think we can start the meeting. I want to thank everyone for coming to our new location. The first item is the report on the Multnomah County Courthouse project. I understand Mr. Deschamps and Mr. Day will present on that so proceed.
- 2:35 J. Deschamps      My name is Jaime Deschamps. I am with the Multnomah County facilities. I am the project manager for the courthouse. It is my one and only project and it is \$250 million. It will keep me quite busy and entertained for the next five years.
- 2:52 M. Day      I am Mike Day with DAY CPM Services. We are the Owner's Representative to support OJD and the county and the state and all the stakeholders through this development process. We are a resource to kind of support and backfill some of the areas that the county needs.
- 3:11 J. Deschamps      We have a presentation that will kind of walk you through some issues with the existing courthouse and the goals that we have for the project. Mike will talk a little bit about the reference design, which is just concept so we can see how the building would fit together. We

have been in the news about the top two sites, so we will talk to you a little bit about that and our schedule. You can interrupt at any time if you have any questions.

- 3:40 Chair Ellis Perfect. Go for it.
- 3:40 J. Deschamps I think everyone is kind of aware if you have been in the courthouse. It was built between 1909 and 1914. We should have had a party celebrating its 100 birthday, but since we are going to be building a new one we have deferred that for a little while. There are 600,000 people that go into the courthouse every year. It is a very busy building. It has a lot of people walking in and out. One question that I am pretty much always asked at any public event is what we are going to do with the existing courthouse. There are no plans with it. It is on the national register of historic places. The county has every intention of either renovating it or selling it for renovation. We have already had a couple of meetings with some interested parties. I have made the comment to a few different lawyers going, "I think it would be a great place to have your law offices. One of your little conference rooms could be one of the old, historic courtrooms." I will get as creative as I have to when we get to that point.
- 4:46 Chair Ellis Are there functions in the current courthouse that would not come over to the new courthouse?
- 4:52 J. Deschamps There are four items that are not coming over, four courtrooms. It is Traffic Court.
- 5:08 J. Waller Nan Waller, presiding judge. We agreed, given the constraints of budget and space, that we would find alternate homes for traffic, parking, small claims, and FED. Everything else will stay in there. We have already begun looking at what are the possibilities in terms of potentially the backside of the second floor of the Justice Center, so we could have all of our high volume courtrooms in one place in close proximity to the new courthouse.
- 5:43 J. Deschamps Also, the DA does not plan to be in the courthouse. In conversations with the national center for state courts, they have pointed out that a number of courthouses across the country have the DA in a different building other than the courthouse. We have been talking with the DA about finding them the appropriate space to be there, but there will be some satellite space in the courthouse for them to use.
- 6:08 Chair Ellis Parallel with what we are going to talk about today?
- 6:08 J. Deschamps Yes, exactly.
- 6:11 Chair Ellis Any estimates how many fewer visits there might be as a result of holding those other four functions elsewhere? In other words, the 600,000 number, do you expect that to be reduced?
- 6:27 J. Deschamps It will be significantly reduced. Judge Waller, do you have....
- 6:32 J. Waller I don't think we have a way of knowing exactly what the reduction will be. There is also a reduction that is somewhat related in that as we have completely implemented eCourt in Multnomah County that is reducing some of the foot traffic because people can do some things like pay remotely.
- 6:57 Chair Ellis Probably jumping ahead, but will the security at the entrance be improved over what we have now?
- 7:09 J. Waller Yes, yes, yes.
- 7:09 J. Deschamps We have some graphics that will be able to demonstrate that. It is kind of good you get me set up for some of the things. I have slides for that. One of the biggest problems we have with the current courthouse, because it was built in 1914, it is not built to seismic standards. The

use of hollow core bricks, while it is holding the building up, in an earthquake masonry structures just do not perform well and they will collapse in a major earthquake. In a minor earthquake depending on the magnitude and the orientation, there will be severe damage to the building. We would have to relocate and probably not be able to repair the building. This is a slide and it kind of gives you a context. Napa had a 6.5 earthquake a couple of months ago. Their courthouse is still not back in operation. Theirs isn't built the same way, but when you have an historic courthouse if you have an earthquake...

8:13 Chair Ellis

The 9<sup>th</sup> Circuit learned that with the earthquake that started with the baseball game. They were closed at Seventh and Mission for what was it two years, same vintage courthouse.

8:30 J. Deschamps

One of the biggest issues that we have with the current courthouse is that it is not built to 21<sup>st</sup> century standards, so we don't have the secure separation. This is a photo where we have an in-custody defendant being walked down the hallway to either go to a courtroom or coming from a courtroom. This is a photo showing just the number of students and kids in the hallway at that time. You never can control exactly what will happen. That is kind of one of the biggest things that we will be able to solve in the new courthouse. We have some slides that we can show you and how we will be addressing that. Another slide and if this were your house you would probably be very worried about touching any single wire or any piece of equipment. You never know what you touch may shut off power to the building or lightening or water or anything else.

9:19 Chair Ellis

All that material in loose storage looks like a fire hazard.

9:27 J. Deschamps

We will be moving them. This is some of the old electrical central wiring. The building is from 1914, so there is a lot of Macguvering to make everything operational. We do have a few key goals for any project. What do you want to do? It is to construct a safe courthouse for the community. Build it to current seismic standards and incorporate the best practices. That was the advantage of working with the National Center. They work all over the US. They work also in Oregon. They gave us some of the best practices from security, technology, and the layout of the space to come up with a courthouse that will meet the goals for the next 100 years. That is kind of where we are working towards. I am going to turn it over Mike who will talk a little bit about the reference design and maybe answer a few of your questions.

10:20 M. Day

Thanks, J.D. So kind of building on the building blocks of the work that the National Center for State Courts did. That was report was kind of finalized in August of 2014. We kind of moved from that problematic level to really testing kind of how does that fit into a building, so the reference design while it is not the actual design, it is more a prototype of what the design could be. It takes the information from the National Center for State Courts and it puts it into kind of the jigsaw puzzle to look at how does the building stack and layout and what are all the different departmental relationships as far as court support functions. The in-custody functions and we are going to go through a series of slides, which I think are going to answer some of your questions to on the in-custody transfer and some of those safety issues. Again, this is a prototype and so don't think as is the final design because by no means it is. Last fall we had a series of workshops and in those workshops we went through this kind of interactive process with the courthouse user group. We kind of went through that process of where does it make sense for the different functions to relate. The different colors that you see there the blue being really departmental functions and again, we are not going within the departments and figuring out where the desks and chairs are at this point, but we are just kind of defining based on the program what those facial relationships are. This does give you the purple in-custody piece and then the yellow really is staff circulation. So this provides you with that context of how is the in-custody transfer done, the holding, and the backup house functions as well on this lower level. As you go up through the building now we will kind of walk up through the building.

12:17 J. Waller Can I mention one thing that they might be interested in. Right now a big issue has been how an allegedly mentally ill people are brought into the courthouse. We don't have a good way of them being brought into the courthouse. They are transported through the halls. The sheriff has agreed not to have them shackled, but sometimes given some of the behavioral issues there are soft restraints. I think it is humiliating for people who are not charged with a crime and who are allegedly mentally ill. This design as with prisoners, it allows no parading through the halls or down the sidewalk of people who are allegedly mentally ill coming into the courthouse for hearings.

13:07 M. Day And that really is part of the best practices of the engagement with the National Center for State Courts and also one of the programming consultants that is part of the our team is HDR. They really brought that court's best practices expertise to, to pull from the National Center for State Courts and work through this reference design process.

13:30 J. Waller You might want to talk about the fact that there are attorney rooms in this.

13:34 M. Day Sure. Part of the in-custody holding piece is that there is that client/attorney visitation that happens in this secured environment as well. So, again, it is the separation of the secured from the non-secured. So moving up through the building now and we are going to take you through all the floors of the building. Again, this is just a concept. The green being your public circulation spaces. Then these lower three floors are really support functions, support services that support the court floors that are on the upper floors. You have got your legal resource center. Your court care, family court services, finance, and we really did spend a lot of time talking about how do these relationships between the different functions and departments best work and function together, whether they are on the same floor or separate floors. This by no means is where we are going to end up. We actually have to take the prototype and put it on to the actual preferred site that we end up selecting, but it does give us the context of how the different parts and pieces work together.

14:50 Chair Ellis The legal resource center, what will be there?

14:51 J. Waller It is our vision for what has been the law library will transform into. We wish that we had the same kind of ability to appoint lawyers in civil cases as we do in criminal cases, but we don't. We have an increasingly large self-represented population taking out small claims and FED in straight civil cases. The last time we looked it was 23% of our civil cases have one side that is unrepresented. That is the population that is using our very lovely and big law library right now for the most part. Really the law library, while we have great staff, it doesn't meet the needs of that population in terms of providing the kinds of tools and resources so that they have some chance of navigating their way through the legal process.

15:44 Chair Ellis So would this be having access to computers?

15:46 J. Waller Computer access. Electronic tutorials. Interactive forms. We already have one for Family Abuse Prevention Act, which is like a Turbo Tax type thing where it prompts you to fill in the forms with answers. So we are next looking at small claims and FED forms. We will get into them the whole menu of family law forms.

16:15 Chair Ellis Is there a Lexus Nexus?

16:16 J. Waller We are looking at all possibilities. We have talked to OSB to MBA to Legal Services about how we can provide the kind of functionality and the tools that will really help people understand the process. In presiding, because my courtroom is open twice a day to whoever wants to come in and present something ex parte, I get a lot of people who come in with very, very basic questions about how do I serve somebody? As a judge that is walking them through the process of Rule 7.

16:59 Chair Ellis They are all young lawyers from big firms.

17:02 J. Waller Having some place that I could send them where they could see a tutorial on when you file a lawsuit you have to file a complaint. We get things that somebody brought in four times over the past week. It is a complaint. It is a little unclear that it is a complaint, but it will help us, and quite frankly the population that is represented by court appointed lawyers in criminal, often have other issues that they need to deal with. They have the family law issue. They have a visitation that is going to be impacted by the restraining order and the VRO. They need solutions. I know that all lawyers want to be able to help their clients in all ways, but that is not possible under the terms of some of the contracts and insurance. This would be a place that people could go and get some of things done that need to be done in order to keep them kind of in compliance with the criminal side of their case, and then dealing with the family law side of their case.

18:10 Chair Ellis I read an article about a week ago about a problem that the San Francisco Municipal Library has. It is a nice heated space. It is open to the public and an awful lot of homeless people come in there because it works for them, although that was probably not the use that anybody had in mind. I bet this would attract that.

18:42 J. Waller Well the one difference between this and the Multnomah County Library that I know had similar issues in terms of people using the library for many purposes is – Michael will explain to you in a moment. The security that people have to come through, which is somewhat of an impediment for people simply coming in and out a lot of times because it takes time. It is not going to be an enormous space and it will be staffed. Our hope is to have people navigators who can assist people in – sometimes people don't know what they want and they think they are doing something and then it is a very frustrating situation for them to be told by the time they get to a courtroom and they think they have all their paperwork and then be told, no that is not okay. What you have done will not get you what you want. The navigators will at least be able to help people define what the issue is and then perhaps get them on the right track.

19:39 Chair Ellis So is this the floor that members of the public and employees, for that matter, enter and go through security?

19:46 M. Day Yes it is. The main entrance point is kind of following the arrow there coming through that vestibule and then through your screening process as far as going through the "TSA" if you will. That is kind of that process flow of circulation as you come into the building.

20:11C. Lazenby (Inaudible) top of the slide.

20:15 M. Day Again this is a prototype. We will actually have slides that will show the (inaudible) work that we have done. We will get you through the prototype of the reference design work and then we will move into both the preferred and the alternate sites and show you that context.

20:31 Chair Ellis Do you think you will be able to do away with the lines?

20:39 M. Day We will address that in a minute. That is a very important and good question.

20:44 J. Waller The other thing this addresses is our entrance is called by the sheriff's department, a "Fatal Flaw Entrance." People can get into the building before they have to go through security. We have seen in courthouses around the country that that ability to get into the building that people have come in with their gun in hand and then the shooting starts. We don't want that. We don't want people to be into the building without having been through security. We also want them to be out of the elements as they are waiting to get through security. Michael will show you that as well.

21:21 J. Potter I assume, as well, in this lobby that there is an information center separate from the legal resource center?

21:28 J. Waller There will be reader boards throughout the building that will have information. We have been talking about what we do in terms of language, how many languages, but there will be a variety of ways that we are looking at providing information about location of hearings.

21:46 J. Potter I am just wondering if there is a person in a lobby center. Did I miss it?

21:56 M. Day It is kind of hard to see on there. There is an informational kiosk and there will be other forms of kind of communication with a real person that is present that is able to help with some of those directional questions and, of course, the way finding signage that is not really developed here at all but that is an important part of the strategy of getting people to the right place. Let's take you up through the building now. We have a few stories to go and then we get up to the court floors. This is your kind of second floor. You can see how there is this openness of the floor below, so you are creating some volume in your space in that public area. Then your DA satellite facilities are here. You have your jury assembly, grand jury, and probation on this floor. Any questions at this point on this floor?

22:54 J. Waller I do want to touch on the Probation Referral and Assessment Center. That is something that we found a little tiny space to have right now. What we are finding is that sometimes the distance between the courthouse and probation intake was just long enough for people to get lost along the way and they wouldn't be appearing. What we want is we want people to get off on the right foot on their probation and to have a name that they will then be going to. We have found that has been helpful to defendants to get to the next place where they need to be, by actually having it in a building. So they go directly from a courtroom down to the probation referral and assessment center.

23:41 M. Day So the next floor has the Public Defense Resource Center. Of course that is probably an important piece that has an interest today to you. Then other administrative support functions around that. We sent a lot of time on this specifically. Judge Waller, did you want ...

24:02 J. Waller The idea of having a place where there is support for defense lawyers and for clients, I think it is brilliant. We have people right now sitting in the hallway trying to talk to their clients and having difficult conversations in the back of courtrooms. We don't really have any space. We have zero space in the building right now. The idea that there is some space where as things come in trials, as issues come up, there will be some support and a place for people to meet with the clients. I think in terms of the goals of our court, we are all very interested in the whole procedural fairness movement. That requires that defendants, any litigants coming into the courthouse, really understand what is going on. They have the opportunity to ask questions and they are treated with respect. The courthouse as it stands right now for many defendants, it can't seem like a place where there is much respect. Everything is out in the open. Often there is no place or time for that. I see this as an important piece of us moving forward on our procedural fairness initiative. Of having the opportunity for people to stop and have a place to meet with their clients and have the support that they need as lawyers.

25:23 Chair Ellis This is obviously the part that we are going to be most interested in. What is your preference? Shall we move on and go through the building and then come back to the third floor?

25:38 M. Day We could do that. We could take you up to just sort of show.

25:42 Chair Ellis Let's do that. Then we will come back.

25:47 M. Day We are going to take you through really a sampling of the court floors. With this program we have 40 courtrooms that stack up through the building.

26:01 Chair Ellis How does that compare to the court of the current courthouse?

26:02 M. Day The current count is 39?

26:06 J. Waller Thirty-nine, but we will be moving four courtrooms out of the building. The one thing that I want to say is that this again is a prototype. We are having a discussion right now amongst the judges in terms of the best way of configuring courtrooms and chambers.

26:25 M. Day It is an example of one of the options that is under study right now. There were actually four different options that we studied. We studied an eight court per floor, six courts, five and four. We have kind of gone through a pretty deep analysis with the courthouse user groups, as well the judge's advisory group. That is a continuation that will be a dialogue that goes on for several months. Because we don't have a design team on board and that will be coming up, this process and this time that we have right now is a great opportunity for getting alignment on really what is going to be the best fit of how many courts per floor. Are the chambers on the same floor, or are they collegial on a separate floor, for example.

27:18 Chair Ellis How does this size courtroom compare. I am going to show my age, but courtrooms like Judge Unis use to accompany? The oak lined, beautiful.

27:29 J. Waller A little bit bigger.

27:33 Chair Ellis But this is comparable to that?

27:33 J. Waller Or a little bit bigger than what we have. The National Center has recommended that the size in the well of the courtroom, for almost all of our courtrooms even the old ones, is that big enough for in terms of security. In terms of enough tables often for big cases, so the size of the courtrooms will allow the addition of extra tables when you have multi-party cases much more easily than our current configurations. The well size in terms of security and not having jurors right – almost within touching distance sometimes of witnesses and lawyers because everyone is crammed into very small spaces.

28:24 Chair Ellis It looks like half of these would have natural lighting and half would not?

28:28 M. Day Well the natural lighting discussion is an important part of the overall program discussion. Again, where we ultimately land as far as the final layout and looking at the tradeoffs between natural light and other important program functions are going to be part of that design process. So, again, just think of this as more of the blocking and the stacking of the pieces, but natural light, of course, is part of the county, the state, and the city's sustainability goals and objectives. It is something that will be looked at and studied as part of the overall programing process once we move into the design phase.

29:06 Chair Ellis What is the ceiling height compared to the old courthouse?

29:14 M. Day The court floors will be a higher floor to floor structure to allow for the right balance of ceiling height and the volume of those types of spaces. For example, a typical court floor to floor is 18 feet, whereas an office building, for example, would be 12 to 14 feet. That volume has been accounted for and looked at as part of the overall volume of what is the right relationship to floor area to ceiling height is. Do I have answer for what that exact ceiling height is? No.

29:56 Chair Ellis Close enough.

29:56 M. Day Later. We do have those things looked at and they are important as far as making the space feel right. So we are going to take you through fairly quickly, I think, just the additional court floors. A lot of this is prototypical from the standpoint that for long term flexibility you can

see that the vast majority of the courtrooms are of the 1,600 square foot floor plate. Again, that does provide for flexibility for the future. As time goes on, needs changed, you are able to adapt what those court functions could be within the overall 40 courtroom set. Now there are specific courtroom functions that are dedicated for different functions. Go ahead, J.D.

- 30:44 J. Deschamps Just one thing that I wanted to add. On all the floors you will notice that we have conference rooms adjacent to each courtroom. We have two of those. That is also an addition. Sometimes you are about to go in court and you don't want to meet in the hallway, so there are conference rooms that are available that can just be for a quick meetings before hand. Those are one of those best practices and also the sound lock vestibule so the conversations outside the courtrooms won't be impacting the courtrooms. This is similar to what we have in East County.
- 31:18 M. Day Then you can see the in-custody separation so you don't have that crossover between the public and the in-custody piece. The backup house functions with jury and just staff corridors and how that is separated from the public. These really do represent 21<sup>st</sup> century best practices when you look at other examples of recent courthouses that have been built. This just kind of takes you up through the building. As we get to the family courts, the size of those courtrooms is right now being modeled around that 1,600 square foot floor plate. Then as we get up to these upper floors here, I think this is the top floor of the family courts. You will notice there is four courts on this floor, but there is capacity with the six courts per floor set because of six times eight, right, is 42. We do have some future capacity that could, potentially be converted into courtrooms at a future date with this particular layout. Again, that final decision has not been made.
- 32:38 J. Waller All of this is something that judges care very deeply about and you have hit on some of the issues. The chambers in connection to courtrooms and what is most functional for the public and lawyers as well as judges. How much natural light is there? What are the security issues? All of the prototypes have secured hallways for staff and judges, but judges want to make sure that we have the capacity for being easily available to the public and to lawyers. Those are all things that I think have come up in terms of the interest of judges.
- 33:19 Chair Ellis So this would be a 12 story building compared to the current is six or seven floors, but a much smaller footprint.
- 33:32 M. Day It is 12 to 14 stories and again it depends on the final configuration or layout. It is probably closer to 14 stories.
- 33:40 Chair Ellis But the useable square feet is this (inaudible), how does the new proposal compare to the existing one?
- 33:48 M. Day Current is about 256 thousand square feet. The new one will be 360. The biggest thing is there are some courtrooms in the existing that are like 700 square feet. All of ours would be 1,600, and then just with that separation for security you start adding a little bit of space for that.
- 34:10 J. Waller Go back to that. The mental health courtroom and mental health holding, which we spent a lot of time talking about making sure that people will never have to be paraded in public, but there will be better space than currently we have while they are waiting for their civil commitment hearings.
- 34:33 M. Day The top two floors really represent, again, one of the studies with the collegial chambers, which had the chambers on the top two floors.
- 34:42 Chair Ellis Well the chambers would be physically separate.

34:44 J. Waller Not necessarily. This is one example. The other example that we are working on is where the chambers are on the same floors as courtrooms. Right now that is what judges like more than this, but some judges like this. We have not finished our discussion.

35:08 Chair Ellis I wondered.

35:14 J. Waller A big change.

35:14 M. Day It is definitely a different direction. What this reflects came out of the NCSC programming documentation that recommended the collegial chambers, but as Judge Waller said we are looking at other varieties of this that have the chambers collocated on the same floor and different configurations with that as well. This will be part of what happens once we get our design team engaged. We will talk a little bit about the next steps on that in a few minutes. Unless there are any more questions, do you want to jump back to the third floor? After we do that we will take you to both the preferred site and the alternate site and kind of show you how those layout.

36:00 Chair Ellis So how do you envision administering this space called Public Defense Resource Center? Is there someone there that decides who gets what?

36:14 N. Cozine Chair Ellis, I think that would be ours to decide. So in other words, it would be our space. We would be responsible administratively for every corner of that space.

36:22 Chair Ellis Okay.

36:22 N. Cozine The NCSC report lays out what we have been thinking about in terms of structure. So some space for appellate division lawyers who can telecommute and serve as a resource to the trial lawyers who are in trial who have legal issues coming up. A conference center so that lawyers can actually meet and talk about issues at a central location. Then hotel stations for the trial level lawyers, so that if they have a break between hearings or a break from trial, they have a space where they can go and get some work done, as well as client meeting space.

37:04 Chair Ellis This space is wonderful and space needs management and we would be responsible.

37:13 N. Cozine You would be responsible for that.

37:15 Chair Ellis I assume we try to accommodate lawyers that may not be on our contract, but our representing criminal defendants?

37:26 N. Cozine I think that is a discussion for the Commission to have. Exactly how do we want to use this space and how do we want to prioritize it. I would like it if we had sort of a reception function where we have a reception (inaudible) so that person can help clients who want to navigate their way around. We would have a filter on who is using it as well. For us, interestingly, I think this conversation is probably a 2020 discussion, because I think the final move in date is probably closer to 2021.

38:05 J. Deschamps No. 2020.

38:10 N. Cozine Okay. So 2019. For us the details about exactly to structure we have a little more time, but they are important discussions.

38:21 J. Waller Can I just say that Nancy's is part of the courthouse users group that meets on a regular basis. Once the design team is in place then the discussions about exactly how the space is configured, every part of the space, and believe that is a big issue for judges, we will all continue to be at the table having input and help in the decision making.

38:44 Chair Ellis            So explain to me the economics. As I understand it this would not be space we would have to pay rent for?

38:54 N. Cozine                My understanding is that the county has committed to no leasing during the life of the bonds.

39:01 J. Deschamps            Thirty years you won't be charged anything for rent.

39:06 N. Cozine                So we are responsible for any personnel and desk space.

39:14 Chair Ellis                And as I further understand it, the legislation of two years, there is a real value to having a state agency co-locate in the building.

39:32 J. Deschamps            So to get the 50% match from the state, the way the statute is written another state agency needs to be located in the courthouse. So we did an outreach to try to find an appropriate agency that wanted to be in the courthouse. Many agencies came to the realization that this is a secure building and it doesn't really work for them because most of the people don't need to go through security to meet with them. Nancy Cozine and Judge Waller had been talking and expressed that this would be a very appropriate group to be there. There is interest, so we started chatting and had the National Center engage with Nancy to figure out how much room do you need to make this work. The county has found the state agency to get the 50% match and Nancy is my best friend.

40:28 Chair Ellis                So let me see if I understand this. We would have access to the space which is 4,000 plus square feet. We would manage it for a public defense resource center. For 30 years we would not pay rent and you guys would get a 50% match?

40:52 J. Deschamps            Twenty-five percent.

40:55 Chair Ellis                Why isn't this a deal made in heaven?

41:01 J. Waller                  It is. I am sure that Nancy has given you some of the background on the bill, but when the bill - when Multnomah County and the court and others were working on this bill, the legislature, understandably, had some concerns about getting into the courthouse building business.

41:21 Chair Ellis                There is a very long history.

41:21 J. Waller                  There is a very long history. It is county function. Multnomah County, in the 40 years and 28 studies that have been done, has never been able to get over the challenge of what the cost of a new courthouse is going to be. It is much different in small locales where for \$2 million dollars they can actually get their needs met. So the intent of the legislation was, because Multnomah County was driving it and we were very involved in it, was to provide an avenue for Multnomah County to actually get to the point, after 40 years, of building the new courthouse but not have the door so wide open that it every court is going to use this as the funding mechanism for courthouses, because there is not the bonding capacity at the state level. There are multiple decision makers. The Chief Justice has to approve the project and there are criteria in terms of safety, life safety, there really is an imminent need and an urgency. That criteria has to be met. Obviously the Department of Administrative Services is involved in the decision making. The legislature, as one of the funders, is involved and has to approve and then the County Board of Commissioners is involved. It is a fairly complicated decision making schematic, but part of the legislature's intent was to allow for state funding but not to open the door so wide. That is what led to the requirement that if you want the 50% match you have to find a state agency. Some courthouses are used as co-located county functions and all. They probably don't have the room or desire. Twenty-five

percent of state funding if their courthouse is in dire need and going to fall down it may meet their needs. For Multnomah County it was a bigger lift.

- 43:21 Chair Ellis We hear from some of our providers' constituents concern that if you do this for Multnomah County there won't be any resources for other counties.
- 43:42 J. Waller The Chief Justice has done a prioritization because courts have to request approval, counties have to request approve from the chief justice. So he has been prioritizing. There are other courts that are already either in the process, or have gotten approval for moving forward in terms of seeking state funding for their projects. So, yes, Multnomah County, the state funding, \$125 million is significant and a lot of other courthouses for the cost of that could be built, but given both the narrowing criteria in terms of health and safety, that is one narrowing, there is also another fund that the legislature has for other courthouse projects that it is not a matter of health and safety that the courthouse needs to be replaced. Which courthouse is - Jefferson?
- 44:42 J. Deschamps Jefferson.
- 44:42 J. Waller Jefferson is getting funding from that. They are in the process of building their courthouse. Coos is looking at this as an option. Lane County is working with the National Center right now. So there are other courts that are going to be able to tap into the state funding and the Chief Justice is making sure that this is being handled in an equitable fashion. Obviously, the big issue is, because of the size, is going to take a big bite.
- 45:19 Chair Ellis Right. Other questions?
- 45:23 J. Potter You said this is a 30 year bond on this courthouse. You have a courthouse that you are moving out of that lasted a 100 years. What is the projected lifespan of this courthouse?
- 45:35 J. Deschamps It is a 50 to 100 year building. It is going to be designed and sized so that it can last 100 years.
- 45:44 C. Lazenby What is our current square footage and current (inaudible)?
- 45:50 N. Cozine Would have to look. I don't know.
- 45:59 J. Deschamps We would kind of like to talk about the preferred site and the alternative site. The Hawthorne bridge is our preferred site, the south block, so it is where the Jefferson Station is and the Veritable Quandary. It is across from the parking garage that the city owns. We do have conceptual views of how the building would sort of sit on the site. This is view of looking in essence from here towards downtown. A couple of things to note, we don't really dominate the skyline. We are very similar height to the two buildings that are most adjacent to it. We will still have the opportunity to make it a beautiful structure, but we won't be dominating the view.
- 46:50 Chair Ellis So education me. Where is this Veritable Quandary?
- 46:57 J. Deschamps So Jefferson Station is the big white building. You can kind of see the Veritable Quandary here. I have a better slide that shows from ground level that kind of looks at it. This one is a better view. You can see on the bottom one the Veritable Quandary. You can see the patio and I think one of the questions or comments you had is about queuing. So this is already a covered area with the building built above it. You would be able to go through the doors and then go through security. This is a concept that we came up with but it allows you to have an open air entrance protected from the elements. Then it allows you to go into the building. It allows the county and the Veritable Quandary to coexist. I just met with the owners of the Veritable Quandary this morning.

47:51 Chair Ellis And that is First Street in front?

47:53 J. Deschamps Yes.

47:53 M. Day Why don't you go back one slide real quick. Again, taking the reference design process that we have gone through now and doing a site specific adapt of what the first floor would look like. You can see the Jefferson Station and the Veritable Quandary, the overall plaza, an entrance point where the security is as you go through from the outside to the inside. Again, the queuing thing is something that we have paid very close attention to.

48:25 Chair Ellis What is Jefferson Station?

48:28 J. Waller An historic building.

48:31 M. Day It is a three story office building. It is a condo arrangement as for the ownership structure, but it essentially an office building. On the first floor there is some food service and retail.

48:46 J. Waller It has Niles Crane . It is part of what makes it historic, isn't it?

48:48 J. Deschamps It has the best Subway and best Benito place in Portland, at least that is what I have been.

48:58 M. Day This kind of gives you the relationship of First Naito Parkway, Jefferson, and then the entrance to the Hawthorne Bridge with Madison Street at the top. It shows the sally port. There is a floor below this that is your holding floor, so your in-custody folks come in. They go down and then there is a holding floor before they come up to the courtrooms. We are currently in the process of taking the prototype model that we have shared with you and doing more development of the lower three floors, if you will, that are all the support service functions and how do those fit together in the context of the site adapt for this site.

49:37 Chair Ellis (Inaudible) a potential tunnel between this ....

49:47 M. Day There was an easement that was established when the building on First and Main was designed and built, which was just east of the justice Center. So there potential opportunity for in-custody transfer from the justice center in a secured environment that would allow you to have that direct connection to the justice center. That is one of the options that is being explored and will be explored further during the design phase. Any questions on that? We don't have specific layouts of the floors yet. Those are in development right now, so as far as the public defense arrangement on this particular site, we don't have any information to share with you today. Now this is the alternate site. That is between the KOIN Tower and the Marriott Hotel. It is a couple of blocks to the south and a block further in off of Naito Parkway. Again, both the sites are within four blocks approximately of the existing courthouse. The logistics of either of the downtown sites are going to be very similar from an access standpoint, traffic circulation, and we will go to the next slide here.

51:12 J. Deschamps One of the complications with this site is this structure here, the white, is the only parking access under the KOIN Tower. We can't demolish it. We can't close it. It is their only access, which is while this site while it is a full block, it is not really a full block. We can just never close that. The other part is it has a truck elevator as part of it as well. It is a little bit of a complicated site to build a courthouse on.

51:45 J. Waller As a judge having public access running underneath the courthouse is not the most desirable.

51:57 C. Lazenby Who owns that now? Is it county owned?

51:59 M. Day No. It is a private ownership.

- 52:02 J. Deschamps      Block 128 , LLC.
- 52:08 M. Day              So we have done some rendering with Google Earth and kind of dropped the building in to do the site adapt to make sure that the test fit works on this site. Very similar to the other site it is an L shaped building, which works out very nicely for the way the court set works out. We have another view here that shows you from a different angle looking from kind of the south to the northwest or northeast. That again shows you a little bit of the context of the L shape here with the fact that we have this existing structure that we have to work in and around for that parking access. Then again here is really just the test fit of how does the first floor circulation work with the sally port, with the in-custody transfer piece, and then a typical layout of what the court set would look like with the six court set with the collegial chambers. Again, those decisions haven't been made. This is just one of the rendered versions of what it could be. The entrance point, the focal point of coming in and kind of creating that civic presence. This the rendering of what that might look like to make that transition off the street and into the building. Again, adequate space to deal with line management so that we don't have people wrapped around the block.
- 43:44 J. Deschamps      So we are doing some geotechnical and metal assessments of both sites, just so we know what the risks are around both of them and that we have a better understanding. We are also doing a traffic impact analysis about how the traffic would change if we picked either site. More importantly, we are collaborating with the Oregon Judicial Department and the Department of Administrative Services and all of the courthouse users groups from the Office of Public Defense Services, the DA, the sheriff, the judges. I have got the MBA as part of that. It is very collaborative approach. It is a good team to kind of work together. Everybody knows there are tradeoffs, so we can kind of talk and kind of come up with the best solution that will work for Multnomah County and the citizens of Multnomah County. I think the main thing you are probably going to wonder about is the timelines. In April we will be finalizing the site selection. We will be issuing a request for proposals for an architecting contractor in April as well, with the goal of having them on board by end of July, so they could start work on the final design in August.
- 55:00 Chair Ellis              How does that work if I am a contractor? How do I respond before the architect is done?
- 55:06 J. Deschamps      So the county is using the construction manager general contractor method of delivery. It has been used on the East County Courthouse. The county is using it on the Sellwood Bridge. They are using it on the State Capital. That approach brings a contractor as part of the team to do value engineering and to talk about construction means and methods. It is a very effective way, Intel, Nike, a lot of private enterprises use it too because it gets the architect not designing in a vacuum. The contractor says, "With this site and what you have there, here are some ideas and methods so that your design can be tweaked, so that we can come up with the best, most economical solution." So we won't doing a hard bid. They will give us a guaranteed maximum price at roughly 40 to 60% of design, but by doing it that we get the best of both worlds. We don't hard bid it and then not be able to build it for the budget. The team is always going to be working. Here is the budget in mind, here are the goals, here is the county vision, let's work together to come up with the best solutions.
- 56:17 Chair Ellis              I am a big fan of that Sellwood Bridge project. I drive by it twice a day and I have personally supervised it. I think it is an incredible, well managed project. If you can do that here, more power to you.
- 56:36 J. Deschamps      I was the lead bridge engineer for the owners for the Sellwood Bridge. When we were moving the bridge across, I was on site monitoring the strain to make sure that the bridge didn't get out of tolerance.
- 56:55 Chair Ellis              Very exciting things. The Fremont Bridge got jacked up, which I also supervised.

57:02 J. Deschamps We will not be moving the existing courthouse.

57:05 J. Waller The East County Courthouse that opened in 2012, three courtrooms. It is a gold lead certified building. My understanding is that it came in on time and under budget by a hair. If you haven't been out there it is a beautiful building.

57:28 J. Deschamps We are looking to begin construction at the end of the 2016, with the heavy, real construction starting in the summer of 2017. Finish construction at the end of 2019 and open, I keep telling people April 20, 2020. If I could February 20, I can do 02/20/2020.

57:51 Chair Ellis That will only happen once in a millennium.

57:58 J. Deschamps That is my goal, or faster. That is our presentation for the day. This is my little project for the next five years. I have been on it for 15 months and I got hired specifically for this project.

58:13 Chair Ellis Questions for others? Thank you. This has been a great presentation. You can tell we all had quite a lot of questions, but we did them during the course of your presentation. So what do you need from us?

58:36 J. Waller It would be very helpful if you would pass a resolution committing to being in the courthouse. That will certainly help in terms the request to the legislature that will be occurring this session. The legislature previously authorized the sale of \$15.4 million dollars in Q bonds. During the E-Board hearings in December, approved sale of those bonds in March. They are not funding – not approving \$125 million dollars in one session. It is kind of a pay as you go process. I think that having the commitment from you as to space in the new building will be helpful to the legislature in terms of knowing that we on the march to the 50% match for them. There is a request for this session for \$17 million dollars in bonds to be sold.

59:46 Chair Ellis This will be the first time this 50/25 match has come up?

59:50 J. Waller Well it has come up previously. It came up in the E-Board hearings and there was discussion about it at that time. When they approved the \$15.4 million when the bill was passed, it certainly was part of the presentation. That Multnomah County was looking to a 50% match in order to get the project done. There was discussion at the E-Board hearings in December.

1:00:21 Chair Ellis If there are not other questions...

1:00:23 J. Potter Was it 4,000 square feet for the Public Defense Resource Center?

1:00:29 M. Day I think it is 4,600 square feet was the program approximately.

1:00:34 J. Potter So we have the draft resolution here and you may have seen that as well. It says that the NCSC recommends (inaudible) space be provided. It says a reception area, 10 work stations, and a large conference room. I am assuming that someone has done the math on this and figured that out.

1:00:50 M. Day Yes. I know we went through that slide and you probably didn't notice, but the actually square footage versus the program that is extrapolated from NCSC and we were within 40 square feet, I think of the program. So as you fit all the pieces within the department together, we are actually just slightly larger. Again, we are talking about a percentage. If we are within 2% of the program plus or minus when you go through that process of where do the offices go, reception and everything, we feel very confident that we can fit all that program into the space.

- 1:01:31 C. Lazenby I asked a question earlier about our current space to just make sure that about the adequacy of this. Is it your impression - I know you don't know the numbers, Nancy, but is it your impression that this is more space than we have now and more than adequate to manage what we project as our growth or size of staff over the next five years?
- 1:01:50 N. Cozine Well the Multnomah County Courthouse space would be in addition to what we have in Salem. I would say that it is very possible that in Salem we will need more space. This plan really addresses Multnomah County and Multnomah County needs, as well as the needs of lawyers who are traveling oftentimes over 400 miles a week because of the distance between our office and - sorry, over 200 miles a week because of the distance between our office and their home location which is here in Portland.
- 1:02:30 Chair Ellis Nancy, maybe part of what Commissioner Lazenby is asking about is I thought I understood that you envisioned a portion of this space would be used by appellate lawyers who live in the Metro area. They currently commute to Salem five days a week. Some of them may do their work from this space and not commute, or at least some days a week. Then that, in turn, would liberate some of the space that we are under constraint on in Salem.
- 1:03:03 N. Cozine It will relieve the number of days where lawyers have to share offices. Right now we have three offices where lawyers, two lawyers, are actually sharing a 100, 10 x 10 feet, 100 square office space. Very small for two lawyers, particularly for appellate work where you are really at your desk and writing for eight hours or more a day. It would relieve the number of days where they are sitting in the same office space, but we may well need, at some point in the near future, some additional space in Salem as well. That depends on whether our office grows in number of positions.
- 1:03:51 Chair Ellis Let us suggest that we hold this topic. I think it is part of what we need to discuss for the next segment, which is Commission discussion as opposed to the presentation. Any other questions? Thank all three of you. It was very enlightening and very exciting.
- 1:04:12 J. Waller It is exciting.
- 1:04:19 C. Lazenby I just wanted to say, Judge, that Chair Ellis wore the tie for the rest of the lawyers up here.
- 1:04:27 Chair Ellis I want you to know that I almost never wear a tie in my current situation, but I thought long and hard.
- 1:04:35 J. Waller Well thank you. It is a lovely tie.
- 1:04:37 Chair Ellis I haven't interchanged with a judge without wearing a tie, so I thought I should.
- 1:04:43 J. Deschamps You are very welcome. I always have my lawyer joke because I have JD at the beginning of my name and you have JD at the end of your name.

**Agenda Item No. 2 Discussion of New Courthouse Proposal**

- 1:04:58 Chair Ellis So why don't we have a discussion within the Commission on this.
- 1:05:05 C. Lazenby My question is really committing this far in advance to a specific footprint. I have been involved in the Portland Development Commission. I have been involved in development projects. We may end up with more space than we use. Free is a pretty good price, but are we anticipating our growth and space needs? Does this really make sense, or do we need to have more? I understand the need in going forward with a commitment from a public agency in order to get the bonding and the funding going and that is great, but I don't want to see us in a situation where maybe we have not enough space. We have grown so much. This space that we are getting is that going to be adequate and then we will be looking around for other

space in Portland, or a larger space in Salem. The problem with my question is that it is too far in the future to know the answer and that is what I am asking.

1:06:12 N. Cozine Right. I think there is this policy issue in play. This is kind of mixing apples and oranges, but does the Commission support the idea of a full-time office in Portland? Certainly it is what our lawyers would like to see but from an administrative standpoint, I don't know if that is where the Appellate Division management team is. I know within the legislature and I think within this body, the Commission in the past, there has been concern about loss of productivity, loss of culture if there are two separate offices.

1:06:57 Chair Ellis I have been on the side of not wanting to see lawyers in the appellate division permanently located in Portland and never going to Salem. Part of my concern has been I think they lose the cohesiveness that the AD now has. I think this ability to interchange with other appellate lawyers is important. I think the quality control is much better if they are concentrated in a single place, and there is obviously a lot of logic in the appellate side with the appellate courts right next door. The other side of that, I have been quite open to telecommuting if it is not five days a week, but just say two days a week. I don't think you lose all the virtues that I was trying to describe before and I do see a lot of advantages. One is I am sympathetic to the lawyers. That is a lot of time on the road. Two is I think there is potential of very healthy interchange between the trial bar and the appellate lawyers if they happen to be adjacent. I think we could use this space for that kind of part of the week telecommuting, as opposed to any vision of a permanent, 100% of their time, never go to Salem, except on arguments use. That is my vision and I am really interested how others react. I would not be enthusiastic if I thought the whole logic of this plan was to relocate, on a permanent basis, several appellate lawyers. I would be troubled by that.

1:08:55 Hon. Elizabeth Welch Mr. Chairman. Do you have a comment at this point? I didn't mean to interrupt.

1:08:58 N. Cozine No. I just want to say in follow up that the spaces for the trial level lawyers. You know there are 10 spaces dedicated for that. That was based on the fact that we have 10 different contract entities. Some of those are primarily juvenile providers and so they spend much more time out at the juvenile court facility. Whether or not 10 spaces are sufficient hoteling space is a question, but because this is a novel concept, I think it is very difficult to tell whether or not that would be sufficient. We just haven't tried this before. It is partly a future projection. It is also that we haven't tried it.

1:09:39 Chair Ellis But it is 10 spaces compared to zero. Even though I don't get to the courthouse much anymore and when I did it was not in the criminal area, I am keenly aware that it is just awful to have criminal defense lawyers being introduced to their clients in the courtroom and have to go to the back of the courtroom and whisper back and forth as to what they are going to do. That is just no way to do it. I am unabashedly enthusiastic about this space for the trial lawyers. My only question is the one I have asked about the appellate.

1:10:19 N. Cozine Right. It was structured with the idea of continuing our existing expansion of telecommute days when there is an alternate location available. Right now we use a public defender office as an alternate location, but the courthouse would serve a broader purpose.

1:10:36 Hon. Elizabeth Welch I just wonder if Lane has some comments about the adequacy of the space for the trial bar.

1:10:47 N. Cozine And I think that all of the contractors in the room might wish to comment. This would be a good time for that.

1:10:53 Chair Ellis Incidentally, Nancy, you were going to pass out some written comments from one of our providers.

1:10:59 N. Cozine            Yep. I have it. I have an email from one of our providers down in Douglas County. I thought I would share that with everyone.

1:11:12 L. Borg              Chairman, Lane Borg, Metropolitan Public Defenders. Thank you, Commissioner Welch, for giving me the opportunity to speak on this. I do have some comments. I will try to go through them quickly. I will go ahead and admit up front that there are going to be some inconsistency in them. I think on the one hand the answer, and I was at the Commission meeting in Salem when outside contractors from Roseburg was asking a question like does this just sound like a sweet deal for Multnomah County.

1:11:48 Chair Ellis          That is what this letter is.

1:11:48 L. Borg              I think the easy answer to that is as to the money, it is not like this is money that was going to be in the budget of OPDS anyway. It is by collocating it is making other state funds available. If you don't collocate, it won't be available to providers in other counties that way. I think that is on the one hand we are agreeing to collocate there or Nancy or the Commission are agreeing to collocate there. That makes it palatable or affordable for the county to build this, but I don't think, and I would urge the Commission as you go forward and don't let too much time go by, be tough and hold our position. We are bringing a hell of a lot of money to the table; \$62.5 million dollars is coming. I think if you look at the history of trying to building a courthouse in Multnomah County, if it weren't for that there is a very good chance that this wouldn't be happening.

1:12:55 Chair Ellis          Is that figure what you think is the benefit to the project of having us collocate here?

1:12:59 L. Borg              They were talking about being \$250 million dollar project. Judge Waller just talked about it being the state bringing \$125 million dollars to it. As I understood it, it is 25% when it was just OJD. With it being OJD plus another agency it is 50% of the project. So "we" the public defense community, represents a quarter of the funding process coming in. I am not saying therefore we have to complain about inadequate space. The space they presented appears to be adequate from what I can tell, but the history has been if you look at the justice center, those little conference rooms next to the four courtrooms were supposed to be defense rooms, supposed to be defense interview rooms. Those were gone. We have a tendency sometimes as public defenders ....

1:13:51 Chair Ellis          What happened to those when you say they are gone?

1:13:52 L. Borg              Well they are being used by release assistant officers, probation officers. They are not defense space anymore. I think there is a reason for that and I want to address that in just a second, but I think sometimes as defense attorneys we act to much hat in hand and grateful for any crumbs that are thrown our way. We are bringing a lot of money to the table here and we should be insisting that our space is protected. That we are given, as Judge Waller talked about, this concept of equal footing. We are stakeholders. We are participants in the system and we need to be treated as such. I think one of the things, I know I am the lone ranger here on this right now, but I think one of the things that the Commission should be insisting on for this, not just we want the space as described, but when we go into this public defenders should be given an equal access to that courthouse as the district attorneys are given. Right now I have to go buy a courthouse access passes for my staff members to go in there. It is costing me about \$33, \$3,400 a year to buy passes to get into the courthouse. The district attorneys are just issued these passes. That is not going to break me, but that is two or three laptops. I can translate that into real things. I think that this is right time. We would be saying, "Great. We want to be a partner with you."

1:15:30 Chair Ellis          Run that out over 30 years and discount it back to present value and you have got real money.

- 1:15:34 L. Borg                    Okay. There is that. The other thing though, is why I think the space is adequate, is that right now the appellate division already has a telecommuting policy that Nancy just alluded to. They generally, not all of them, but they generally come to my office. We have a space to use and it has been a great thing. The collaboration, the ability for lawyers to go by and bounce issues off. Sometimes we have had situations where we have been able to really target and say, "What should we be doing to develop this issue? What are the issues that the appellate division wants to be bringing to the Court of Appeals and how do we set that up at the trial court level to do that?" I think that collaboration can continue. I am little worried it might not work in the hubbub of the day to day trial work. You are in the courthouse and I need something right now. I need an answer for a judge right now. That might be a little too fast paced. I don't know that I would say that I want to get rid of the notion that occasionally we have appellate division lawyers telecommuting from my office. I think it is those after court hours walking around.
- 1:16:54 Chair Ellis                Do you charge rent for these telecommuting lawyers?
- 1:16:54 L. Borg                    No we don't. It is something that Pete started years ago, appointing people to be in charge of certain counties and certain regions. It has been very helpful. I have tried to utilized that and encourage the lawyers in my office to say, "Go to that person. Talk to that person in your have an appellate question." As a de facto thing with having the people there, the lawyers know somebody is there. It is not every day of the week, but I would say four out of the five days of the week there is somebody from the appellate division back in our extra space, work space, not so much in the summertime because now we have a robust student program and that is where the students all are. But they know they are there. They wander back and run issues past them. I think it has been really beneficial, so I have been more than happen to provide that space. But the reason why I do think this idea of hoteling and what is being proposed will work this time and there will be better way to keep that beachhead in the courthouse, is that the technology is changing enough that when we have just finished a project at MPD of going to a collocate site for our computer or IT processes. So now, it is not quite there, we need to get Citrix more online, but we this I would be able to access our case management database, the discovery, play videos that the police have sent us. That is going to be coming more and more of videoed evidence. This is the right time for that coming and having a hotel location of the courthouse to be useful to lawyers. It won't just be sitting around waiting for a jury verdict and reading the newspaper. They will be able to do actual work because the connectivity that even they have at the courthouse now is allowing lawyers to get into my database. They can get their emails. Juvenile court has been using it for awhile and has really been successful.
- 1:18:53 Chair Ellis                Who do you understand that the county has authority to commit on this access piece?
- 1:19:04 L. Borg                    It is the sheriff that we go to now for access, but as we have seen recently on an issue about visitation at the jail, I think they are ultimately responsive to the Commissioners. So the Commissioners approve their budget and I - I don't know if I have thought through and saying, "Okay. This is the way to do it." I think, and I would urge the Commission to take a position that we are bringing significant resources to the table. We are co-equal partners in this. Certainly with the DA's office we should have equal access to the courthouse. I don't think it should just be people in my office or Keith's office, I think as we have learned through this parity discussion, anybody who is doing - pick a percentage, 90% or whatever. They should be treated just like people in my office or people in Keith's office and been given access to the courthouse.
- 1:20:03 Chair Ellis                I am in agreement with you. I don't think it is an issue where we say, "Well, if you don't do that, we won't agree to collocate."
- 1:20:09 C. Lazenby                Let me make this suggestion. One way you might want to do it procedurally is that these guys that we talked to today are managing the project. They are doing it for the county. You are

right, Lane, the sheriff's office and the county tend to be sort of co-equal partners in managing these things because the sheriff is an independently elected official. I think one approach that might work is at this juncture is to say that the Commission has some concern repeating what happened in the past, which is loss of dedicated space. I think as binding as you can get would be a MOU or a MOA, or something between the county and the sheriff's office, the defense community, somebody like that, around principals of use in the building because we are bringing so many resources in. Dedicated space would go to us. Not having to pay for access cards. That is just something that is going to be embedded in the operational costs of the building. A number of other concerns that our clientele, the practitioners have about the way they work inside the buildings. You could do it MOU like that and to the extent it is not like an ironclad contract or lease, but what it does though is it puts us, this agency, in a position where those promises made to us are almost a part of the bond covenant. That if they violate those and we are starting to move out, it could trigger something in the bond covenant where they may have to repay it somewhere down the line. Now there isn't a correct connect the dots there. I think at this point because we are a necessary part of the formula, is the time to strike these sort of operational bargains and get people to agree in principal that that is something we would need because of the resources we are making possible. I think at this point people are going to be amenable to that because they can see the money they don't have.

- 1:22:23 P. Ramfjord I would agree with Commissioner Lazenby on that point. I think that actually the draft resolution that we have proposed could do a couple of things slightly differently. One, I think it talks more about some of the defects in the existing building and a little bit less about our need for this space. I think that it should really actively address the need for this space, both at the trial court level and at the appellate court level. I think it should say that based on the commitment to provide that space we whole heartedly support this project. But I think doing it by really emphasizing the need for the space and the commitment to provide it, would be a useful thing to do in the resolution.
- 1:23:02 Chair Ellis Nancy, do you have enough that you could modify the resolution to include those thoughts?
- 1:23:09 N. Cozine Yes.
- 1:23:09 Chair Ellis I think it is clear enough among us what we are voting for. It is the resolution supplemented by that - it is not a condition but really a statement of expectation as we pass the resolution.
- 1:23:28 C. Lazenby I want to congratulate Mr. Borg on signing up for yet another job to help make sure of these operational details. Thank you very much, Mr. Borg.
- 1:23:42 Chair Ellis Did you wish to present?
- 1:23:48 J. Calhoun Is this where I ask for the pool and the gym.
- 1:23:50 C. Lazenby Hot tub.
- 1:23:50 J. Calhoun My name is Joe Calhoun. I have done indigent defense for 28 eight years. Two years with the public defenders. Both Lane and Keith were my supervisors at one time and to me the notion of having a place for myself as a lawyer can go and not be in the hubbub of the courthouse and not be in the hallways. The harsh reality of clients that are out of custody they sometimes don't bother to come and see me. We send office visits and they don't show up. A lot of times the first time we do meet a client when they are out of custody is at the courthouse. It would be just amazing to be able to take a client and go sit down in a quiet, private place because it is something that we don't have now. There is no quiet, private place in the Multnomah County Courthouse for the defense attorneys. That piece would just be excellent. Having the resources there would be added, having someone from Public Defense Service Commission there, appellate lawyers there. It would very helpful to be able to resource that. Now a lot of time it is email and telephone. I don't know if I would get to see

Paul, but we don't have anything right now. We don't have anything. You go talk to a DA and they say, "Okay. We will do this with your offer." You have to go find the least crowded place in the hallway to talk to your client about a recent change in his offer. There is just no place to talk with anyone. You have to be careful when you are talking with someone about a case because someone could overhear. Having a place to go to would just be a God send.

- 1:25:52 Chair Ellis      So Lane and Keith, how much time of your lawyers is spent going from the courthouse back to your office, conferring, and then coming back to the courthouse.
- 1:26:06 K. Rogers      Your Honor, Keith Rogers, MDI. I agree with what both of these guys have had to say and I am preaching to the choir for my enthusiasm for the space. To answer your question especially when you are waiting for a jury late at night, you might be a woman walking back and forth, no place to wait, no place for the clients to wait, security issues. I think it is really important that there is a place to go. The back and forth part of it is real common. We go back and forth, especially my office, because we do misdemeanors and we have eight, 10, 12 cases a day in the courthouse. You might go back and forth five or six times. If you could get a half here and there is no place else to go, you just go back and forth and you save a lot of time.
- 1:26:51 Chair Ellis      I know where Lane's group is located. I know I should know, but I don't know, where is your group located?
- 1:26:58 K. Rogers      We are in the historic Yeon building.
- 1:27:02 Chair Ellis      That was my first building when I started.
- 1:27:06 L. Borg      I don't disagree. The additional thing that I would add is that a lot of times my lawyers have complaints relative to the ways some of the dockets are run. There is a lot of time you sit at the courthouse. It has helped having the connectivity that they do. They can get on and answer emails and do things. It would be even better if they could get into space. I understand why judges are reluctant to say, "Go ahead. Go back to your office and come back." I think they will be more likely if you are just right over here one floor away. I am in the building still. That would give the lawyers a place to get to and actually do some work. That is what I hearing from - particularly in my misdemeanor section and my minor felony section is, there is a lot of time just sitting in courtrooms waiting for things to happen.
- 1:28:05 J. Calhoun      A good example of that is when you say, "Judge, I am ready for trial. The judge says, "When I am done with the docket, I will then assign your case." That can be anywhere from an hour to two hours. For most of the attorneys ...
- 1:28:21 Chair Ellis      And you are expected to be sort of on standby.
- 1:28:22 J. Calhoun      A lot of them are. I cut out and give the clerk my phone number. Most of the attorneys are just stuck there, they really are. Maybe if you have your laptop you can do something, but you could get a lot more done if you could go make some phone calls, take care of other things while you are waiting for the court.
- 1:28:42 Chair Ellis      Other questions or comments?
- 1:28:45 J. Potter      Did I see on those charts that we looked at, the plans, that each courtroom would have at least client conference room outside of it, right?
- 1:28:58 L. Borg      That is my understanding.
- 1:28:57 J. Potter      That would take a little bit of the pressure off of this public defense resource center. What I am thinking is that you want to have client space near courtrooms. I can see lawyers bringing

clients back to the resource center, but if the resource center is also a place for the lawyers doing real work, I could see a conflict between those two if there wasn't space outside the courtrooms.

- 1:29:27 L. Borg                    Yeah. I think you will want to utilize that space. In a drug call situation where you have one courtroom handling 50 or 60 cases on a docket that one is going to be hard use that. One attorney and one client can use it at a time. I think it is great that they are putting those in. It is better than what they have right now, which is you sit in the hallway talking about very serious changes in your offer. I mean you are talking about situations where like you might need to go to prison now. This is what you have to deal with and trying to have that conversation on a bench where other people are around is just really, really uncomfortable.
- 1:30:13 C. Lazenby                The new courthouse, as conceptualized, is going to alleviate some of those docketing problems and systems that are in place. There will be more courtrooms, so I am assuming that the work will be spread out.
- 1:30:35 J. Calhoun                Usually there is one judge. It is called a Drug Call Docket. The property and drug crimes, one judge handles that whole docket. So like Lane said, there could be 30 out of custody people in the courtroom.
- 1:30:53 N. Cozine                I just wanted to comment on the conference spaces outside of the courtrooms, because that is exactly analogous to what exists at the Justice Center and at the Juvenile Court facility. Both of those facilities were built with those conference centers for client communications. I don't think that either one of those are currently available to lawyers and clients.
- 1:31:22 J. Calhoun                I don't think they ever were.
- 1:31:22 N. Cozine                They were at the juvenile court. When I first started at the justice center it was there, but there were security problems with concerns about lawyers. They couldn't see in well, and they were concerned about lawyers not being safe, but there were also other needs for the space and because that space was not in any way under the control of the Public Defense Services, there was no way to protect it. So while I think those conference rooms in theory are very, very helpful, I lack confidence that they we always be available. At the justice center they started being locked and then they were repurposed. It is not a criticism. It is just sort of a reality of the situation. Things don't always play out the way that you think. Having dedicated space, it really is our space. I think that is really the way to make sure that you have a lasting presence and a lasting way to have confidential communications.
- 1:32:32 P Ramfjord                It is always a race with the prosecutor to get to those offices too. If they are full of cops you are not going to be using that room.
- 1:32:41 J. Potter                    And the private bar wants to use them too.
- 1:32:45 N. Cozine                Right.
- 1:32:51 Chair Ellis                Keith, I cut you off.
- 1:32:51 K. Rogers                This is probably not anything that you can influence, but I think the decision on the site – the train has probably left the station no matter what they said. But for the record, I think my attorneys in my office which much prefer the preferred site, which seems to be where it is going. We spend a lot of time waiting for clients. A lot of that is wasted when they do security issues. That would make an amazing amount of difference to the speed and efficiency of the courthouse, but I think it has already been decided and they are just paying lip service to the choices at this time.
- 1:33:30 Chair Ellis                In any event, you are weighing in on the side of the preferred option.

1:33:36 K. Rogers           What the majority seems to be agreeing with.

1:33:44 Chair Ellis           Okay. Any other ...

1:33:44 J. Potter            Only that it strikes me that the space is going to be inadequate sooner than later. This is a 100 year courthouse with a 30 year bond. I think that you will be able to hold onto that space for the 30 years because the money is tied in, so I think you will have some leverage. After that how do we best protect it? But 15 work spaces for lawyers and 10 telecommuting spaces in 30 years, it is going to seem like nothing. We have nothing now and I understand that it is an improvement, but I bet it will look like nothing in 30 years.

1:34:27 L. Borg            If I may, Chair, comment on that. I have really been surprised. I have been interested in this topic and I had an opportunity when I was doing work through the law school. I was traveling around to many cities seeing different courthouses and configurations and it is really interesting. I went to the federal courthouse in Albuquerque. If you haven't seen it you should go see it. It is really fascinating. I am really surprised how traditional they are going with. I am surprised they don't have an entire floor of specialty courts. They have the one mental health court, but I am surprised they don't have more courtrooms that envision that we are not going to have a traditional jury trial and this is the way this is going to be used all the time. I am surprised they don't have an alternative dispute resolution area that has larger conference rooms that you need when you are having your stressful mediations and debate back and forth, but you are not going into a traditional courtroom settings. I was really surprised that we get eight, nine floors of courtrooms that Clarence Darrow would be comfortable in.

1:35:35 Chair Ellis           Okay.

1:35:39 P. Ramfjord        One question for Nancy. This is a fairly large commitment of funds that could be needed from the Public Defense Services Commission. Do you think that could negatively affect our ability to get funding for either more office space in Salem, or for other projects down the road? How would you deal with that prospect to put it that way?

1:36:07 N. Cozine         It is an interesting question. Thus far no one has attributed the money to public defense seen as something to support the county. There are many legislators who were supportive of the concept of the 50% match, because they wanted to see the new courthouse built. That being said, I think it is difficult to predict the future and the whether or not, at some point in time, someone would say, "We already committed as much as we are going to commit to space to support public defense." I think it is difficult to say. I think I couldn't represent that that would never happen. I think it is a plausible kind of possibility. I would certainly do my best to make sure that our position is heard as being committed to the project, supportive of the county's request, and that we are doing our best to describe how we fit it and why it is important. So that is where the discussion stands today.

1:37:30 Chair Ellis         Everybody is assuming that PDSC qualifies as a collocating state agency, but we are part of the judicial branch. I just raise this to make sure that nobody is proceeding on an assumption that hasn't been validated. So you are comfortable that we would qualify?

1:37:55 N. Cozine         I don't know if you have read the statutory provision about collocating state agencies. I think there is a question about who actually designates an entity as a collocating state agency. My understanding is that it is the Department of Administrative Services that makes that determination. They have been participating in the discussions. They have not said this does not qualify as a collocating state agency. But that is the discussion today and whether or not at some point in the future there would be a concern that it wasn't sufficient. I can't say with 100% certainty.

1:38:34 Chair Ellis Okay. To me it would be perverse to jam an unrelated state agency function into this building, which is tight enough on space as it is because of a different interpretation of the funding. So I am very hopeful that everybody's assumptions will be true, but the lawyer in me as I sat here and worried about it a little bit.

1:39:08 J. Waller It was discussed a lot with DAS and OJD and DAS have had multiple meetings over the last two years on these issues. There was an issue earlier about whether DA offices could count as the 50 match, whether they could be seen as a state agency.

1:39:27 Chair Ellis But they are not a state agency.

1:39:28 J. Waller That has been rejected. There has never been any question about Public Defense Services meeting the needs for the 50 match. It has been discussed.

1:39:41 Chair Ellis I hope that remains the case.

1:39:44 J. Waller That has never been an issue and everyone has accepted that that meets the requirement.

1:39:54 Chair Ellis And you heard our discussion about concern that we go forward and then the space somehow gets diverted.

1:40:00 J. Waller I think everyone is aware what this space does for building the building. So I think that there is a great deal of commitment on the part of the court and the county that the space needs to be protected and preserved. It is the first time in the 40 years and 28 studies that we actually have a road to building the building. To be blunt this puts us firmly on the road. I think everyone recognizes that and is very committed to protecting the space.

1:40:38 Chair Ellis To the extent you have the ability, would you support our people getting access without having to pay a fee for the card?

1:40:47 J. Waller I know that is a big issue and to the extent that I could provide any kind of support. I understand that the sheriff is independently elected, but the sheriff sees this as such a necessary thing. They shut down Fifth Avenue twice a day and have sheriff deputies standing across, which is horrible. It is a terrible safety risk for everybody all the way around. The sheriff, in terms of the transport, we are in constant discussions about the difficulty and delay for lawyers, judges, everyone sitting waiting for transport of people. This building solves so many problems in terms of staffing for the sheriff's department. All of sudden they will be able to get people into the building without the kind of standing on your head that has to happen sometimes.

1:41:41 Chair Ellis But they get real operating savings out of it.

1:41:47 J. Waller I think they are going to have a good space and they are going to have a workable space. It will have an impact on their business process because you do not have to parade people through the hall with deputies. You just go straight up to the courtroom, right into the courtroom through a secured entrance. From their perspective, this is going to be safer. It will work for people having a secure corridor for judges and staff is much safer. Having the building set up in such a way that you can actually see what is going on in the building. They have cameras all over the building as you probably know, but they have to be watching and then hoping that even at the moment that something is going on they are able to scramble up the stairs to the sixth floor where the fight is beginning to break out because we don't have enough space. Our building was built for a different era in terms of being able to separate people. There weren't gangs when the building was built. Right now we have people who are sitting right by each other sometimes.

1:42:53 Chair Ellis Hang on. They had the Chinese Tongs back in 1914.

1:43:00 J. Waller We have people who really do need to have some space between them. So all of those concerns in terms of how do we make sure that victims and defendants have enough space so that it is a space situation.

1:43:12 C. Lazenby My sense of the conversation here and we are all lawyers for the most here, but just because we are asking for a prenuop doesn't we aren't in love. It is still a good idea.

1:43:25 J. Waller I think we want to make sure that I can say to you that I absolutely will do everything that I can to protect the space. We are hoping that this building and space is going to be used for a very long time. I do want to say one thing in terms of the expansion possibilities. The county looks at all the courthouses in Multnomah County, not just the main courthouse, but then we have these other courthouses that have different functions. So expansion could take place in a number of ways. It could take place in the Juvenile Courthouse which was designed to be expanded. It may be that we change our business process at some point in the future and have more juvenile and family out there. The East County Courthouse, which also has expansion capacity. We could have six courtrooms at there at some point. Maybe when judges come onto the bench they go to East County for year. There are all sorts of possibilities in terms of how we do our business that will allow for the building to not just be the sponge effect of every space is taken up, because there are these other possibilities that will provide some relief to what is going on in the main courthouse.

1:44:45 Chair Ellis Okay.

1:44:45 J. Potter If I could follow up on the Chair's comment and concerns on the qualifying state agency, and you are reasonably confident that is the case. Is one of the assumptions that the state agency will have state employees in that space?

1:45:02 J. Waller No. I think there has been so much discussion about PDSC and it has just never been an issue. The state is providing something for PDSC. That is what the state hopes to be able to get out of it, is that something is being provided. They are providing funding. They are paying for your space right now. This will satisfy, I think, the needs of the legislation. The intent of the legislature, which was really, quite frankly, to provide a narrowing of the gate through which courts and counties could get..

1:45:38 J. Potter I just wanted to make sure that there was no assumption that just because it is a state agency that qualifies, we would not necessarily have employees there. It might be just contractors, PDs, consortia members.

1:45:52 J. Waller That has just never come up and there has been so much discussion about this between OJD and DAS. I think you would have heard if there was any concern. We have certainly heard the concern about the district attorneys are not going to be and they are not a state agency. No matter where some of the funding comes from, it is not going to be considered for the 50% match requirement. It would come up by now in the number of discussions that we have had.

1:46:17 Chair Ellis For the record, my view this collocation would significantly enhance our ability to perform our mission. I think there will be real savings to our Multnomah County contractors, which is savings to PDSC and our defense fund. I am quite comfortable that it fits so long as that one technical issue is not raised or not a problem.

1:46:53 J. Waller I don't think that is a problem and certainly from the court's perspective, it will enhance the practice of law in Multnomah County to have resources readily available. In the end it is what we all want.

**Agenda Item No. 3 Approval of Resolution in Support of the Multnomah County Courthouse Project**

1:47:08 Chair Ellis            Alright. Are we ready for the question? Who is going to make the motion?

1:47:14 J. Potter               Well is this the motion that is basically saying that we are approving a draft resolution of some modification that deals with the space needs and statement of expectations?

1:47:26 Chair Ellis            Yes. Nancy feels she has enough information to articulate the sense of the Commission, so I don't think we have to revote. I think we have enough to do it.

1:47:40 N. Cozine               Yes, Chair Ellis. I do think that I have enough direction to modify the resolution as the Commission has expressed. I would probably run it by the Chair once I have modified it to make sure that it did indeed meet your expectations.

1:47:53 Chair Ellis            Okay.

1:47:53 N. Cozine               And meet what the Commission and I am assuming will go ahead and pass today.

1:47:58 Chair Ellis            Does that work for everybody else?

1:48:02 Hon. Elizabeth  
  Welch                               So moved; Chip Lazenby seconded the motion; hearing no objection, the motion carried:  
**VOTE 5-0.**

1:48:16 Chair Ellis            Thank you, judge. We appreciate it.

1:48:20 J. Waller               Thank you all very much.

**Agenda Item No. 4               SB 471 – Right to Counsel in Conservatorship and Guardianship proceedings**

1:48:30 Chair Ellis            Nancy, we have one other item we are going to address?

1:48:42 N. Cozine               Chair Ellis, members of the Commission, the last and newest agenda item is SB 471. This is a bill that was introduced at the beginning of this session and it does address an important issue. Judge Welch is very familiar with the topic and she may wish to actually supplement my brief summary with a more detailed background. She was on the task force that helped create the concept in the bill, which is the right to court appointed counsel in conservatorship and guardianship cases. Not all cases, but a limited number of them. My understanding is that when the bill was initially drafted, there was a question about where the responsibility for that appointment would land. As the session began it was written that PDSC would be the appointing entity. We have begun to look at the bill and analyze what would be required in order for us to absorb that function. I would say that Judge Welch's earlier description was accurate. This bill had been heard by a policy committee. It seems clear that the policy committee is very supportive of the concept of lawyers for people who are in a vulnerable position in a guardianship or a conservatorship situation. The issue really is going to be what the funding structure is. We have already talked about the space and constraints about our office down in Salem. When we are looking at this bill, we see this as something outside the scope of what we currently do. In other words, our current providers are not well equipped to handle this new subject matter area. We feel that we would need to bring someone in internally who could establish the standards of representation, the minimal qualifications for handling this type of work, and handle any complaints that arose as a result of providers in the area. Essentially, to perform those general counsel duties that are specific to this area of practice. We also believe we would have to spend some dedicated time finding contractor providers in each county, because they wouldn't be the same as our existing contract providers. That we would also have to issue an RFP, as we do in all of our case types, to try and recruit proposals for this kind of work. It is very difficult to tell what the appropriate rate would be. We have estimated that it would be something around what we pay right now for a dependency, which is in the \$750 range. There would also be non-routine expense requests

and we estimated that to be somewhere closer to a misdemeanor. Maybe up to what we see in a dependency case. That being said, what is challenging right now is they are all private providers. In our informal discussions, the hourly rates that people are charging for these cases are much, much higher than what we pay to our contractors. So we won't really know, I think, what that rate is until we have an opportunity to issue that RFP and see what we get back. I think in the RFP we could put in some parameters and see what we get, but we don't have a good sense right now of what people would really expect in terms of compensation.

- 1:52:26 Chair Ellis      You left out what to me was another really challenging and negative piece, which is the bill contemplates that many of these estates would themselves be the source of funding of the appointed lawyer. But then it says to the extent the estate is insufficient to support the appointed lawyer then the funding would come out of our appropriations. That involves us in an area that I don't see us having any desire to get involved in, which is this whole back and forth of whether an estate can afford to pay. What we doing?
- 1:53:11 N. Cozine      We assume in our reading of the bill that the court would be responsible for the verification work as they are now. So we assume that court staff is going to have to do what we call "verification."
- 1:53:25 Chair Ellis      So you think we would only be involved after a judge has determined that the estate could not afford to pay for the appointed lawyer?
- 1:53:31 N. Cozine      That is my assumption. I think that is the assumption in the Judicial Department's fiscal impact statement as well. They would have to dedicate some resources to make sure that they have the staffing to make that assessment.
- 1:53:48 Chair Ellis      I had some other reactions to this, all negative, which it just seems to me that a local judge – this are in probate court, he or she is going to know the bar that functions in that area. I think a local judge is in so much better position to make an appointment in this area then we would ever be. Secondly, it didn't seem to me that there was sufficient likely caseload to justify building up the big machinery of contract relationships with providers and case weighted compensation and all the rest that goes into our criminal side. I am going to have you speak first, Judge Welch. What are your thoughts on this?
- 1:54:44 Hon. Elizabeth Welch      I think there is a little misunderstanding here about what we are talking about. The first thing that I want you all to know is that 47 states out of 52 provide this protection. We are totally behind the eight ball and there is no rationalized explanation for the fact that Oregon does not pay for appointed counsel. We are talking about indigent people. This grew out of the Public Guardian Task Force. The people we are talking about, although it is not just for that population, it is for anybody in the guardianship and the conservatorship. I really don't like the conservatorship to even be mentioned, even though it is not inaccurate, Nancy, because we are talking about people of very limited circumstances. This population is invisible to the world, to the bar, even to the bench to some degree. We are talking about homeless people. We are talking about people living under bridges. We are talking people in very low level congregate facilities. These are the people who are the sort pool where elder abuse is the most common. The complexities of figuring out whether or not somebody qualifies for counsel are in my experience and in my opinion, really not going to be that much of a problem. Not to say it won't come up. Not to say there won't have to be some mechanism to deal with it, but basically we are talking about people that is a fall off the log appointment. Remember that in civil commitments everybody – if a petition for civil commitment is filed people get lawyers automatically. They don't have to ask. They don't have to fill out any paperwork. They automatically get it. This population is very similar if not the same.
- 1:57:58 Chair Ellis      Nothing I have said is intended to challenge the need for it. I just don't think this Commission is the right place to park the process of appointing those lawyers.

- 1:57:14 Hon. Elizabeth Welch  
There are lawyers doing this work now. If we have more time, I feel guilty about talking very much, but I think it is a subject that I don't disagree with you. I think this needs to be looked at. Nancy and company are starting from zero as of a week ago when she was official informed of it. Two weeks ago.
- 1:57:45 N. Cozine  
Right. I think we talked about it after the last Commission meeting.
- 1:57:59 Hon. Elizabeth Welch  
I just think it needs to be looked at. I mentioned to Amy and Nancy, talk to some lawyers. I gave them the names of the lawyers to talk to and gave them the probably most expensive lawyer in the world that does this kind of work. I am thinking maybe some kind of new look at what a consortium is that would be sort of a statewide consortium of people with some expertise. That might work.
- 1:58:26 Chair Ellis  
Why go through the Commission with all the machinery that is involved with what we do, in an area where the (inaudible) is not that great. It is a very localized issue. The judges and you were in this role and know better than anybody, are going to have a much better handle on who is available to do this kind of work. It seemed to me it cried out for a local judge appointment, as opposed to going through the Commission and retaining contractors and building it up all that way, in an area that we have zero background.
- 1:59:10 Hon. Elizabeth Welch  
What would judges say at this point? Judges were very happy to be rid of the appointment process.
- 1:59:24 C. Lazenby  
The idea is really that judges may have knowledge of the lawyers, but they won't really have the time or the resources to administer such a system for those appointments and how people are compensated. My prejudice on this issue is that I was the lawyer a number of years ago for the Public Guardian here in Multnomah County, so I am aware of this population. It was really difficult a lot of times to get counsel to come where it was clear that the person needed to have a guardian appointed, but the person needed to have representation so the court would go ahead and act. The converse of your question, Mr. Chair, is not whether we have the ability to do it, but who else has the ability to manage appointment systems of attorneys in the state? I can't think of anybody else. Really it is just a matter if the legislature is willing to come up with an appropriate funding mechanism, to fund positions for somebody with the knowledge and ability to liaison with the courts in our shop. Also to fund the compensation with attorneys that are doing it, so we are not robbing public defense to pay these folks. Then we really do have the technical expertise to manage this as a function, I think, it is just a matter of getting people with the right professional context outside criminal defense.
- 2:00:53 Chair Ellis  
What am I missing? What is wrong given the relatively small volume in this specialized area and the local judge that is going to have far better knowledge than we. What is wrong with having the judge be the appointer?
- 2:01:11 C. Lazenby  
I think part of the problem is that you underestimating the size of this population. There are a number of indigent homeless folks that fall into this category, but there are also a fair number of eligibility solitary people who actually have resources but don't the ability to manage it. We experience in this county some people really kind of going off the rails for years around one of these estates and arguments that the judge was in collusion with the lawyer. They took money.
- 2:01:48 Chair Ellis  
Favorites. But as I heard Nancy, on estates that have sufficient assets to pay, we won't be involved anyway.

2:02:02 C. Lazenby We might be.

2:02:02 Hon. Elizabeth Welch That is true.

2:02:05 C. Lazenby We might be. The most typical cases that my client, the Public Guardian, dealt with when I was doing that work, was we were tipped off by a social service agency that Nancy is 87 years old. She is living in a house that has some fair market value, but nobody is taking care of her. She can't take care of herself. She has no other family. You go to Nancy and say, "Nancy, we are from the government and we are going to help you." She is going, "I don't want to leave my house. This is my house. I know what I am doing." But all the kind of objective pieces she really can't take care of herself. There are resources that need to be marshalled so that things can end up happening. The dilemma that the court has is that she isn't really even competent to hire somebody. You get a lawyer involved, so it isn't just the public agency coming in with a county attorney saying we think this is the right thing to do. We have Nancy on the other side saying, "I don't have a lawyer. I don't want to hire one. I don't want anything to do with this." It is a real problem and the people that do this work, because it spills over into elder abuse both financial and physical. It is also homeless people that have mental health issues. All of these things down the line spills over. I agree with you above the conservatorship, separate thing, but the guardianship is always someone who is viewed with authority to organize and manage folk's affairs for their benefit under court supervision. You need to have lawyers involved to get that piece set up.

2:03:55 Chair Ellis I am not arguing that lawyers shouldn't be involved, but I just found myself strongly resistant to it being added to what the Commission does. It is so unrelated to anything we do.

2:04:11 C. Lazenby Other than subject matter, who else runs and administers the system where lawyers are appointed for people who can't afford them?

2:04:22 Chair Ellis Well for quite a number of years judges did.

2:04:27 C. Lazenby But we have usurped that.

2:04:30 Chair Ellis In one area where the volume is very high.

2:04:34 C. Lazenby I can't think of anywhere where the local courts appoint lawyers.

2:04:40 Chair Ellis I think I may have the answer to my question. I suggested we put this on the agenda naively assuming there would be a consensus of opinion. If there was, we would communicate back to Judge Welch's group our unanimous opinion, but I am not hearing a unanimous opinion. Maybe we just let the chips fall where they may.

2:05:11 N. Cozine Chair Ellis, I should have started with I have been proceeding under the assumption that we are going to stick with what is my understanding of historical PDSC wishes. We don't take a policy position of matters. We let the legislature decide, but in this instance...

2:05:29 Chair Ellis Except where they impact us.

2:05:30 N. Cozine In this instance if they do assign the function to us and we are underfunded, then we do run into a situation where our other providers are negatively impacted. It is very helpful for me to have some guidance from the Commission on how you would like me to navigate this. I do see this as something that will be moving forward. We have had one hearing so far on the Senate side, in the Judiciary Committee. They will have another hearing. My decision at the first hearing that was held on Monday of this week was to not testimony, because really at this point my role is to simply make sure the legislature understands what we understand the costs would be.

2:06:17 Chair Ellis            So your function is information provided but not in a policy opinion?

2:06:25 N. Cozine            I will continue to operate that way unless I have other instruction from the Commission.

2:06:34 J. Potter            Who are they going to turn to for a fiscal impact?

2:06:40 N. Cozine            I know they have asked for a fiscal impact from the Judicial Department and from us. I don't know that there is any other entity that would be terribly affected. Though I would say that someone from Protective Services testified about how challenging it was in a particular case because there was high conflict between the conservator and the guardian.

2:07:11 Hon. Elizabeth Welch            Nancy, that example was absolutely irrelevant to this discussion.

2:07:20 N. Cozine            It seems it was. My point is, I don't know if they would put in some kind of statement indicating that there would be efficiencies captured for them, because the protected person would have a lawyer from the start that would be looking out for their interests.

2:07:38 Chair Ellis            Well does anybody want to bring a motion?

2:07:42 Hon. Elizabeth Welch            I do.

2:07:43 Chair Ellis            To instruct the executive director how to proceed.

2:07:51 Hon. Elizabeth Welch            On more point, Mr. Chairman. There probably isn't anybody east of Bend who does this kind of work. The volume, of course, east of Bend will be tiny. We think. We don't really know anything about the volume, particularly with the public guardian aspect of it, because these are people who are not in the system now. You can't have a guardian if there isn't anybody to serve as your guardian. That is what brings people into the system. There is no appropriate family member to do this. The need for something that isn't geographical based. I just throw that into the confusion here. I understand your concern. I don't see any reason why we can't advance this discussion and at the same time perhaps investigate. I would be very happy to aid staff in maybe getting together a small group of judges and talking to them about these issues and to see how they feel about it. Again, I don't see how a non-statewide approach is going to address small counties. Not just the eastern ones, but particularly the eastern ones. I would ask the Commission to instruct our fearless leader to continue to assist the legislature in evaluating the impact of this.

2:09:42 Chair Ellis            From an information point of view, but I don't hear you saying she should say, "And we don't think it is a good idea for the Commission to be charged."

2:09:53 Hon. Elizabeth Welch            Right.

2:09:55 C. Lazenby            I am only opposed to us getting this if the funding is such that it robs PD to pay for this. It needs a separate pot and to be adequately funded so that we don't have that balance of the funding, not only the service provision piece, but also our administrative piece that we would need to administer such a program.

2:10:23 Chair Ellis            I think I am hearing a "no" consensus on a policy position. B. You should continue to be an information provider and obviously the cost of our doing it is a big piece of that. I don't know that it takes affirmative action from us. That is where you are already.

2:10:48 P. Ramfjord I would agree with that. I would just add that I have been somewhat silent because I don't really feel like I have enough information right now to take a principle position on these issues. I can see benefits to both sides. I can see there is a need. I can see that we have administrative functions to do this better than any other existing state agency. On some level, I can see some of the points that you are making about whether or not we are in the best position to make an appointment, but I don't feel like I am in a position to actually make a judgment one way or another as to what is or is not a good idea. I would just ask that Nancy keep us informed as things move forward. Then we can add other views as it is appropriate.

2:11:30 Chair Ellis Okay.

2:11:30 J. Potter I agree with Chip, though, the fiscal part is important. I can't get my head around that.

2:11:43 N. Cozine It is clear and I think we keep proceeding as we have been proceeding. Do our estimate of work regarding costs associated with taking on the additional function.

2:11:58 Chair Ellis And Nancy is doing just what she should do, which is not take a policy position without our having discussed it and saying that it what we think is right. We have discussed it and didn't have a policy position on this one. That is good. Is there a motion to adjourn?  
**MOTION:** John Potter moved to adjourn the meeting; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

**Meeting adjourned**

# Attachment 3

# 2015 Annual Statewide Public Defense Performance Survey



## 1. Please tell us your role in your county's justice system.

	('09)	('10)	('11)	('12)	('13)	('14)	Response Percent	Response Count
Judge	95	92	109	104	97	116	68.0%	104
Prosecutor	11	13	20	45	12	16	6.5%	10
Juvenile Department	16	25	14	20	17	31	11.1%	17
Citizen Review Board	14	10	11	10	12	8	11.1%	17
Other							3.3%	5

Other (please specify) 4

answered question 153

skipped question 1

## 2. How long have you worked in your county's justice system?

	Response Percent	Response Count
1 to 3 years	11.1%	17
3 to 5 years	7.2%	11
5 to 10 years	12.4%	19
10 years and more	69.3%	106

answered question 153

skipped question 1

### 3. Please tell us where you work (Judicial District).

		Response Percent	Response Count
JD 1 Jackson County		5.2%	8
JD 2 Lane County		6.5%	10
JD 3 Marion County		6.5%	10
<b>JD 4 Multnomah County</b>		<b>12.3%</b>	<b>19</b>
JD 5 Clackamas County		9.1%	14
JD 6 Morrow & Umatilla Counties		5.2%	8
JD 7 Hood River, Wasco, Sherman, Wheeler, Gilliam Counties		6.5%	10
JD 8 Baker County		0.6%	1
JD 9 Malheur County		2.6%	4
JD 10 Union & Wallowa Counties		1.3%	2
JD 11 Deschutes County		2.6%	4
JD 12 Polk County		5.8%	9
JD 13 Klamath County		3.2%	5
JD 14 Josephine County		2.6%	4
JD 15 Coos & Curry Counties		3.9%	6
JD 16 Douglas County		0.0%	0
JD 17 Lincoln County		1.3%	2
JD 18 Clatsop County		3.2%	5
JD 19 Columbia County		0.0%	0
JD 20 Washington County		7.1%	11
JD 21 Benton County		1.9%	3
JD 22 Crook & Jefferson Counties		2.6%	4

JD 23 Linn County		3.2%	5
JD 24 Grant & Harney Counties		1.3%	2
JD 25 Yamhill County		1.9%	3
JD 26 Lake County		1.3%	2
JD 27 Tillamook County		1.9%	3
<b>answered question</b>			<b>154</b>
<b>skipped question</b>			<b>0</b>

**4. Are you able to comment on the quality of public defense representation in adult criminal cases?**

		Response Percent	Response Count
Yes		73.9%	113
No (the survey will skip questions related to these cases)		26.1%	40
<b>answered question</b>			<b>153</b>
<b>skipped question</b>			<b>1</b>

**5. Please rate your overall impression of the quality of public defense representation in adult criminal cases.**

			Response Percent	Response Count				
	( '09 )	( '10 )	( '11 )	( '12 )	( '13 )	( '14 )		
Excellent							27.5%	30
Good							62.4%	68
Fair							8.3%	9
Poor							1.8%	2
<b>answered question</b>								<b>109</b>
<b>skipped question</b>								<b>45</b>

**6. Within the past year, has the quality of public defense representation changed in adult criminal cases?**

		Response Percent	Response Count
Improved significantly		3.7%	4
Improved somewhat		27.5%	30
<b>Remained about the same</b>		<b>61.5%</b>	<b>67</b>
Worsened somewhat		4.6%	5
Worsened significantly		2.8%	3
<b>answered question</b>			<b>109</b>
<b>skipped question</b>			<b>45</b>

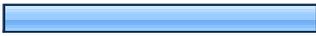
**7. Do public defense attorneys in your judicial district provide satisfactory representation of clients in adult criminal cases?**

		Response Percent	Response Count
Always		24.8%	27
<b>Often</b>		<b>66.1%</b>	<b>72</b>
Sometimes		9.2%	10
Rarely		0.0%	0
Never		0.0%	0
<b>answered question</b>			<b>109</b>
<b>skipped question</b>			<b>45</b>

**8. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in criminal cases?**

		Response Percent	Response Count
Yes		33.3%	36
No		66.7%	72
If "yes," please describe your concerns.			40
answered question			108
skipped question			46

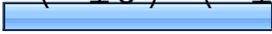
**9. How would you describe the adult criminal caseloads of public defense attorneys in your judicial district?**

		Response Percent	Response Count
Significantly too large		8.5%	9
Somewhat too large		44.3%	47
<b>About right</b>		<b>47.2%</b>	<b>50</b>
Somewhat too small		0.0%	0
Significantly too small		0.0%	0
answered question			106
skipped question			48

**10. Are you able to comment on the quality of public defense representation in juvenile dependency cases?**

		Response Percent	Response Count
Yes		59.9%	88
No (the survey will skip questions related to these cases)		40.1%	59
<b>answered question</b>			<b>147</b>
<b>skipped question</b>			<b>7</b>

**11. Please rate your overall impression of the quality of public defense representation in juvenile dependency cases.**

		Response Percent	Response Count
Excellent	( '09 ) ( '10 ) ( '11 ) ( '12 ) ( '13 ) ( '14 ) 	40.2%	35
Good	24.4% 29.5 31.8 26.3 42.5 39.1 	50.6%	44
Fair	61.0% 61.5 60.0 64.6 52.5 54.5 	8.0%	7
Poor	14.6% 7.7 8.2 9.1 5.0 6.4 	1.1%	1
<b>answered question</b>			<b>87</b>
<b>skipped question</b>			<b>67</b>

**12. Within the past year, has the quality of public defense representation changed in juvenile dependency cases?**

		Response Percent	Response Count
Improved significantly		5.7%	5
Improved somewhat		21.8%	19
<b>Remained about the same</b>		<b>70.1%</b>	<b>61</b>
Worsened somewhat		2.3%	2
Worsened significantly		0.0%	0
<b>answered question</b>			<b>87</b>
<b>skipped question</b>			<b>67</b>

**13. Do public defense attorneys in your judicial district provide satisfactory representation of clients in juvenile dependency cases?**

		Response Percent	Response Count
Always		34.9%	30
<b>Often</b>		<b>58.1%</b>	<b>50</b>
Sometimes		7.0%	6
Rarely		0.0%	0
Never		0.0%	0
<b>answered question</b>			<b>86</b>
<b>skipped question</b>			<b>68</b>

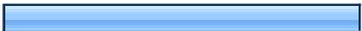
**14. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in juvenile dependency cases?**

		Response Percent	Response Count
Yes		10.5%	9
No		89.5%	77

If "yes," please describe your concerns. 10

answered question	86
skipped question	68

**15. How would you describe the juvenile dependency caseloads of public defense attorneys in your judicial district?**

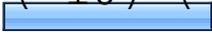
		Response Percent	Response Count
Significantly too large		6.1%	5
Somewhat too large		36.6%	30
<b>About right</b>		53.7%	44
Somewhat too small		3.7%	3
Significantly too small		0.0%	0

answered question	82
skipped question	72

**16. Are you able to comment on the quality of public defense representation in juvenile delinquency cases?**

		Response Percent	Response Count
Yes		50.3%	74
No (the survey will skip questions related to these cases)		49.7%	73
<b>answered question</b>			<b>147</b>
<b>skipped question</b>			<b>7</b>

**17. Please rate your overall impression of the quality of public defense representation in juvenile delinquency cases.**

			Response Percent	Response Count				
	( '09 )	( '10 )	( '11 )	( '12 )	( '13 )	( '14 )		
Excellent							31.1%	23
Good	22.1%	23.5	32.9	28.4	41.0	33.7	58.1%	43
Fair							10.8%	8
Poor							0.0%	0
<b>answered question</b>								<b>74</b>
<b>skipped question</b>								<b>80</b>

**18. Within the past year, has the quality of public defense representation changed in juvenile delinquency cases?**

		Response Percent	Response Count
Improved significantly		2.7%	2
Improved somewhat		24.3%	18
<b>Remained about the same</b>		<b>70.3%</b>	<b>52</b>
Worsened somewhat		2.7%	2
Worsened significantly		0.0%	0
<b>answered question</b>			<b>74</b>
<b>skipped question</b>			<b>80</b>

**19. Do public defense attorneys in your judicial district provide satisfactory representation of clients in juvenile delinquency cases?**

		Response Percent	Response Count
Always		35.6%	26
<b>Often</b>		<b>56.2%</b>	<b>41</b>
Sometimes		8.2%	6
Rarely		0.0%	0
Never		0.0%	0
<b>answered question</b>			<b>73</b>
<b>skipped question</b>			<b>81</b>

**20. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in juvenile delinquency cases?**

		Response Percent	Response Count
Yes		11.0%	8
No		89.0%	65

If "yes," please describe your concerns.

9

answered question

73

skipped question

81

**21. How would you describe the juvenile delinquency caseloads of public defense attorneys in your judicial district?**

		Response Percent	Response Count
Significantly too large		2.8%	2
Somewhat too large		12.5%	9
<b>About right</b>		77.8%	56
Somewhat too small		6.9%	5
Significantly too small		0.0%	0

answered question

72

skipped question

82

**22. Are you able to comment on the quality of public defense representation in death penalty cases?**

		Response Percent	Response Count
Yes		22.1%	33
No (the survey will skip questions related to these cases)		77.9%	116
answered question			149
skipped question			5

**23. Please provide any comments you have concerning the quality of public defense representation in death penalty cases.**

	Response Count
	26
answered question	26
skipped question	128

**24. Are you able to comment on the quality of public defense representation in civil commitment cases?**

		Response Percent	Response Count
Yes		44.3%	66
No (the survey will skip questions related to these cases)		55.7%	83
answered question			149
skipped question			5

**25. Please rate your overall impression of the quality of public defense representation in civil commitment cases.**

					Response Percent	Response Count	
Excellent	( '10)	( '11)	( '12)	( '13)	( '14)	30.8%	20
	23.4%	35.7	37.1	41.9	32.9		
Good						55.4%	36
	70.2%	51.4	52.9	56.5	53.2		
Fair						12.3%	8
	6.4%	11.4	10.0	1.6	13.9		
Poor						1.5%	1
<b>answered question</b>							<b>65</b>
<b>skipped question</b>							<b>89</b>

**26. Within the past year, has the quality of public defense representation changed in civil commitment cases?**

		Response Percent	Response Count
Improved significantly		0.0%	0
Improved somewhat		17.2%	11
<b>Remained about the same</b>		<b>79.7%</b>	<b>51</b>
Worsened somewhat		3.1%	2
Worsened significantly		0.0%	0
<b>answered question</b>			<b>64</b>
<b>skipped question</b>			<b>90</b>

**27. Do public defense attorneys in your judicial district provide satisfactory representation of clients in civil commitment cases?**

		Response Percent	Response Count
Always		50.8%	33
Often		41.5%	27
Sometimes		7.7%	5
Rarely		0.0%	0
Never		0.0%	0
<b>answered question</b>			<b>65</b>
<b>skipped question</b>			<b>89</b>

**28. Do you question the competence of any public defense attorneys in your jurisdiction who provide representation in civil commitment cases?**

		Response Percent	Response Count
Yes		8.1%	5
No		91.9%	57
If "yes," please describe your concerns.			9
<b>answered question</b>			<b>62</b>
<b>skipped question</b>			<b>92</b>

**29. How would you describe the civil commitment caseloads of public defense attorneys in your judicial district?**

		Response Percent	Response Count
Significantly too large		0.0%	0
Somewhat too large		3.1%	2
<b>About right</b>		<b>86.2%</b>	<b>56</b>
Somewhat too small		10.8%	7
Significantly too small		0.0%	0
<b>answered question</b>			<b>65</b>
<b>skipped question</b>			<b>89</b>

**30. Please provide any comments, concerns, or suggestions that you may have about the quality of public defense representation in your county or judicial district.**

	Response Count
	58
<b>answered question</b>	<b>58</b>
<b>skipped question</b>	<b>96</b>

**31. Your name (optional)**

	Response Count
	56
<b>answered question</b>	<b>56</b>
<b>skipped question</b>	<b>98</b>

**Page 9, Q23. Please provide any comments you have concerning the quality of public defense representation in death penalty cases.**

1	The appointed counsel are competent. The "specialty" attorneys whom they often seek to have admitted are not helpful in the least; in most cases they do not know the case; their briefs are canned from across the country on topics that have already been addressed, and God only knows what you are paying them to interject themselves into these cases.	Jan 23, 2015 2:38 PM
2	Highly skilled and experts on these cases.	Jan 22, 2015 9:07 AM
3	Overall, it is excellent	Jan 22, 2015 9:01 AM
4	There is broad disparity of skills among attorneys appointed on DP cases. Some attorneys may be skilled, but are so antagonistic and difficult to work with, many times leading to delays or ruling on sequential mistrial motions, that it is difficult to assess their skill level. I also think there is a dearth of truly qualified investigators in death penalty cases.	Jan 21, 2015 12:46 PM
5	It is extremely good. I am amazed at the proficiency and level of effort and professionalism in attorneys who do public defense in death penalty cases.	Jan 21, 2015 12:44 PM
6	I believe the representation is high quality	Jan 21, 2015 10:04 AM
7	In the most recent case, the defendant was represented by David Falls and Laurie Bender who were both excellent.	Jan 15, 2015 4:15 PM
8	Too much gaming by some. Worse in pcr cases.	Jan 15, 2015 11:24 AM
9	Representation is very thorough and the defense team is experienced, well-qualified and able to provide adequate defense services in a very difficult and serious case.	Jan 13, 2015 11:13 AM
10	No concerns. The defense attorneys assigned to death penalty cases (historically, McCabe, Smith, Gokey) have been extremely high quality and well-prepared.	Jan 12, 2015 2:34 PM
11	Always very good. Excellent in all respects.	Jan 12, 2015 11:06 AM
12	I have found the death penalty defenders qualified and excellent in their representation.	Jan 12, 2015 9:24 AM
13	Extremely great.	Jan 11, 2015 12:06 PM
14	No concerns, so far, the attorneys appointed for murder and aggravated murder have done fine.	Jan 9, 2015 4:36 PM
15	The attorneys who represented the defendant in the case I had were very professional and did a very thorough job.	Jan 9, 2015 4:23 PM
16	Spend too much money and take too long to get a case to trial. File unnecessary motions.	Jan 9, 2015 1:25 PM
17	Adequate	Jan 9, 2015 12:35 PM
18	It is very good.	Jan 9, 2015 10:54 AM

**Page 9, Q23. Please provide any comments you have concerning the quality of public defense representation in death penalty cases.**

19	None at this time.	Jan 9, 2015 9:59 AM
20	none. these are attorneys from outside the judicial district but all seem to be trained, informed and competent in this area of law.	Jan 9, 2015 7:15 AM
21	The contractors are always prepared and provide excellent representation for thei clients.	Jan 8, 2015 4:45 PM
22	We have one death penalty case pending in our county - State v Gary Goins. The original appointed attorneys were Ken Hadley and Geoff Gokey. They were extremely professional, they communicated with our attorneys and appropriately shared discovery material. They were allowed to withdraw shortly before the second trial setting. The new team has not shown the same professionalism.	Jan 8, 2015 4:11 PM
23	I have no concerns whatsoever. Counsel in these cases have been very qualified, always prepared, with plenty of support from co-counsel, their office, mitigation experts, etc.	Jan 8, 2015 3:59 PM
24	some of the out of town attys overwork the cases, are obstructionist rather than good attorneys	Jan 8, 2015 3:52 PM
25	Other than Metropolitan Public Defenders, death penalty attorneys are pretty good.	Jan 8, 2015 3:35 PM
26	I wish there were more uniformity in practice. I have been BOTH defending and prosecuting capital cases as chief counsel since 1989 and there is a vast gulf in practice	Jan 8, 2015 3:29 PM

# Attachment 4



# Oregon

Office of Public Defense Services

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[www.oregon.gov/opds](http://www.oregon.gov/opds)

## Public Defense Services Commission

### Marion County Service Delivery Review Preliminary Report with Public Testimony (March 2015)

#### I. INTRODUCTION

**Background.** In 2004, the Public Defense Services Commission (PDSC) began meeting in public session in various regions of the state as part of its commitment to evaluating the effectiveness and efficiency of public defense services in all counties of the state. Since that time, the Commission has met in every region of the state. Reports from these evaluations, based upon dozens of interviews and public testimony from local justice system stakeholders, have focused on the structure of public defense services. Some counties rely upon one consortium for all its representation needs, while others might also include a non-profit public defender office, a private law firm, or hourly attorneys, in order to provide sufficient services for the county. The goal of these “service delivery reviews” has been to ensure that the best type and number of public defense organizations are serving each county.

Parallel with the Commission’s service delivery review process, the Office of Public Defense Services (OPDS) has facilitated nearly 50 peer reviews of individual public defense providers since 2004. For each review, teams of public defense leaders from around the state spend several days in a county conducting interviews with justice system stakeholders in the course of examining the quality of representation provided by the entity under review. Among the primary aims of these reviews are identifying successful local policies and procedures that might be recommended to other public defense providers, and making recommendations for improvement where needed. The overarching purpose of these reviews is to assist each public defense provider in pursuing excellence. Until recently, peer review teams produced confidential reports provided only to contract administrators and managers at OPDS.

In 2013, OPDS merged the two review processes while preserving the core purposes of each review. Under the current practice, a peer review team will examine some or all providers in a county, much as it would in the past. As a part of the peer review, providers and other system stakeholders are informed that the Commission will visit the county under review to follow-up on the findings and recommendations of the peer review report. Prior to the Commission’s public meeting in the county under review,

OPDS staff update the peer review report based on follow-up interviews with public defense providers and county officials. After the Commission's hearing, at which it receives testimony from stakeholders, a draft final report is prepared for Commission deliberation and approval.

**Marion County Peer Review.** The Marion County peer review team looked at the two public defense contractors providing representation in criminal cases. The Marion County Association of Defenders, Ltd. (MCAD) is a consortium of approximately 40 attorneys that contracts to provide representation in all criminal case types. The Public Defender of Marion County (PDMC) also contracts for these case types. The peer review team did not examine the work of the sole juvenile court contractor, the Juvenile Advocacy Consortium in Marion County.

The OPDS executive director asked David Audet to chair the peer review team, and asked attorneys Rosalind Lee, Alex Bassos, Morgen Daniels, and Tony Bornstein to serve as team members. Paul Levy, OPDS General Counsel, served as staff for the team.<sup>1</sup> The team's site visit was conducted in May, 2013, with a final report submitted in September 2013.

Prior to the review team's site visit, OPDS solicited information about each contract group. MCAD members and PDMC employees received an online survey about entity operations and the effectiveness of contract administration. The administrators of MCAD and PDMC also answered detailed questionnaires about their organization's operations. Both administrators cooperated fully with the evaluation, providing invaluable assistance in preparing for the evaluation and scheduling interviews for the site visit. Typically, peer reviews also employ an online survey of justice system stakeholders who are familiar with the work of a contractor. However, OPDS had asked all Marion County judges and the District Attorney for comments about MCAD and PDMC as part of its annual statewide performance review of all public defense conducted earlier in 2013. The peer review team reviewed results from the statewide surveys from 2010 to 2013.

A three-day site visit to Marion County was completed on May 3, 2013. During the site visit, team members met with judges, court staff, prosecutors, Sheriff's staff, MCAD and PDMC board members, attorneys and staff of each organization, and others, interviewing more than 35 people. At the conclusion of interviews, the team met separately with each administrator to discuss preliminary findings and conclusions. A draft report was then provided to each administrator for comments and corrections, after which the team approved a final report.

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<sup>1</sup> David Audet, who has served on a previous peer review team, is in private practice in Hillsboro, where he is a member of the Oregon Defense Attorney Consortium. Previously, he was an attorney with the Metropolitan Public Defender. He is a past-President of the Oregon Criminal Defense Lawyers Association (OCDLA). Morgen Daniels is an attorney in the Appellate Division of the Office of Public Defense Services. Previously, she was with the Intermountain Public Defender in Pendleton. Alex Bassos is Director of Training at the Metropolitan Public Defender. Rosalind Lee is in private practice in Eugene, where she is a member of the Lane County Defense Consortium. Tony Bornstein is an attorney with the Federal Public Defender in Portland. He is also an alumne of the Metropolitan Public Defender.

**Service Delivery Review Procedure.** On October 29th and 30th, 2014, OPDS Executive Director Nancy Cozine, PDSC member John Potter, and OPDS Analyst Shelley Winn, conducted interviews with key Marion County justice system officials and contractors to determine what developments had occurred in the county in response to the peer review reports.

The key findings and recommendations of the peer review reports, and the information gained from the follow-up interviews and meetings, are related in the balance of this report. This report will be amended further in response to information gained during the PDSC meeting in Marion County on January 22, 2015. The report will be finalized following a subsequent PDSC meeting after deliberations on any specific findings and recommendations arising from the January meeting.

## II. MARION COUNTY

**Demographics.** Marion County has a population of about 319,985, making it the fourth most populous Oregon county after Multnomah (759,256), Washington (547,672) and Lane (354,542). The total estimated population for Oregon in 2012 was 3,899,353<sup>2</sup>. The county includes 20 incorporated cities, of which the largest are Salem and Woodburn.<sup>3</sup>

According to U.S. Census data, the county is significantly more diverse than the statewide population, with 68.2% identifying as white persons not of Hispanic or Latino origin (78.1% statewide); 1.4% identifying as black persons (2.0% statewide); 2.5% identifying as American Indian or Alaska Native (1.8% statewide); 2.1% identifying as Asian persons (3.9% statewide); and 24.8% identifying as persons of Hispanic or Latino origin (12.0% statewide). Census data also show the county has a slightly lower than statewide percent per capita of high school graduates (82.5%; 88.9% statewide), and a lower percent of college graduates (20.7%; 28.6% statewide). Nearly a quarter of persons over the age of five in the county speak a language other than English at home (14.6% statewide).<sup>4</sup>

Geographically, Marion County extends east from the Willamette River to the Cascade Mountains, covering the “promised land” that was the destination for Oregon Trail pioneers. The county is the largest producer of agricultural income among Oregon’s counties. The State of Oregon is the largest single employer in the county, with 38 state agencies based in and around Salem. Other major employers include food processors, manufacturers, schools and colleges, and tourism.<sup>5</sup>

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<sup>2</sup> U.S. Census Bureau, State & County QuickFacts, 2012 Estimates.

<http://quickfacts.census.gov/qfd/states/41/41047.html>

<sup>3</sup> The Salem Metropolitan Statistical Area (MSA), which consists of Marion and Polk counties, is the second largest in the state after the Portland-Vancouver-Hillsboro MSA, which consists of seven counties adjacent to or near Portland, and ahead of the Eugene-Springfield MSA, which consists of Lane County.

<http://www.pdx.edu/prc/2010-census-profiles-oregon-cities-alphabetically>.

<sup>4</sup> <http://quickfacts.census.gov/qfd/states/41/41007.html>

<sup>5</sup> <http://bluebook.state.or.us/local/counties/counties24.htm>.

Oregon State Police profiles of index crimes for Marion County show a steady decline over the five year period ending in 2010, with the numbers dropping from 15,389 in 2006 to 10,868 in 2010. Total reported crime for the county also declined each year over the same period.<sup>6</sup>

**Justice System.** Several features define the Marion County criminal justice system. First, its operations take place at two courthouses. While other large counties, such as Multnomah and Washington, also divide criminal court operations between two locations, in those places the facilities are separated by a short walk. In Marion County, the main Courthouse in downtown Salem is about five miles away from the Court Annex, where first appearances occur in all cases and where numerous other hearings can occur in many cases. The county jail is located adjacent to the Annex.

Another defining feature of the Marion County court system is the absence of central docketing. As discussed further below, if cases are not resolved at the Annex, they are assigned to one of the ten or so available judges at the Courthouse, each of whom manages his or her own docket. While this presents some logistical challenges for busy public defense attorneys, most lawyers report that they like the system because they know what to expect from a judge as a case proceeds toward resolution and because trials are rarely rescheduled due to other trials competing for the same time slot.

Twelve judges have offices in the Marion County Courthouse, including Presiding Judge James Rhoades. The building underwent extensive renovation after a 2005 arson fire and is now a comfortable, modern building with impressive accommodations for the court and public. The District Attorney's offices are located in a building across the street from the Courthouse.

**Case processing.** All criminal cases originate at the Annex, which is a court facility located near the Marion County Jail at 4000 Aumsville Hwy SE, Salem, about five miles from the downtown Courthouse. The Annex is served by two judicial officers: a referee, and a Circuit Court judge.

First appearances in criminal cases at the Annex are at 8:30 am for out-of-custody defendants; in-custody defendants appear at 3:00 pm. Jail staff provide in-custody defendants with a sheet of paper listing all MCAD and PDMC attorneys, with the name of the lawyer appointed to a particular defendant highlighted.

Discovery and plea offers are given to defense counsel at the first appearance in nearly all misdemeanor cases. In many felony cases, police reports and plea offers are available at first appearance if the defendant waives a "preliminary hearing." If it later appears that the case will proceed to trial, a defendant may request a preliminary hearing (which, as in most counties, simply means the deputy district attorney will take

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<sup>6</sup> Oregon State Police, 2010 Annual Uniform Crime Report, [http://www.oregon.gov/osp/CJIS/Pages/annual\\_reports.aspx](http://www.oregon.gov/osp/CJIS/Pages/annual_reports.aspx). The "Crime Index" was developed to measure crime on a national scale by choosing eight offenses that are generally defined the same by each state, which are: Willful Murder, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny (Theft), Motor Vehicle Theft and Arson. Total reported crime was 40,942 in 2006 and 33,270 in 2010, the last year for which data are available and a low for the five-year period.

the case to grand jury), although many cases proceed to trial on an information of the district attorney.

The second appearance in criminal cases, called a “Rule 7” hearing, after Uniform Trial Court Rule 7.010, is also at the Annex. This proceeding is the occasion for defendants to enter a plea of guilty, or to enter a plea of not guilty and request a court date at the downtown courthouse. Those who plead guilty at the Annex can elect to be sentenced immediately or at a later date, and Rule 7 hearings may be continued to allow the parties to continue negotiations. In-custody cases must go downtown if a settlement is not reached within 30 days of arrest, unless there is a waiver of the defendant’s 60-day speedy trial right.

Typically, the first Rule 7 date is set within one or two weeks of the first appearance for in-custody defendants. For them, the appearance is at 8:30 am. For out-of-custody defendants, Rule 7 hearings are at 1:30 pm, about 30 days after the first appearance. The court limits the number of cases on any given day, and attorneys have some control over when the Rule 7 hearing will be held, so there is some variance on when these are scheduled.

When cases are transferred to the downtown courthouse after a Rule 7 hearing, the defense attorney asks Annex court staff at the service counter to assign a judge to the case. Any intention to file a motion for change of judge (“an affidavit”) must be announced at the counter, with motions filed by 5 pm the following day. This allows little or no time for client consultation, especially for those who are in custody. Court staff also provides defense counsel with a case status date with the assigned downtown judge. Each judge conducts case status hearings at regular times during the week, although the time and day is different for each judge.<sup>7</sup>

Once a case goes downtown, it is managed by the assigned judge. In Marion County, pretrial motions are, in fact, scheduled and heard on a date prior to the scheduled trial, unlike some other counties where motions are heard on the day of trial.

Before a case resolves at the Annex or goes downtown, there may be other pretrial matters heard at the Annex, such as release hearings, and some trial-related motions, such as motions to suppress or motions in limine. (A short release pitch is typically made at first appearance, but more informed release hearings are heard separately.) Pretrial hearings at the Annex are heard at 10:30 am for in-custody defendants; 2:30 pm for out-of-custody.

Probation violation hearings are also held at the Annex unless a judge has made clear that he or she wants to preside over a particular defendant’s probation violations, which happens relatively rarely. After the first appearance on most PVs, there is an “Admit/Deny” date about 12 days after arrest. Contested hearings are set at the Annex

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<sup>7</sup> The trial judges each have slightly different practices once the case gets on their docket; most of the judges require one or more “status conferences” and a pretrial hearing. Some require only a pretrial. Most judges, but not all, have a standard Pretrial Order setting out their specific requirements and deadlines for such things as exchange of exhibits, etc. The content of the orders varies from judge to judge. Most of these matters are explained in a “Judicial Preferences” Manual maintained by the Court.

a couple days after the Admit/Deny date, in order to meet the statutory requirement to have a hearing within 14 days of arrest.

Marion County also operates a Drug Court, a Mental Health Court, and a Veterans Court. MCAD attorney Phil Swogger staffs the Drug and Mental Health Courts. Some cases are referred directly to these courts at the time of arraignment. If a case that begins on the regular case track is negotiated into one of these courts, Mr. Swogger is typically substituted as counsel when the client enters the specialty court. Judge Dennis Graves presides over the Drug Court, and Judge Mary James presides over the Mental Health Court.

Daniel Wren, an MCAD attorney and board member, staffs the Veterans Court, along with a PDMC attorney, a deputy DA, and representatives from the Veterans Administration, probation and parole, and treatment providers. Judge Vance Day presides over the Veterans Court.

Oregon Judicial Department (OJD) data shows that the Marion County felony trial rate is slightly higher than the statewide average, and the misdemeanor trial rate is slightly below the statewide average.<sup>8</sup> The average age of criminal cases when closed is older than OJD targets but consistent the statewide average.<sup>9</sup> The total number of criminal cases filed has declined slowly but steadily over the past five years.<sup>10</sup>

**System Issues.** Overall, defenders, prosecutors, the court, and other criminal justice system stakeholders in Marion County enjoy cordial and collegial working relationships. While the normal friction of adversaries is clearly present, the various parties express

<sup>8</sup> Cases Tried data from the Oregon Judicial Department, at <http://courts.oregon.gov/OJD/OSCA/pages/statistics.aspx>.

	<u>Felony</u>	<u>Misdemeanor</u>
2011	5.2% (4.4% statewide)	2.3% (3.8%)
2010	4.9% (4.2%)	2.5% (3.7%)
2009	6.1% (5.7%)	2.6% (4.4%)

<sup>9</sup> Age of Terminated Cases data from the Oregon Judicial Department, at <http://courts.oregon.gov/OJD/OSCA/pages/statistics.aspx>

	<u>Felonies Closed Within 120 Days (Goal is 90%)</u>
2011	71.7% (71.7% statewide; 70.5 Multnomah, 88.0 Lane, 88.1 Coos)
2010	72.6% (70.6% statewide; 67.1 Multnomah, 88.7 Lane, 88.9 Coos)
2009	71.3% (69.7% statewide; 61.9 Multnomah, 85.9 Lane, 89.3 Coos)
	<u>Misdemeanors Closed Within 90 Days (Goal is 90%)</u>
2011	79.1% (80.0% statewide; 86.6 Multnomah, 86.3 Lane, 87.4 Coos)
2010	76.1% (78.2% statewide; 82.8 Multnomah, 88.7 Lane, 86.3 Coos)
2009	77.7% (78.5% statewide; 79.5 Multnomah, 87.1 Lane, 88.8 Coos)

<sup>10</sup> Cases Filed data from the Oregon Judicial Department, at <http://courts.oregon.gov/OJD/OSCA/pages/statistics.aspx>

	<u>Felonies</u>	<u>Misdemeanors</u>
2011	2,543	3,979
2010	2,705	4,044
2009	2,750	4,409
2008	2,791	4,364
2007	3,246	4,495

general satisfaction with the structure of the county's criminal justice system and work collaboratively on some policy and procedural matters. As noted above, difficulty with access to confidential meeting space for in-custody clients is a barrier to necessary communication between attorneys and clients. And the physical distance between the Annex and the downtown courthouse creates a strain on defenders who regularly find themselves needed in several places at or near the same time.

The peer review team explored in several interviews the findings of a 2011 Criminal Justice Commission report<sup>11</sup> on Measure 11 showing that 63 percent of Measure 11 defendants in Marion County are convicted of some Measure 11 charges. This is a higher percent than in other rural counties, which on average convict at a lower rate than larger populous counties. By way of comparison, though, the Measure 11 conviction rate in Multnomah County is 36 percent. The study also showed that while blacks who are indicted for Measure 11 offenses are about 15 percent less likely to be sentenced to prison than whites, Hispanics are about 40 percent more likely to be sentenced to prison than whites in Marion County. When the peer review team asked deputy DAs about the report, they were unaware of it but suggested the data simply reflects better case assessment and charging decisions by the Marion County DA's office than in those counties that convict in a smaller percentage of cases.

**Statewide Survey Results for Marion County.** As noted above, unlike most other peer reviews, OPDS did not send Marion County justice system stakeholders a survey specific to MCAD and PDMC because the annual statewide public defense performance survey had been sent to some of these officials just a couple months prior to the site visit. The peer review team did review the Marion County results for the statewide surveys for 2010 through 2013.

The statewide survey asks generally about public defense representation in Marion County. Some survey responses had suggestions aimed at both entities, but other comments did not identify whether it was true of one or both providers. Particular areas of concern for both entities included better management of lawyers, though the particular challenge areas for each group appear to be quite different. Some MCAD lawyers are criticized for not visiting clients frequently enough, or arriving to court unprepared. One respondent indicated that the "Public Defender in Marion County does a better job litigating pre-trial issues than the MCAD members," but that "MCAD membership (overall) does a much better job managing clients and getting clients to acknowledge the reality of their situation." Overall, most respondents to the statewide surveys reviewed by the peer review team rated public defense representation in Marion County as "good," with a few respondents over the years saying it was "excellent," some saying "fair," and none saying "poor."

### **III. OVERVIEW OF MARION COUNTY ASSOCIATION OF DEFENDERS (MCAD)**

**Background.** The Marion County Association of Defenders, Ltd. is a consortium of attorneys formed in 1993 as a Section 501(c)(3) nonprofit corporation. Steve Gorham served as MCAD's first Executive Director until 2008, when Paul Lipscomb became the

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<sup>11</sup>The study attributed most of the disparity in application of Measure 11 to DA practices. The study is available at [http://www.oregon.gov/CJC/docs/measure\\_11\\_analysis\\_final.pdf](http://www.oregon.gov/CJC/docs/measure_11_analysis_final.pdf).

Executive Director after retiring as Presiding Judge in Marion County. Shortly after the finalization of the peer review report, Jon Weiner, a Salem attorney, became Interim Director of MCAD. He continues in that position as of the writing of this report.

In 2005, when MCAD was still the sole public defense provider in criminal cases in Marion County, the PDSC conducted a service delivery review of public defense in Marion County. Its 236-page report recognized that there were some very good attorneys on MCAD's active roster of between 50 and 55 attorneys, but found that the organization lacked structure and, in particular, did not have effective quality assurance and management mechanisms.<sup>12</sup> The report concluded that MCAD should undertake significant reforms if it wished to continue to contract with PDSC and that a new public defender office should be established with quality assurance and management structures that would "serve as models for other public defense providers across the state."<sup>13</sup>

In September 2006, MCAD reported to the Commission on progress toward reforms. Their 46-page report described a restructured board of directors that would include non-MCAD members appointed by outside entities; creation of a "communications plan" that required members, among other things, to check their voicemail; an "education plan" requiring mandatory membership in OCDLA and attendance at CLE programs; and the creation of a "work group" structure, which would be the core of MCAD's quality assurance program.<sup>14</sup> As described in more detail later in this report, these structures remained in place at the time of the peer review.

In early 2009, Ingrid Swenson, then-executive director of OPDS, provided the Commission with a 12-page report summarizing the 2005 review and subsequent improvements at MCAD.<sup>15</sup> By this time, Judge Lipscomb had become executive director of MCAD and the new public defender office was also in operation.

In 2010, the Commission again heard from MCAD and PDMC.<sup>16</sup> The MCAD report described plans to become a "model of excellence" in public defense. The PDMC report described its basic office operations.

**Operations.** As noted above, MCAD is governed by a board of directors. There are nine board members, three of whom are non-MCAD members. The Marion County Circuit Court Presiding Judge, the local bar association and the dean of the Willamette Law School each select one of the non-MCAD board members. MCAD attorneys on the board have staggered three year terms. The non-MCAD members do not have limits to their length of service. The board meets monthly and considers major policy, personnel, and financial matters.

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<sup>12</sup> *OPDS's Report to the Public Defense Services Commission on Service Delivery in Marion County* (February 2006),

<http://www.oregon.gov/OPDS/docs/Reports/MarionCountyReportwithappendices022106.pdf>.

<sup>13</sup> *Id.*, at 34.

<sup>14</sup> PDSC Agenda, September 14, 2006. <http://www.oregon.gov/OPDS/docs/Agendas/09-14-06.pdf>.

<sup>15</sup> PDSC Agenda, January 22, 2009. <http://www.oregon.gov/OPDS/docs/Agendas/01-22-09.pdf>.

<sup>16</sup> PDSC Agenda, June 17, 2010. <http://www.oregon.gov/OPDS/docs/Agendas/06-17-10.pdf>.

The MCAD Executive Director is selected by and serves at the pleasure of the board. When Paul Lipscomb began his service as Executive Director, he devoted a significant amount of time to MCAD business. He later moved from Salem to Sisters, Oregon. Although he always attended board meetings and remained available by phone and email to address MCAD matters as needed, the distance limited his day-to-day contacts in Marion County. As noted earlier, Jon Weiner became the Interim Executive Director in January 2014 and he continues to serve in this capacity.

The daily operations of MCAD are managed by the Office Manager, Lisa Richardson, who works full time, and Leslie Cross, who works on an intermittent part-time basis. They work with MCAD members and the court to track case assignments and manage payments to members. They also maintain a database, which members can access and update, to track attorney caseload and case-specific data, such as disposition by counts. A fine is imposed on members who are late in entering closing data about their cases.

Members of MCAD must apply for membership every two years, coinciding with the two-year period for MCAD's contract with PDSC. Each member signs an "MCAD Independent Contractor Attorney Agreement," which details the conditions of membership, including provisions regarding imposition of corrective actions and termination for unsatisfactory performance. Corrective measures and termination may be taken by the MCAD board of directors "or its designee."

Although the active roster of MCAD attorneys lists 41 members, that number includes some who accept very few or no appointments through the group, either because they have their own contracts with PDSC to provide representation in capital or PCR cases or because they have a busy practice of retained cases.

MCAD's written protocols include three main components to the group's quality assurance mechanisms. First, an education plan requires, among other things, membership in OCDLA and attendance at CLEs, including two MCAD-sponsored CLEs per year. Second, assigned mentors provide guidance to new MCAD lawyers regarding Marion County criminal procedure, as well as knowledge and skills for effective criminal defense. Third, a mandatory work group structure provides that each member will participate in a work group, headed by a group leader, which meets regularly to discuss legal and procedural developments affecting criminal defense in the county. In addition, according to the plan adopted by MCAD, the work groups "include oversight of attorney performance, routine performance reviews, and appropriate response to complaints."

According to the work-group plan description, complaints are handled within a three-level structure. At the first level, the work group will investigate complaints and develop an "action plan" to address specific concerns about a member's performance. Matters that cannot be resolved at the first level are referred to a "Committee of Working Group Leaders," which may place a member on probation for no longer than three months. At the end of that period, a "probation monitor" will report on the matter, recommending an end to probation if the report is good or referral to the next level. At the third level, the MCAD Executive Director receives reports about the matter and "will impose whatever resolution s/he deems appropriate," subject to a member's right to seek review by the MCAD board of directors.

MCAD members are appointed to cases through an “attorney of the day” structure that has been in place since well before the 2005 PDSC review of public defense in Marion County. At a monthly MCAD membership meeting, attorneys sign up for a rotation on a court calendar for misdemeanor and felony case assignments. On his or her designated day, the attorney is present in court for arraignments and personally meets new clients there and can make arrangements then for further meetings with the client. PDMC receives cases on the first work day of the week, and MCAD is present the other days of the week to receive case appointments. According to MCAD, its attorneys meet with all clients within the time periods required by its contract with PDSC. At the time of the peer review, lawyers were able to switch days and trade cases in ways that increased some attorney caseloads to unacceptably high levels. Since the peer review, MCAD reports that it has implemented case distribution oversight to even-out caseloads and prevent attorneys from carrying too many cases.

#### **IV. SUMMARIZED FINDINGS OF THE PEER REVIEW & SYSTEM DELIVERY REVIEW UPDATES**

**Responses to Questionnaires Circulated in 2013.** MCAD members were asked to complete an online survey about the operations of the consortium. Thirty-two members responded to that survey. In response to the member survey circulated at the time of the peer review, most MCAD attorneys expressed general satisfaction with how the consortium operated. However, in response to a question about how well MCAD addresses concerns about underperformance by lawyers, while most (16) said it was “good,” and five said “excellent,” five also described it as only “fair,” and five said “poor,” and comments suggested that MCAD needed to address the consistent under-performance of certain attorneys.

**Information Obtained During Peer & Service Delivery Review Interviews.** During the course of its three day site visit, the peer review team interviewed about 35 individuals involved with the Marion County criminal justice system, in addition to meeting twice with Paul Lipscomb. The Service Delivery Review team, which included OPDS Executive Director, Nancy Cozine, PDSC member, John Potter, and OPDS Analyst, Shelley Winn, interviewed stakeholders, as well as MCAD and PDMC lawyers and leaders, during October 29-30, 2014.

Most interviewees described overall satisfaction with MCAD attorneys and, more generally, with the functioning of the criminal justice system in Marion County. Attorneys from MCAD are seen as good partners in a number of collaborative efforts, such as standing committees on court operations and security, special projects such as an effort to streamline jury duty procedures, and in connection with a number of special courts, such as a new veteran’s court that requires good working relationships among prosecutors, defenders, the court, community corrections, and treatment providers. Marion County is also enthusiastically embracing evidence-based practices in its parole and probation operations, which are managed by the Sheriff’s Department. Likewise, the county has been active in grant-funded prison reentry programs.

Many interviewees did express some concern regarding the county’s Courthouse Annex and jail operations. The options for meaningful, confidential attorney visits with clients at

the jail are very limited. On the other hand, Annex personnel complain about attorneys showing up late and unprepared for proceedings. Moreover, the jail is at capacity, requiring routine releases for purposes of population control.<sup>17</sup>

Interviewees generally described the work of MCAD attorneys as very good, and many said that the quality of the group overall improved significantly when Paul Lipscomb became executive director. Stakeholders noted additional improvements when Jon Weiner became the Executive Director in January 2014. However, reports continued to suggest that a small number of low performers remain in the group. The concerns with these attorneys generally involved lack of adequate case preparation and poor client contact.

According to interviews, MCAD attorneys like being a part of the consortium and especially appreciate the support they receive from the MCAD office staff. Several attorneys described a high degree of satisfaction with the group's mentor program for lawyers new to MCAD. It appears that MCAD did some work to improve its training and mentoring program between the time of the peer review and the service delivery review visits.

## **V. RECOMMENDATIONS OF THE PEER REVIEW TEAM FOR MCAD & MCAD RESPONSE**

### **Consortium Structure and Administration**

The peer review team found that the consortium model generally, and MCAD's structure in particular, allows public defense clients to benefit from the knowledge and skill of experienced criminal defense attorneys who wish to engage in the private practice of law but are willing to accept public defense cases, and that the MCAD consortium includes some excellent attorneys. These attorneys, who generally maintain a substantial caseload of privately retained clients, enjoy the collegiality of the MCAD group and appreciate the efficiency of MCAD staff in handling the business end of public defense work.

The peer review team also found that MCAD has structures designed to assure quality representation. Its education plan is a model that can be recommended to other consortia, including MCAD's commitment to conduct its own CLE programs. The mentorship program is appreciated by members new to the group. The group's email listserv is an important and effective means of collaboration among members. And the work group structure is a good model for consortium lawyers to keep abreast of legal and procedural developments and to address particular issues and challenges that group attorneys may be facing. MCAD also has an excellent database that is capable of capturing and measuring important information about caseloads, case outcome, and attorney performance. MCAD's addition of caseload oversight and management is a very positive improvement.

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<sup>17</sup> Members of the peer review team observed an in-custody arraignment of a person charged with theft in the third degree, who was ordered held in custody. Asked about this afterward, the team was told the person would undoubtedly soon be released due to overcrowding.

## Quality of Representation

MCAD took steps to improve overall representation and to address concerns regarding particular lawyers following the peer review report. Still, effective quality assurance remains a challenge for MCAD. Interviews indicate that there are a few lawyers in the group who continue to appear for court without being well prepared, effective advocates for their clients.

## Peer Review Recommendations & MCAD Response

1. **Quality Assurance.** The peer review team recommended that MCAD review its procedures for ensuring quality representation by all of its members, and that the board review the OPDS *Best Practices for Oregon Public Defense Providers*<sup>18</sup> and determine how best to implement procedures for training attorneys, monitoring and evaluating attorney performance and, where necessary, remedying performance deficiencies. The peer review team further encouraged MCAD to explore the prevalence of resolving cases at the Annex without pretrial litigation, including whether the practice is confined to particular attorneys, and determine whether each attorney is fulfilling the obligation to advocate for a client's cause with zeal, skill and loyalty. MCAD has clearly taken steps to address concerns regarding the quality of services provided, but has not yet found a way to address all concerns.
2. **Enhanced Database Capability.** The peer review team found that MCAD is well served by a strong office staff and a sophisticated database that enables the group to easily account for the work it performs, make required reports to and receive payment from OPDS, and distribute payment to its members. The peer review team recommended that the database be used to track additional information such as open public defense cases for each member, and case closing information such as the resolution by alleged counts and the manner in which the case was resolved. Again, MCAD has been responsive to the peer review team recommendations and has begun tracking attorney caseloads and other information.
3. **System Issues.** With the physical distance between the Annex and downtown courthouse, the peer review team found that public defense lawyers could spend much of each day literally running and driving around, with little time for client contact, case preparation, or litigation. The peer review team recommended that MCAD leaders explore the desirability of changing the current scheduling practice and work with PDMC and the court if a different approach appears to be preferable. This appears to be an area where MCAD could continue to focus.
4. **Measure 11 advocacy.** The peer review team recommended that MCAD review the findings of the 2011 Criminal Justice Commission report on

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<sup>18</sup> Available on the OPDS website at <http://www.oregon.gov/OPDS/CBS/pages/bestpractices.aspx>.

Measure 11, and determine if a different approach to these cases, either on a case-by-case basis or as a systemic challenge, is warranted by the data that show disproportionate conviction rates in Marion County for persons charged with Measure 11 offenses. This appears to be another area where MCAD could continue to implement improvements by ensuring that qualified lawyers are readily available for more serious case types.

## VI. OVERVIEW OF PUBLIC DEFENDER OF MARION COUNTY (PDMC)

**Background.** As noted above, the October 21, 2005, Service Delivery Plan adopted by the Commission for Marion County called for the creation of a new public defender office with quality assurance and management structures that would “serve as models for other public defense providers across the state.”<sup>19</sup> Thereafter, a steering committee that included members of the local community worked with OPDS to plan for the new office and recruit a board of directors, which held its first meeting in September 2006. The board met regularly to establish the new office and recruit an executive director. Tom Sermak, who had been a senior attorney with the Public Defender Services of Lane County, was selected as the Executive Director. He began working with the Board on April 2, 2007, to locate office space and furnishings and recruit an initial staff for the office, which opened in July 2007.

In Ingrid Swenson’s 2009 report to the Commission on Marion County, she described the efforts made to establish the PDMC. She reported that in 2008, the first full year of PDMC operations, the office received 1,877 appointments (MCAD received 6,319 appointments). She also wrote that “[w]hile the substantive legal work of the office is said to be good, there have been on-going issues related to the deployment of the office’s attorneys, timely appearances at court hearings, office management, and adequate training of new attorneys.”<sup>20</sup> Later, in an update before the PDSC in 2010, it appeared that many of the concerns identified earlier had been resolved. The office had expanded to eight lawyers, two investigators, a legal assistant and three other fulltime support staff, and was handling approximately 25% of the adult criminal caseload in the county.<sup>21</sup>

**Operations.** PDMC is a nonprofit corporation governed by a seven-member board of directors that meets monthly. One board member each is appointed by the Chief Justice of the Oregon Supreme Court, the President of the Oregon Bar Association, and the Chair of the Marion County Board of Commissioners. The board selects the remaining members. Among its duties, the Board approves an annual audit and report from the Executive Director, approves revisions to an employee manual, and conducts an annual review of the Executive Director. According to the employee manual, the board may also receive employee grievances, a process that had been followed in at least one instance at the time of the peer review.

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<sup>19</sup> OPDS’s *Report to the Public Defense Services Commission on Service Delivery in Marion County* (February 2006), at 34.

<http://www.oregon.gov/OPDS/docs/Reports/MarionCountyReportwithappendices022106.pdf>.

<sup>20</sup> PDSC Agenda, January 22, 2009. <http://www.oregon.gov/OPDS/docs/Agendas/01-22-09.pdf>.

<sup>21</sup> PDSC Agenda, June 17, 2010. <http://www.oregon.gov/OPDS/docs/Agendas/06-17-10.pdf>.

At the time of the peer review, PDMC had budgeted for eight attorney positions in addition to the Executive Director, who handles his own caseload. Their work was supported by two investigators, two legal assistants, and several other support staff. As discussed more fully below, the Executive Director articulated a strong desire to add several new attorney positions, another investigator and another support person to the office staffing.

The PDMC negotiated for an increase in its 2014 contract in order to add attorneys and staff, and while the number of lawyers had increased to 10 by the time of the service delivery review, PDMC had not yet implemented any form of mid-level management as was recommended by the peer review team. Additionally, only one attorney who was employed at the time of the peer review remained by the time of the service delivery review. Seven of the lawyers interviewed at the time of the Service Delivery Review were relatively new to the office.

PDMC is the primary public defense contractor for new case appointments on the first workday of every week. An attorney from PDMC, usually the Executive Director, is present at criminal arraignments, at which time new clients and the court are given the name of the PDMC lawyer who will handle the matter. Lawyers are assigned on the basis of their qualifications to handle particular case types, with an effort to maintain balanced workloads. PDMC reviews the docket prior to arraignment to screen for obvious conflicts of interest. After arraignment, when discovery is received, the assigned attorney determines whether any conflicts of interest are present pursuant to a written conflict checking procedure.

Although a senior PDMC attorney holds the position of “assistant to the executive director,” Mr. Sermak has primary responsibility for supervising and training all staff attorneys. Training consists largely of an orientation to the office and the Marion County court system, the assignment of a mentor, and some case review during the early stages of employment. Thereafter, PDMC relies upon the resources of the Oregon Criminal Defense Lawyers Association (OCDLA) for most of its training and continuing legal education needs. The physical configuration of the PDMC office promotes frequent informal consultations among the firm’s attorneys, who also meet as a group once a week to discuss their cases and system issues. At the time of the peer review, and again during the service delivery review, Mr. Sermak was described as being spread too thin to offer sufficient supervision to newer lawyers in the office. Nonetheless, lawyers report that they enjoy their work, appreciate the excellent support staff, and feel supported in the office.

As part of its case closing protocol, PDMC seeks to provide each client with a survey asking about satisfaction with the firm’s services. Responses, which are rare, are reviewed by the case attorney and, in the event of critical responses, by the Executive Director. The responses are maintained in the client’s file. There is no tabulation of responses or other data maintained concerning the responses outside of the client’s file.

According to the Executive Director, “[a]ll staff is to be evaluated annually.” However, responses on the survey of all PDMC staff, discussed further below, indicate that regular performance reviews may not be occurring. Annual performance appraisals

were still not happening at the time of the service delivery review visit, but there had also been a significant turnover in lawyer staff.

PDMC is an active participant in justice system policy discussions. All PDMC attorneys are members of the Marion County Bar Association. The Executive Director is a member of the Local Public Safety Coordinating Council. He also meets regularly with the presiding judge to discuss issues concerning his office. He also represents the office at monthly meetings with judges, court staff, jail administration, community corrections and others regarding operations at the Courthouse Annex. All stakeholders described Mr. Sermak as an excellent resource who has fostered positive working relationships with all Marion County stakeholders.

## **VII. SUMMARIZED FINDINGS OF THE PEER REVIEW & SYSTEM DELIVERY REVIEW UPDATES**

**Responses to Questionnaires Circulated in 2013.** In response to the survey of PDMC employees in 2013, there was strong endorsement for the clarity of the PDMC mission to provide high quality legal services<sup>22</sup> and that PDMC is accomplishing its mission. Nearly all respondents to the survey said they were proud to work at PDMC, and that they were supported in their work by the office. Most respondents disagreed with the statement that “my compensation is about equivalent to others who do the same kind of work,” and, for reasons discussed further below, similarly disagreed with the statement “people stay in the same job assignment too long.”

Responses were somewhat mixed regarding PDMC supervisory functions, which was reflected as well in staff interviews conducted by the peer review team. While nearly all respondents strongly agreed that “my supervisor treats me with respect,” there was some disagreement that management priorities are consistent with the PDMC mission and that management decisions take into account the needs of PDMC staff. There was also somewhat weak support for the statement that the “current organizational structure is appropriate for PDMC’s mission and philosophy,” and mixed responses to whether supervision is helpful in accomplishing daily tasks. Nearly half of the respondents also disagreed with the statement that “I receive regular formal performance reviews by my supervisor.”

**Information obtained during interviews.** During the course of its three day site visit, the peer review team interviewed about 35 persons involved with the Marion County criminal justice system, in addition to meeting twice with Tom Sermak. As noted earlier, the Service Delivery Review team, which included OPDS Executive Director, Nancy Cozine, PDSC member, John Potter, and OPDS Analyst, Shelley Winn, interviewed stakeholders, as well as MCAD and PDMC lawyers and leaders, from October 29-30, 2015.

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<sup>22</sup> The firm’s mission statement reads: “The overall mission of the Public Defender of Marion County is to provide high quality, cost effective criminal defense to persons who qualify for our services while maintaining the confidence of the clients that they are receiving zealous and proficient legal representation.” [http://www.pdmarion.org/Public\\_Defender\\_of\\_Marion\\_County/PDMC\\_Home.html](http://www.pdmarion.org/Public_Defender_of_Marion_County/PDMC_Home.html).

Most interviewees described overall satisfaction with both PDMC attorneys and, more generally, with the functioning of the criminal justice system in Marion County. Like MCAD, attorneys from PDMC are seen as good partners in a number of collaborative efforts, such as standing committees on court operations and security, special projects such as an effort to streamline jury duty procedures, and in connection with a number of special courts, such as the veteran's court that requires good working relationships among prosecutors, defenders, the court, community corrections and treatment providers.

Most interviewees recognized PDMC as an important player in the Marion County's criminal justice system. A number of people noted the difficulties that PDMC had when it began operating in a fairly closed and insular legal community. In this connection, one person described Salem as a "big farm town." Several judges acknowledged that Mr. Sermak had a "steep learning curve" when PDMC began operations and that there were a number of problems at first. Those issues have been largely resolved, although the fairly regular turnover at PDMC means a regular influx of attorneys new to the system who face challenges of mastering difficult work in a complex setting. Generally, though, judges and other court staff consider Mr. Sermak to be a very good manager. He is said to "check in" regularly about attorney performance, responds to specific performance concerns, and participates constructively in system policy discussions. One person said he does a "fantastic job" as a system partner.

Overall, PDMC attorneys are seen as zealous advocates for their clients. Some interviewees expressed concern that some attorneys were zealous to a degree that it was a disadvantage to the clients. Others noted appreciation for PDMC motion and trial practice. At the time of the service delivery review, PDMC lawyers were described as having consistently good client contact and arriving well-prepared for court hearings.

Several interviewees mentioned the turnover at PDMC, which means that judges, DAs and others regularly encounter inexperienced attorneys who are dependent upon training and supervision from Mr. Sermak. As mentioned earlier, there are concerns that Mr. Sermak spends too much of his time in court and on casework to devote sufficient time to supervision.

Interviews with PDMC attorneys and support staff reflect a group that is strongly committed to zealous client advocacy but frustrated with the barriers to effective advocacy. The relatively low compensation for attorneys is seen as the primary reason for high turnover at the office. At the time of the site visit, two senior attorneys had just resigned and another one, who said he loved his job there but needed to find better paying work, resigned shortly after the visit. As noted earlier, by the time of the service delivery review, only one attorney who was present during the peer review remained on staff. The peer review team heard complaints regarding leadership, but those concerns were not articulated during the service delivery review. A major friction point for many was office technology, which is based on Apple products. While Mr. Sermak has not made any immediate changes to the office system, he is exploring other options.

## Peer Review Recommendations & PDMC Response

- 1. Quality of Representation.** The peer review team commended PDMC for having established itself in the Marion County criminal justice system as a strong and respected presence known for its zealous and effective advocacy on behalf of public defense clients. PDMC was also commended for having a strong and engaged board of directors that is clearly committed to responsible stewardship of PDMC and supportive of its role in the local legal community. Finally, PDMC, largely through its Executive Director, was noted as a valued partner in county criminal justice planning and responsive to concerns and needs of the court and other system stakeholders. Mr. Sermak is widely applauded for successfully establishing PDMC, and providing strong representation for public defense clients.
- 2. Office Management.** The peer review team found that PDMC's structure must evolve in order to sustain its good work, and recommended that it add several attorney and staff positions to allow establishment middle-level management. This recommendation was identified as necessary in order to relieve the Executive Director of sole responsibility for the training and supervision of PDMC attorneys, and promote closer and more meaningful supervisor involvement with attorney development. The team also recommended that Mr. Sermak and the PDMC board assess whether he can better meet the demands of successfully leading and inspiring the office employees. The team specifically recommended that PDMC provide more training for its attorneys, noting that the high turnover rate makes on-going training essential. It recommended that the Executive Director explore ways to offer a new lawyer trial skills curriculum and hour-long presentations at the PDMC office, on topics affecting criminal defense generally and in Marion County. Finally, the peer review team recommended that, to the extent that the firm is able to increase its salary scale, both the office and its clients will benefit significantly. PDMC has done a few trainings in the office, but nothing consistent, has not implemented any mid-level management structure despite addition of new lawyers at the start of 2014, and has not created a new lawyer trial skills curriculum.
- 3. System Issues.** With the physical distance between the Annex and downtown courthouse, the peer review team found that public defense lawyers could spend much of each day literally running and driving around, with little time for client contact, case preparation, or litigation. The peer review team recommended that PDMC leaders explore the desirability of changing the current scheduling practice and work with MCAD and the court if a different approach appears to be preferable. This appears to be an area where PDMC could continue to focus.
- 4. Measure 11 advocacy.** The peer review team recommended that PDMC review the findings of the 2011 Criminal Justice Commission report on Measure 11, and determine if a different approach to these cases, either on a case-by-case basis or as a systemic challenge, is warranted by the data that show disproportionate conviction rates in Marion County for persons charged with Measure 11 offenses. PDMC has, since the peer review, designated two experienced attorneys in the office who handle all of the Measure 11 cases.

## VIII. Service Delivery Review – Recommended Areas of PDSC Inquiry

Both MCAD and PDMC serve as dependable public defense resources in Marion County. Both should be applauded for taking steps to act on recommendations made by the peer review team. At the same time, both have challenges that will require the continued efforts of leaders and lawyers in both organizations.

### 1. Quality Assurance.

The Commission will likely want to ask MCAD about its plans for addressing concerns regarding individual lawyers. While many MCAD lawyers are seen as having good client management skills, some are reported as failing to meet with clients in a regular and timely fashion, failing to adequately prepare for court, and settling cases without appropriate pretrial litigation. Addressing these matters should be considered a very high priority. The Commission may also wish to ask MCAD what it has done since the service delivery review interviews to be sure qualified lawyers are readily available for murder and other serious case types.

With regard to PDMC, the Commission might want to inquire about any additions to training available to new lawyers, and any efforts it is making to attract and retain lawyers.

### 2. Management.

MCAD was applauded for having a robust database capable of ascertaining not only caseload information, but also details regarding case outcomes. The Commission might want to inquire about any enhancements planned for its database.

The Commission will likely want to ask PDMC about any plans it has to implement a mid-level management structure, whether new attorneys are getting regular reviews, and what plans the office has for acquiring new case management systems.

### 3. Systems Issues.

As noted, both MCAD and PDMC are seen as dependable, valuable resources. The Commission might wish to ask both about their willingness to work together to address system issues, and about any efforts they have made to achieve more regular communication with each other and with other system stakeholders. Additionally, the Commission might want to ask whether there are system issues that could be addressed more effectively through a collaborative approach.

### 4. Structure.

Marion County's current public defense structure, with a consortium and a public defender office, was adopted in 2007. It has served the community well, and

seems to have improved the overall level of representation in the county. The Commission will likely want to know that both providers remain committed to the concept of excellence and that both have concrete plans to improve representation through regular training, enhanced monitoring of attorney performance, regular reviews, and immediate responses to concerns regarding representation.

## **IX. TESTIMONY AT JANUARY 22, 2015, PDSC MEETING**

Chair Ellis began by thanking everyone in Marion County for the time and effort they dedicated to the review process. Nancy Cozine then provided a summary of the Service Delivery Review Report and recommended areas of Commission inquiry.

Chair Ellis asked Judge Prall whether there was any information the court would like the Commission to consider. Judge Prall said the court shared the concerns and accolades outlined in the report, and confirmed that the introduction of a public defender office heightened the responsibility and professionalism of defense delivery in Marion County. She noted that the court shares the long-standing concerns created by the distance between the annex and the courthouse, and problems with lawyers signing themselves up to be in two places within too short a timeframe and then being late to court. She said the eCourt implementation exacerbated the issue because some of the annex work had to be shifted back downtown, increasing the need for travel between the two locations. Chair Ellis noted the efficiency created in the public defender office by having only one lawyer responsible for taking cases each day, and asked whether a similar efficiency could be created within the MCAD group; Judge Prall thought that might reduce time conflicts.

Chair Ellis also asked questions about lawyer assignment within both entities. Judge Prall said her impression was that both providers were making an effort to assign cases based upon experience, but that efficiencies might be captured through increased specialization at MCAD.

Chair Ellis expressed his sense that the public defense providers in the county worked well together. Judge Prall agreed, saying that Marion County benefits from a very collegial Bar. Chair Ellis asked whether the court has good access to both Mr. Weiner and Mr. Sermak. Judge Prall responded in the affirmative, explaining that both were very available during eCourt implementation. She commended their ability to work collaboratively and follow through with communication to their groups. Commissioner Potter asked whether there was any regular policy meeting for the defense bar, the judges, and the prosecution. Judge Prall said that a local Criminal Justice Advisory Council is on the horizon, delayed slightly because of eCourt, but starting soon. She also mentioned the Annex group, which meets regularly to address operational issues. Chair Ellis asked whether non-English-speaking populations are being well-served. Judge Prall noted that it was very helpful to have several lawyers who speak Spanish,

that in other cases the attorneys are good at utilizing and accessing interpreters, and that she is satisfied that attorneys are communicating well with their clients.

Chair Ellis asked whether the Commission could do anything to improve the quality of counsel in Marion County. J. Prall commended the Commission's approach to the Service Delivery Review, and indicated that it was a helpful and important process. Chief Justice Balmer asked whether there are enough lawyers available to handle the serious felony cases. Judge Prall said both providers seem to be focused on training newer lawyers to be able to handle these cases, pairing a less experienced lawyer with a more experienced lawyer.

Chair Ellis thanked Judge Prall and invited District Attorney Beglau to share his thoughts. Mr. Beglau began by thanking the Commission for including his office in the review discussions, and emphasized the collegial nature of the practice in Marion County. He expressed strong support for having prosecutors and defense practitioners on equal footing, and appreciation for Tom Sermak's and Jon Weiner's level of involvement in policy discussions. Mr. Beglau indicated that both were present for important discussions, like new approaches in misdemeanor cases where defendants are unable to aid and assist, and diversion of prison-bound property offenders who are at a medium and high level risk rate, which is saving about 50 or 60 prison beds, and specialty courts. He acknowledged that it can be harder to get the message out to MCAD attorneys because it is a bigger, more diverse group. He also suggested that it would be helpful to have those in public defense management positions refrain from taking a caseload.

Chair Ellis asked whether the District Attorney's Office is experiencing the same level of turnover that we are told the public defender's office. Mr. Beglau said that it isn't as big a problem, but that the office is starting to lose people to jurisdictions with better salaries. Chair Ellis asked whether there is an experience disparity between lawyers in the DA's office and those in the PD and MCAD. Mr. Beglau said there is disparity, and went on to explain that as Oregon comes out of the recession, counties are starting to increase salaries. He indicated that the issue is being studied in Marion County. He again emphasized the importance of creating equal footing between the defense and prosecution. When asked about anything the Commission could do a better job of, Mr. Beglau suggested increased training and mentoring for defense lawyers, saying that the issues presented today are more complex than ever; he also suggested increased salaries. Commissioner Potter asked about the discovery process in Marion county. Mr. Beglau indicated that it was the subject of a recent discussion and would be examined as part of the county's effort to identify ways to be more effective at resolving cases quickly.

Chair Ellis asked about the composition of the lawyers in Mr. Beglau's office. Mr. Beglau indicated that there are thirty-three lawyers, in four sections: domestic violence, child abuse and adult sexual assault, career property and the drug team. He explained that on each team there is a manager and five or six lawyers. The remaining case types are divided up, mostly the misdemeanors, and the entry level lawyers get most of those cases. He indicated that with a

manager for each team, there is a lot of supervision and mentoring on the more serious cases. Mr. Beglau pointed out that it takes five years for a lawyer to know what they are doing in a child abuse case, and that he wouldn't want a brand new lawyer taking on a child abuse case or a Measure 11.

Chair Ellis thanked Mr. Beglau and invited Mr. Weiner and Mr. Sermak to present information. Mr. Weiner began by saying that he began as interim executive director in January of 2014 and that it became obvious very quickly that his mission was to understand and address concerns outlined in the peer review report. Chair Ellis asked Mr. Weiner whether he is handling a caseload. Mr. Weiner said he doesn't have daily assignments, but that he tries to co-counsel with newer lawyers in more serious cases, and that he also likes to work on murder and PCR cases.

Chair Ellis asked about the composition of the MCAD board. Mr. Weiner indicated that three of the nine are external members and that the monthly meetings are well attended. Cheryl Richardson, Chair of the MCAD board, indicated that they would soon be filling the executive director position and that Mr. Weiner would be a frontrunner given the work he has accomplished in the last year.

Chair Ellis asked about MCAD's methodology for assigning cases. Mr. Weiner explained that MCAD lawyers don't get to decide what types of cases they are qualified to handle on their own; it must be approved by MCAD. He indicated that he is working with the court to make sure that only the most qualified lawyers are taking murder and Measure 11 cases, and he is also looking at the possibility of having lawyers specialize in certain case types.

Chair Ellis asked Mr. Sermak about turnover at the PDMC. Mr. Sermak explained that the primary reason is financial, and he gave several examples of lawyers who simply could not continue to practice with the low salary. Commissioner Potter asked why lawyers from MCAD aren't applying at PDMC. Mr. Weiner speculated that it was because most of the MCAD lawyers have been their own boss for a long time, and changing now would be very difficult, and that many like the flexibility of doing a variety of case types. He estimated that out of the 38 MCAD lawyers, 20 to 25 are full-time criminal law practitioners, but the rest enjoy other private work. Vice-Chair McCrea noted that Mr. Weiner was now monitoring caseloads, and asked whether that working out alright. Mr. Weiner indicated that it was. Vice-Chair McCrea followed up by asking whether there were any lawyers who were not taking cases regularly enough to stay current on the law. Mr. Weiner indicated that one lawyer didn't take a particular case type, but that it was not a problem, and said that the group is really working on getting newer lawyers up to speed so that they can take felony cases.

Mr. Weiner and Mr. Sermak expressed appreciation for the work of the Commission and employees at the Office of Public Defense Services. Both said the system is working well at this point. Mr. Sermak pointed out that his firm is prepared to expand when necessary, and expressed support for the idea of staffing specialty courts out of the public defender office. Chair Ellis asked

whether conflicts are becoming a problem now that PDMC has been around for a longer period of time. Mr. Sermak said they are becoming more prevalent, but checking dockets in advance allows them to avoid having too many. Vice-Chair McCrea asked Mr. Sermak whether he is still carrying a caseload, and he indicated that he stopped taking new cases several months ago and finished his last case late last week. He indicated that this change has given him time to address county policy and structure issues in his office. Vice-Chair McCrea finished her questions by asking Mr. Sermak about the challenges of practicing in Marion County. Mr. Sermak said they will be working on discovery issues – that often video tapes or other evidence are not requested from the policy until the defense attorney requests them, and this slows down the whole process. Mr. Sermak also noted the challenges with Measure 11 cases, saying that in Marion County there is a policy against negotiating out of Measure 11. He indicated that as a result, 20% of the Measure 11 cases in Marion County went to trial in 2012. He compared this to other counties: 27% in Clackamas County (but only 86 cases were filed during the entire year); 7% in Multnomah County; 6% in Lane County; and 12% in Washington County. He said this is a major challenge.

Chair Ellis thanked Mr. Weiner and Mr. Sermak.

**X. A Service Delivery Plan for Marion County**

# MARION COUNTY ASSOCIATION OF DEFENDERS

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October 30, 2014

Executive Director Nancy Cozine  
Office of Public Defense Services  
1175 Court Street NE  
Salem, OR 97301

Re – May 2013 Peer Review – Responsive Actions

Dear Director Cozine,

The Office of Public Defense Services (OPDS) completed its most recent peer review of Marion County contractors in May 2013. That process generated several reports, one of which focused specifically on the Marion County Association of Defenders (MCAD). The MCAD peer review report raised several concerns. Although MCAD's process of addressing those concerns is ongoing, the responsive actions taken by MCAD thus far are outlined below.

## **Concerns Raised in Peer Review Report**

Although the peer review report's thoughtful consideration of the Marion County service delivery system addressed many issues, the report's primary concerns as to MCAD can be fairly described as follows:

- Are MCAD attorneys “working their cases” less vigorously than they should be? There is apparently a perception by some that there exists a pattern of MCAD attorneys filing disproportionately few pre-trial motions, and resolving a disproportionately large number of cases at the Court Annex.
- “Quality assurance remains a challenge for MCAD.” Many stakeholders opine that “a number of low performers remain in the group.” MCAD does not effectively address underperformance by its members. The workgroup structure, while an effective means of improving attorney performance, is perhaps too cumbersome to be relied upon as the sole means of addressing attorney performance issues in a timely manner.

- MCAD “does not appear to embrace a strong client-centered practice.” Members may be “worried about underperformers not because of the consequences for clients but because ‘their bad behavior reflects on others and may have economic impact on others.’” There is no “equivalent concern for the welfare of MCAD clients.”
- The distant location of then-Executive Director Paul Lipscomb necessitated that “the MCAD board directly address the need for leadership transition.” Although centralization of certain quality assurance functions is likely a positive development, Judge Lipscomb’s distance from Marion County impairs the effective performance of these centralized functions.
- “It appears that MCAD is in need of again examining whether the organization and its clients could benefit from changes in procedures and personnel.”

### **Responsive Actions by MCAD**

MCAD has taken action on several fronts in response to the concerns raised in the Peer Review Report. Some actions have been relatively simple, while others have entailed considerably more planning and effort. While MCAD’s efforts are (and must be) ongoing, a summary of the changes effectuated thus far in 2014 are set forth below.

#### Transition in Leadership

MCAD transitioned to a locally situated interim executive director in January, 2014. After receipt of the OPDS’ evaluation of MCAD’s response to the Peer Review Report, and consideration of other interested applicants, the MCAD Board will decide whether to retain or replace the current interim executive director.

#### Changes in Personnel

MCAD has historically been challenged by its seeming inability to make necessary changes in its membership, and its seeming reluctance to add or subtract member attorneys when necessary from a quality assurance perspective. In 2014, MCAD responded to that challenge by making both types of changes to its membership rolls. In particular, MCAD added five new misdemeanor attorneys to its ranks.

#### Training/Mentoring/Workgroups

MCAD’s workgroup structure was recognized in the peer review report as a distinct asset. The workgroups have been reshuffled and revitalized. Attendance at the monthly workgroup meetings has returned to its former levels. Each new attorney has been assigned a mentor and a workgroup. In addition, the executive director plans to meet with these new attorneys for lunch approximately once per month. Oregon Post-Conviction Consortium Administrator (and MCAD Board Member) Noel Grefenson has agreed to attend these lunch meetings in an effort to enhance the training of these new members. It is anticipated that the Board will approve partial or full scholarships for each of these new members to attend the National Criminal Defense College (NCDC) in Macon, Georgia for two weeks. It has been the policy of the Metropolitan Defenders

(Metro) to send its new attorneys to the NCDC, and it would appear to be appropriate for MCAD to do the same.

### Changes in Case Assignment Process

Since its inception, MCAD has assigned cases on somewhat of a rolling basis, irrespective of the caseloads of the attorneys who are signing up to take “attorney of the day” (AOD) assignments. Typically, members choose their assignments by picking “felony days” and “misdemeanor days” at the monthly MCAD meetings. However, it became a common practice over time for attorneys to trade assignments between themselves (e.g. – “I’ll take your felony day next Tuesday and you can take my misdemeanor day tomorrow”). Moreover, some attorneys have proven to be especially adept at picking up stray cases from colleagues, the court, and even the Public Defender’s Office. MCAD has taken steps to de-randomize this process and flatten-out the distribution curve as much as possible, in order to inhibit the ability of its member attorneys to garner huge caseloads. In certain cases, MCAD has worked with individual attorneys to limit their caseloads when it appeared necessary to do so.

MCAD attorneys now sign up for cases in inverse order of the number of cases they have. In other words, the attorney with the fewest cases signs up first, the attorney with the next fewest cases signs up next, and so on. Although the Interim Executive Director and several members did travel to Portland to learn about the case assignment procedure used by Metro, it was determined that implementation of such a system would require a systemic change in the way that the Marion County Circuit Court handles its criminal docket. With Marion County’s change to ecourt at the end of this year, it was not feasible to address this type of systemic change at this time.

MCAD also took steps to reel in the supply of available stray cases. The court and the Public Defenders Office now route all such cases to the MCAD office, which assigns those cases based largely upon caseload considerations.

### Enhanced Availability of Attorney (and MCAD) Contact Information

The first step to embracing a client-centered approach was for MCAD to provide accessible contact information to our clients. MCAD’s website has been enhanced, such that contact information for each of its attorneys is provided therein. Moreover, MCAD’s contact information is now prominently displayed, with an offer to help anyone having questions or issues regarding an MCAD attorney.

MCAD has also arranged with Lieutenant Doug Cox to have fliers posted in each pod at the Marion County Jail. These fliers have contact information for the MCAD office and each MCAD attorney. Similar to the website, the fliers display an offer to help anyone having questions or issues regarding an MCAD attorney.

### Enhancing MCAD’s Participation in the Criminal Defense World and the Community

In spite of its status as the largest consortium in Oregon, MCAD has largely been absent from the criminal defense community. In 2014, MCAD has attempted to change this by actively seeking to take a more active role in that community. MCAD participated actively in the Pay Parity Committee and Lobbyist Selection Committees, receiving the OCDLA President’s Award for its

efforts on the Pay Parity Committee. MCAD is also active on several local committees, including the Marion County Circuit Court court committee and the Oregon State Hospital – Marion County workgroup.

MCAD has also attempted to increase its utility to the local community, enhancing its website to provide particularly useful forms and pleadings to other practitioners and the general public. MCAD has also added valuable information about important community resources – such as links to the following:

- Contact information for free clothing, food boxes, veterans' assistance, health and medical, and shelters.
- DOC Transitional Services Division – Department of Corrections Transitional Services Information and Contacts by county.
- Marion County Jail - Information regarding visiting hours, policies, and frequently asked questions.
- Marion County Jail Inmate Roster – Full Roster with booking photos.
- Victim Information and Notification Everyday (V.I.N.E.) - A searchable database to locate an inmate anywhere in Oregon.
- Oregon Courts Resources and Links – A guide to preparing yourself to navigate the court system, including court etiquette.
- Court Calendars

### Expanded Utilization of Database

Taking heed of the Peer Review Report's recognition that the MCAD database could be more powerfully utilized, MCAD has expanded its use of the database in important ways. The database is now used to track members' caseloads. It has also been used to provide numerical data about trends among MCAD attorneys overall or even particular attorneys. This expanded use of the database has been instrumental in allowing MCAD to monitor attorney caseloads and make responsive adjustments accordingly.

Finally, the database is being expanded to allow for the tracking of two additional parameters – client meetings and pre-trial motions. Starting in November, attorneys will track all of their client contacts, and all motions filed, in new data fields being added to the database. These two metrics should provide valuable information regarding client-centered practices and how hard MCAD attorney are working their cases. Members have embraced these changes, and have suggested the addition of even more data fields to track valuable metrics.

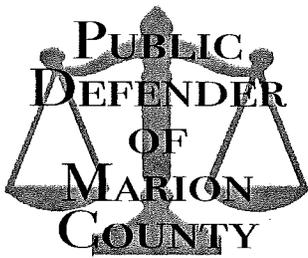
### **Conclusion**

The actions outlined above represent but a few initial steps in what must be a continual quest for improvement on the part of MCAD. As the largest consortium of public defense providers in

Oregon, MCAD is uniquely positioned to be a significant positive force in the public defense community. Metro, which occupies a similar position among public defenders' offices, has enthusiastically embraced its position as the flagship of the State's public defense fleet. Although in the beginning stages of fundamental change, MCAD is committed to moving toward an analogous position among private bar providers.

Sincerely,

Jon Weiner  
MCAD Interim Executive Director



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February 18, 2015

Ms. Nancy Cozine, Executive Director  
Office of Public Defense Services  
1175 Court St NE  
Salem, Oregon 97301

Rè: Marion County Service Delivery Review

Dear Ms. Cozine:

Thank you for inviting me to appear before the Public Defense Services Commission when they addressed the forthcoming Service Delivery Review for Marion County. In your draft report you suggested the Commission might want to inquire into certain areas regarding PDMC's internal structure or it's role in the local criminal justice system.

While I found the inquiries made of me and the other Marion County folks invited to participate to be quite appropriate and enlightening, I did note that some of the areas you thought worthy of consideration were not addressed. Anticipating that you or the Commission might like to know how I would have responded had I been asked, I have prepared this letter.

The draft report suggested the Commission might inquire whether PDMC had created a mid-level management structure. PDMC had the semblance of such a structure but it was not formalized. Following the visit of your team to our office late last year we both formalized and expanded the structure. PDMC has nineteen employees. For some time all the office staff have been directly supervised and evaluated by our Office Manager, thus she has direct supervisory authority over three secretaries/legal assistants, a receptionist and an office clerk. The Office Manager is directly supervised and evaluated by the Executive Director. Ever since the Board adopted an Emergency Succession Plan, a senior lawyer has acted as "Assistant to the Director," which required her to be familiar with the duties of the ED and practiced at performing them when the ED is unavailable either due to vacation, illness, injury, etc. At my suggestion, my assistant also undertook a more direct role as office liaison to Willamette University Law School and the Extern program we participate in. We also had a deputy public defender who had volunteered to coordinate the law-clerk and CLS activities of the externs who worked with us. Your visit coincided with the conclusion of our office expansion to ten lawyers and increased support staff. Motivated by your visit and the increased need, we now have a formal management structure in which I, as ED, supervise the Office Manager, the Assistant to the Director, our three investigators, the Measure-11 lawyers, and share supervision of the Major Felony lawyers. The Assistant to the Director has primary responsibility to administer the Extern program and supervise the law clerks, she also supervises the misdemeanor/minor

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felony attorneys and divides supervision of the major felony qualified attorneys. She and I have in the past informally shared training responsibilities; her role in that process is now formalized. Admittedly the structure is rudimentary but we believe it will suit the needs of our nineteen employees. We also believe that by dividing the responsibility to regularly evaluate the employees it will alleviate another concern, which is the office's failure to comply with the schedule of annual formal evaluations. I have enclosed a flow chart showing the new management structure.

Our evaluation practice as set forth in the employee manual specifies that each new employee undergo an informal evaluation after three months of employment, a formal written evaluation at six months and a first annual review six months after that. The new hires are then evaluated annually thereafter. (While I have been lax about maintaining the evaluation schedule overall, new hires almost always receive their first three evaluations at or near the time they are scheduled.) We have now divided the duty of evaluating attorneys roughly in half. Additionally, our experience during our years of operation have led us to conclude that senior attorneys with more than three years in the office in most cases don't need to be evaluated annually, so we are changing our policy to require a formal evaluation every other year for attorneys with more than three years in the office. If in an individual case the need arises to do a formal evaluation more frequently we will assure that happens. In making this change we are mindful that the evaluation process is not a disciplinary tool nor is it a primary or even secondary training tool. PDMC policy and practice is to address disciplinary and training issues *as they arise* not wait till the annual evaluation occurs. The evaluation is to measure progress and set goals which, with the more senior attorneys can be adequately accomplished with biannual evaluations.

We are also in the process of formalizing our training program. A lawyer hired with no prior experience is taken out and introduced to the Annex experience usually on the first day; they are advised that within the next few days they will be expected to have chosen a "mentor" attorney, who will be the primary go-to person with questions. Each new hire is required to sit in on at least two client interviews, one of which must be in the jail. They must then conduct at least two interviews under supervision. They are expected to "shadow" an attorney for some portion of a day. They are expected to observe at least one of each kind of appearance or hearing before they take part in one. If they have not already done so they are sent to the new-lawyer CLE and to the next available OCDLA Trial Skills seminar. They are required to observe a trial, and co-counsel a trial before they have a trial on their own.

PDMC has a training manual, which I characterized in our meeting as having "fallen into disuse." While that may have been an apt characterization the manual was still circulating among new hires. However, it has always served as a secondary resource—secondary to the hands-on training described above. That said, the manual was out of date and not well-tailored to the practice of law in Marion County. The training manual is in the process of being updated and made more Marion County applicable with special sections describing the more common elements of local practice and with another section detailing how criminal law is practiced at PDMC—emphasizing office procedures and the specialized tools and support the office offers. Past experience indicates it will always be a secondary training tool, but it will provide a readily available and reliable source of

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information for those occasions when the inexperienced attorney cannot find a colleague to pose a question to.

Insofar as ongoing in-house training is concerned, I provided a partial list of trainings we have done here at PDMC; a more expanded list of the presentations we have done in the last fourteen months or so would include a CLE on Immigration Law set up by one of our staff lawyers. The presenter appeared interactively over the internet; she did trainings all over the country and her presentation to us was specifically tailored to Oregon and 9<sup>th</sup> Circuit law. We had a Forensic Psychologist come in for a lively session on the various types of forensic assessments, how they are conducted and the various instruments relied upon by the assessors; one of our members gave a formal CLE on the law as it pertains to firearms, concealed weapon permits, the "open carry" law, etc. We have had speakers present on the new ignition interlock devices, how they work, where they can be obtained, problems with them, etc. And we have had folks from local treatment agencies, jail mental health, the local 370 program and others come in on occasion to address topics of interest. We also make liberal and frequent use of OCDLA CLEs.

The draft report also mentioned what was characterized as frustration with our reliance on Apple products. I suspect the frustration was more directed at the database we are presently using rather than the machines we use to access it. In point of fact there *are* problems with our current database system principally surrounding how it integrates with our calendaring system. The database currently automatically enters on the assigned attorney's calendar all court appearances or events linked to a particular case and that calendar is available to all PDMC employees both in the office and remotely. But the ability to integrate or enter an attorney's personal appointments to that calendar is cumbersome and limited. The database is a custom product developed in conjunction with the Lane County PD office; maintenance has increasingly become an issue and development is slow. That said, and the calendaring issue aside, the system does pretty much what we need it to do. The New Dawn program would probably be better, certainly a bit more polished, and one would hope maintenance would be less of an issue, but it may not be cost-effective to switch databases. I won't know that until we can get some cost figures out of New Dawn. We will be attending a demonstration/ question-and-answer session on the New Dawn product at the end of this month and I hope to know more then.

The final topic the Commission was invited to inquire into was the rate of conviction for M-11s in Marion County versus the rest of the state. First, let me put the issue into historical perspective. The 2011 report that provided the troubling data was based entirely on cases filed in 2008. By the end of 2008 MCAD was about two years into its newly restructured form, and PDMC had been in existence for eighteen months. My office expanded considerably between 2008 and April 2013 when the site visit occurred. We had also just changed our own intra-office structure to designate two of our most senior and experienced attorneys to do the M-11 cases. I have since asked the Criminal Justice Commission, the source of the 2011 report, to update the data relied upon in that report and they have provided me with the most current data which, unfortunately, only goes up to 2012. Regrettably I cannot report a statistically demonstrable improvement in Marion County's M-11 statistics between 2008 and 2012. For example, in 2008 Multnomah County obtained convictions for M-11 offenses in 36% of those cases where M-11 was

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charged (21% highest M-11, 15% lesser M-11); in Marion County it was 63% (48% highest M-11, 15% lesser). In 2012 Multnomah County's numbers were 39% (28% highest, 11% lesser); Marion County's numbers were 64% (55% highest, 9% lesser)

The 2011 report notes, however, in discussing the disparity in prison sentences resulting from M-11 cases:

It appears that in Multnomah County prosecutors are more likely to indict an offender for a M11 crime, and then obtain a plea agreement to lesser offenses. The plea agreements still include a prison sentence in many of these cases. Prosecutors in Marion County are much more likely to convict for the indicted charge. If they are unable to obtain a conviction for the M11 offense indicted, then offenders are more likely to receive a probation sentence or have their case dismissed.

The report also noted that a M-11 case that goes to trial is 300% more likely to result in a M-11 conviction than if the case is negotiated. It is my perception, somewhat born out by statistics, that Marion County is less likely than most jurisdictions to negotiate out of M-11. Unfortunately the 2011 report does not break down trial statistics by county, but it does show that of the 2272 M-11 cases brought statewide in 2008 352, or 15% went to trial with 70% of those resulting in M-11 convictions. In 2012, statewide, 200 of 1665, or 12% of M-11 cases went to trial again with 70% resulting in M-11 convictions. I had CJC break down the resolution by trial statistics for 2012 by county. Marion County took 34 of 170 or 20% of its M-11 cases to trial with 74% of them resulting in M-11 convictions. By contrast Multnomah County took only 29 of 405 or 7% of its M-11 cases to trial, with 93% resulting in M-11 convictions. Lane County took 10 of 157 or 6% to trial with a 90% M-11 conviction rate. Washington County took 27 of 210 or 12% to trial with 70% resulting in M-11 convictions. And Clackamas County took 24 of 86 or 27% of M-11 cases to trial with 71% resulting in M-11 convictions.

I was recently advised by Walt Beglau that his office does not have a written policy for charging or negotiating M-11 cases but that they do not as a rule negotiate out of M-11. That was my experience when I was trying cases and it seems to be a policy that is only recently easing up. Our M-11 lawyers negotiate aggressively, and try a lot of M-11 cases. (When a client's option is "this measure eleven sentence for sure or a risk of that one," more of them opt for trial.) All the lawyers have reported to me that they are getting more non-M-11 offers and are taking fewer cases to trial. Unfortunately, statistical data is two years behind so my only data is anecdotal.

Another factor that should be addressed is variance, if any, between counties in the number of M-11 charges brought in a single case. It goes without saying that a client facing multiple M-11 sentences will plead to a lesser number of M-11 charges to cut his losses and it is also self-evident that a defendant taking a case to trial with multiple M-11 charges is more likely to end up in a M-11 conviction. I am told that data are available from CJC and I requested it but it was not provided.

Marion County brings a lot of M-11 charges. In 2012 they filed a M-11 case for every 1890 citizens; by contrast Multnomah County filed one for every 2368 citizens and Washington County filed one for every 2600 citizens. They also have a practice of not negotiating out of M-11; I believe that to be contrary to most jurisdictions where

Ms. Nancy Cozine  
February 18, 2015  
Page Five

negotiating out of M-11 is a common way to avoid trial. (Marion County pays a price for that as well; the 2011 report noted that for the period 2004-2008 the per capita cost of prison for Marion County citizens was the highest in the state at \$118 per citizen per year.)

It is difficult for the defense bar to affect charging practices; we cannot turn down the faucet but we can block its flow, which is what we are doing by taking such a large percentage of cases to trial. If the current anecdotal evidence is born out by statistics as they become available we are effecting some change. I'm hoping when Marion County's Criminal Justice Advisory Council becomes operational, the increased dialogue will enable the defense bar to have a more direct impact on the way M-11 cases are prosecuted in Marion County and bring the statistics more in line with the rest of the state.

I hope this additional information is useful to you in preparing the Service Delivery Review for Marion County.

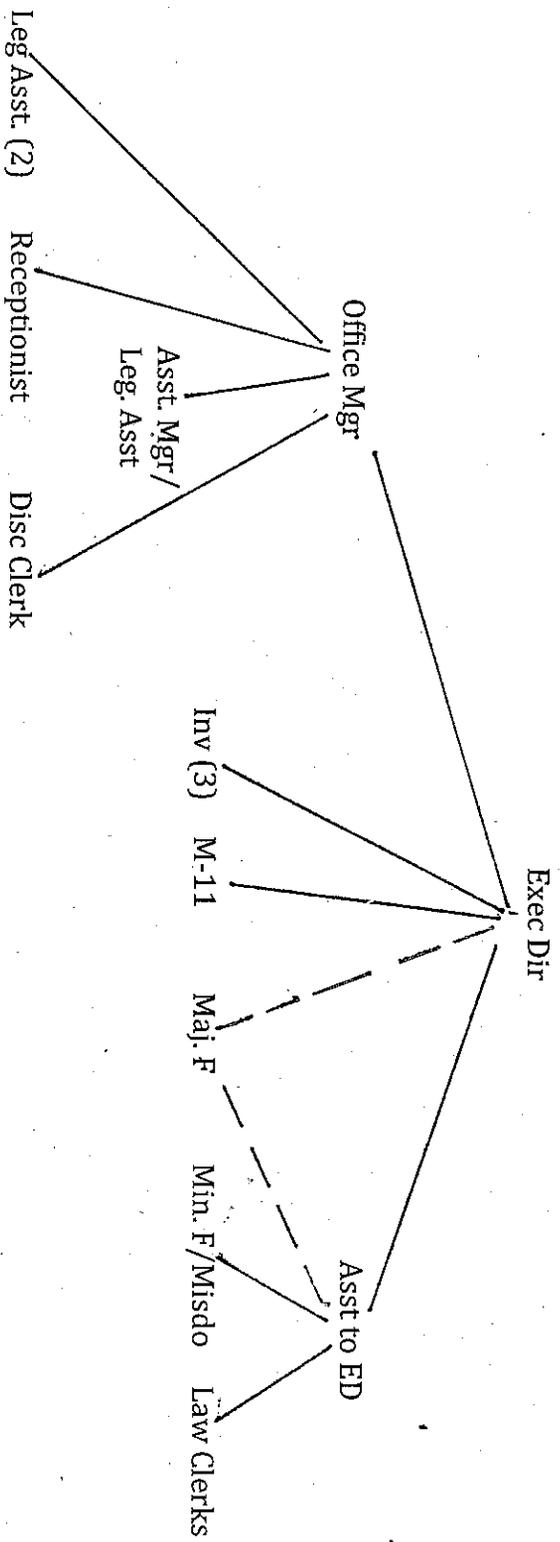
Sincerely,

A handwritten signature in cursive script, appearing to read "T. Sermak".

Thomas S. Sermak  
Public Defender of Marion County, Inc.

# PDMC Organizational Chart

Jan. 2015



The Exec Director supervises and does regular evaluations of the OM, AED, M-11 lawyers and Investigators; the ED and AED jointly supervise and evaluate the Major felony lawyers. AED in addition supervises and evaluates the Minor Felony/Misdemeanor lawyers and the law clerks. The AED also administers the Extern program with WULS. The AED remains able and available to perform all ED administrative functions in the AD's absence

In addition to having primary responsibility for all purchasing, case reporting, and budgetary matters, the Office Manager supervises and evaluates the receptionist, Asst. Office Manager, legal assistants and discovery clerk.

# Attachment 5

**A-Engrossed**  
**Senate Bill 471**

Ordered by the Senate February 25  
Including Senate Amendments dated February 25

Sponsored by Senators DEMBROW, MONNES ANDERSON, KRUSE; Senators JOHNSON, WINTERS, Representative OLSON (Pre-session filed.)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Requires court to appoint legal counsel for respondent or protected person in protective proceeding under certain circumstances. Requires payment for appointed counsel from guardianship or conservatorship estate of respondent or protected person or at state expense.

**A BILL FOR AN ACT**

1  
2 Relating to appointment of legal counsel for certain persons in protective proceedings; amending  
3 ORS 125.080.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 125.080 is amended to read:

6 125.080. (1) The court may require that a hearing be held on any petition or motion in a pro-  
7 tective proceeding.

8 (2) A hearing must be held on a petition or motion if an objection is **made or** filed to the peti-  
9 tion or motion and the objection is not withdrawn before the time scheduled for the hearing.

10 (3) The respondent or protected person may appear at a hearing in person or by counsel.

11 (4)(a) If the court requires that a hearing be held [*on a petition,*] or a hearing is otherwise re-  
12 quired under this section, the court [*may*] **shall** appoint counsel for the respondent **or protected**  
13 **person** [*unless the respondent is already represented by counsel*] **when:**

14 **(A) The respondent or protected person requests that counsel be appointed;**

15 **(B) An objection is made or filed to the petition or motion by any person;**

16 **(C) The court has appointed a visitor under ORS 125.150, 125.160 or 125.605, and the visi-**  
17 **tor recommends appointment of counsel for the respondent or protected person; or**

18 **(D) The court determines that the respondent or protected person is in need of legal**  
19 **counsel.**

20 **(b) The court is not required to appoint counsel under this section if the respondent or**  
21 **protected person is already represented by counsel.**

22 **(5) If the court appoints counsel under subsection (4) of this section:**

23 **(a) The court shall order payment of attorney fees and costs from the guardianship or**  
24 **conservatorship estate of the respondent or protected person if sufficient funds exist to pay**  
25 **all or a portion of the attorney fees and costs due; or**

26 **(b) The court may determine that a respondent or protected person is financially eligible**  
27 **for appointed counsel at state expense, and the compensation for legal counsel and costs and**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **expenses necessary for representation of the respondent or protected person must be deter-**  
2 **mined and paid by the public defense services executive director as provided under ORS**  
3 **135.055.**

4

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# Senate Bill 471 A

(Relating to the appointment of legal counsel for certain persons in protective proceedings.)

Public Defense Services Commission

March 19, 2015

# Background

- Guardianship: a relationship created by state law in which a court authorizes a person or entity to make decisions for another person who has been found unable to make those decisions for him or herself to the extent that a serious injury or illness is likely to occur
- Conservatorship: a legal relationship which gives a person or entity the power to make financial decisions for another who is incapacitated and unable to make financial decisions for him or herself
- Who serves as a Guardian or Conservator?
  - Typically a family member or close friend; may be a professional fiduciary
  - Some high-risk, low-income persons may have no one to serve as guardian and no resources to hire a professional fiduciary. These vulnerable people may fall victim to the self-interest of others and may be unnecessarily placed in institutions.

# History

- 2009: Public Guardian and Conservator Task Force (HB 2883)
  - Judge Welch, Chair
  - Charged with studying the need and providing comprehensive recommendations to the Legislature about Public Guardian and Conservator services in Oregon
- 2011: Joint Interim Task Force on Public Guardian and Conservator (HB 2237)
  - Judge Welch, Chair
  - Charged with completing the work of the 2009 Task Force
  - Recommended establishing a State Office of the Public Guardian and Conservator
  - Supported future legislative action to provide a right to counsel for the proposed protected person
- 2014: Oregon Public Guardian and Conservator created within the Office of the Long Term Care Ombudsman (SB 1553)
- 2015: S. Travis Wall begins work as Oregon Public Guardian

# Effect of SB 471 A

- Senate Bill 471 A establishes the right to court appointed counsel at public expense in guardianship, conservatorship and other protective proceeding cases under certain circumstances.
  - ORS 125.005(9) Protective proceeding means a proceeding under this chapter
- 4 events trigger appointment of counsel (if a hearing is required)
  - 1. At the request of the respondent or protected person
  - 2. When an objection is made to the petition by any person
  - 3. Recommended by a court visitor
  - 4. The court determines counsel is needed
- Payment for court appointed counsel
  - From the estate if sufficient funds exist to pay all or a portion of attorney fees and costs
  - At state expense if the court determines the respondent or protected person to be financially eligible
    - Includes compensation for “legal counsel and costs and expenses necessary for representation”

# Current Law (ORS 125.080)

## Hearing

- (1) The court may require that a hearing be held on any petition or motion in a protective proceeding.
- (2) A hearing must be held on a petition or motion if an objection is filed to the petition or motion and the objection is not withdrawn before the time scheduled for the hearing.
- (3) The respondent or protected person may appear at a hearing in person or by counsel.
- (4) If the court requires that a hearing be held on a petition, or a hearing is otherwise required under this section, the court may appoint counsel for the respondent unless the respondent is already represented by counsel. [1995 c.664 §12; 1999 c.775 §1; 2003 c.227 §4]

# SB 471 A (amending ORS 125.080)

- If the court requires a hearing be held or a hearing is otherwise required under this section, the court shall appoint counsel for the respondent or protected person when: (Sec. 1 (4)(a))
  - The respondent or protected person requests that counsel be appointed; (Sec. 1 (4)(a)(A))
  - An objection is made or filed to the petition or motion by any person; (Sec. 1 (4)(a)(B))
  - The court has appointed a visitor under ORS 125.150, 125.160 or 125.605 and the court visitor recommends appointment of counsel for the respondent or protected person; or (Sec. 1 (4)(a)(C))
  - The court determines that the respondent or protected person is in need of legal counsel. (Sec. 1 (4)(a)(D))
- The court is not required to appoint counsel under this section if the respondent or protected person is already represented by counsel. (Sec. 1 (4)(b))
- The court shall order payment of attorney fees and costs from the guardianship or conservatorship estate of the respondent or protected person if sufficient funds exist to pay all or a portion of the costs and fees due; or (Sec. 1 (5)(a))
- The court may determine that a respondent or protected person is financially eligible for counsel at state expense, and the compensation for legal counsel and costs and expenses must be determined and paid by the public defense services executive director as provided in ORS 135.055. (Sec. 1 (5)(b))

# Estimated System Impacts

- Contracts & Business Services
  - Negotiate and administer contracts
  - Quality assurance
  - Non-routine Expense Requests
  - Complaints
  - Business system configuration and development
  - Develop institutional knowledge as it relates to guardianship and conservatorship cases
- Attorney Providers
  - Workload
    - Similar to a juvenile dependency case
    - Case-related expenses similar to a misdemeanor case
  - Total caseload estimate
    - 2000 per biennium
  - Geographical challenges

# Bill Status

- 1/12/2015 Introduced
  - Chief Sponsors: Senator Dembrow, Senator Monnes Anderson, Senator Kruse
  - Regular Sponsors: Senator Johnson, Senator Winters, Representative Olson
- 2/9/2015 Public Hearing (Senate Judiciary)
- 2/23/2015 Work Session (Senate Judiciary);  
Recommendation: Do pass with amendments and be referred to Ways and Means
  - Fiscal Impact Statement (Legislative Fiscal Office)
    - Government Unit(s) Affected: OJD, PDSC
    - Further Analysis Required

# Attachment 6

**PUBLIC DEFENSE SERVICES COMMISSION**

**REQUEST FOR PROPOSALS**

**FOR**

**PUBLIC DEFENSE LEGAL SERVICES CONTRACTS**

**BEGINNING**

**JANUARY 1, 2016**

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## **PART I – GENERAL INFORMATION**

### **1.1 Request For Proposals (RFP) Description**

The Public Defense Services Commission (PDSC) is seeking contract proposals to provide legal services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense. Proposals must demonstrate that the legal services meet Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice.

**PDSC is accepting proposals for all categories of cases in all counties. The contracts awarded may have one-year, two-year, or four-year terms beginning January 1, 2016, or other such length of term and beginning date as determined by PDSC.**

This RFP contains the applicable procedure, instructions and requirements for proposals. It is organized in four parts:

- Part I     General Information
- Part II    Proposal Application Instructions and Requirements
- Part III   Proposal Application Summary and Proposal Outline
- Part IV    Contract General Terms

### **1.2 Applicable Contracting Procedure**

ORS 151.216 authorizes PDSC to adopt policies and procedures for the contracting of public defense services. As part of the Judicial Branch, PDSC is not subject to the Department of Administrative Services administrative rules and procedures that govern contracting for personal services contracts. PDSC adopts the policies, procedures, instructions, requirements and other provisions of this RFP as the PDSC procedures for contracting for personal services. The model rules of the Oregon Attorney General do not apply to PDSC contracting but will be reviewed each time the Attorney General modifies them to determine whether PDSC should modify the policies and procedures contained herein.

### **1.3 Authority**

ORS 151.219 authorizes the PDSC executive director to contract for legal services for financially eligible persons in proceedings in which:

- 1) a state court or magistrate has the authority to appoint counsel to represent the financially eligible person, and
- 2) the PDSC is required to pay compensation for that representation.

PDSC may contract with individual attorneys, groups of attorneys, private firms, and full-time, not-for-profit public defender organizations for these services.

Awarding these contracts is a proprietary function of PDSC. All such contracts are:

- 1) subject to PDSC's express approval under ORS 151.216(1)(d), and
- 2) contracts with independent contractors for personal services.

PDSC reserves the right to reject any or all proposals received by reason of this RFP or to negotiate separately in any manner necessary to serve the best interests of the PDSC and the state. PDSC reserves the right to seek clarifications of proposals and to award a contract(s) without further discussion of the proposals submitted. PDSC reserves the right to amend or cancel this RFP without liability if it is in the best interest of the state and public to do so.

#### **1.4 Funding Source**

The Legislature appropriates funds to the Public Defense Services Commission to pay attorney compensation and other expenses related to the legal representation of financially eligible persons for which PDSC is responsible, including contract payments under ORS 151.219.

#### **1.5 Minorities, Women and Emerging Small Businesses**

Pursuant to ORS 200.035, PDSC shall provide timely notice of RFPs and contract awards to the Advocate for Minorities, Women and Emerging Small Businesses if the estimated value of the contract exceeds \$5,000.

As noted in Governor Kitzhaber's Executive Order 12-03: "Minority-owned and women-owned businesses continue to be a dynamic and fast-growing sector of the Oregon economy. Oregon is committed to creating an environment that supports the ingenuity and industriousness of Oregon's Minority Business Enterprise [MBE] and Women Business Enterprise [WBE]. Emerging Small Business [ESB] firms are also an important sector of the state's economy."

Oregon MWESB certified firms, as defined in ORS 200.055, have an equal opportunity to participate in the performance of contracts financed in whole or in part with state funds. By submitting its proposal, proposed contractor certifies that it will take all necessary and reasonable steps to ensure that MWESB certified firms are provided an equal opportunity to compete for and participate in the performance of any contract resulting from this procurement. Proposed contractor further certifies and agrees that it has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin, and it has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

It is the expectation of PDSC, that the proposed contractor will develop an effective and thoughtful approach to the solicitation of MWESB certified firms to perform work on this project.

#### **1.6 Schedule of Events**

Release of RFP	May 1, 2015
Proposal Submission Deadline ( <i>Received via email by 11:59pm</i> )	June 26, 2015
Commission review of statewide contracting plan	July 30, 2015

Notice of intent to award contracts  
Commission review of proposals and  
award of contracts

October 15, 2015  
October 23, 2015

PDSC presently intends to award public defense legal services contracts according to the above time schedule. By publishing this schedule, PDSC does not represent, agree, or promise that any contract will be awarded on a specified date or any other time in any particular county or judicial district. PDSC intends, however, to adhere to these time frames as closely as possible.

PDSC will provide notice of its intent to award contracts to all applicants at least seven (7) days before the award of contracts, unless exigent circumstances require a shorter period of notice.

### **1.7 General Proposal Review Procedures**

The instructions and information necessary to prepare and submit proposals are found in Part II of this RFP. PDSC will evaluate proposals based on the contents of the applications, their review by the affected court(s), and any other information available to PDSC. Applicants must submit a completed application using the forms and format provided. Applications must be received by PDSC by 11:59 p.m. on the submission deadline date. The following events will then occur.

#### **A. Inadequate Proposals**

PDSC may immediately reject proposals that do not meet the minimum RFP requirements. If a proposal is unclear or appears inadequate, PDSC may give the applicant an opportunity to further explain or provide additional information. If PDSC finds the explanation or additional information inadequate, PDSC's decision to reject the proposal will be final and not subject to appeal.

#### **B. Facially Adequate Proposals**

PDSC will evaluate proposals that meet the administrative and contractual minimum requirements as set forth in Part II of the RFP. PDSC will evaluate each proposal based on its total characteristics and any other information available to PDSC. During the evaluation period, PDSC may:

- 1) request additional information from applicants to clarify information or material in the proposal;
- 2) consult with judges, court administrative staff, and others who have knowledge of the applicant or the local caseloads and practices to aid in the review of the proposal's merits; and
- 3) request individuals with experience and expertise in the proposed case types to review the apparent qualifications of the applicants, the strengths and weaknesses of the management plans submitted by applicants and the apparent cost-effectiveness and quality of the various proposals.

C. Negotiations

PDSC must ensure that each contract is compatible with:

- 1) the needs of the particular court(s), county(ies), judicial district(s), region(s), and the state;
- 2) other public defense contracts in place or contemplated; and
- 3) budget allocations.

During negotiations, PDSC may discuss adjustments to proposed costs, caseload types, coverage, level of services, or service providers necessary to meet these objectives.

D. Contract Awards

**Award of any contract will be final only when the applicant and the PDSC have properly completed and executed the contract documents.**

E. General Contract Terms

PDSC will offer all applicants the same general contract provisions. Successful applicants will enter into a contract substantively similar to the general contract document in Part IV of this RFP, unless otherwise specifically agreed by PDSC.

An applicant may request in the proposal to amend general terms of the contract. PDSC must approve any change. Applicants who do not otherwise accept the general terms contract in Part IV may be disqualified.

**1.8 Proposal Evaluation Criteria**

PDSC shall evaluate proposals based on the criteria listed below. PDSC reserves the right to reject any proposals that do not comply with the RFP requirements. PDSC shall be the sole determiner of the relative weight given any criterion. Although price is an important criterion, the intent is to provide financially eligible persons with effective legal representation. The applicant with the lowest cost proposed will not necessarily be awarded a contract. PDSC reserves the sole right to make this determination.

**CRITERIA:**

- 1) The proposal and any modification is complete and timely, in conformance with the RFP.
- 2) The applicant meets the minimum attorney qualification standards for the types of cases proposed, as specified in PDSC's Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense.
- 3) The proposed plan for delivery of services is adequate to ensure effective legal representation. Among the factors PDSC may consider are the quality of legal representation, the experience of the attorneys, staffing patterns, available support staff and other services, and caseload per attorney.

- 4) The applicant has the ability to perform the contract effectively and efficiently and to provide representation in the types of cases proposed. Among the factors PDSC may consider are financial ability, personnel qualifications, and successful experience providing public defense services under contract or on a private bar basis.
- 5) The cost for services is reasonable. PDSC may consider factors that affect the cost, including those outside the applicant's control, such as district attorney (DA) negotiation practices, local jail facilities, and court programs and procedures.
- 6) The budget is reasonable, and expenses are prorated to the proportion of applicant's time to be devoted to the contract. Among the factors PDSC may consider are the ratios of administrative cost, support services, and non-personnel expenses to direct legal services, as well as compensation, benefit, and other resource levels.
- 7) The proposal is consistent with the needs and best interests of the court(s), county(ies), judicial district(s), and region(s) involved. Among the factors PDSC may consider are the other service methods and service providers available, the applicant's ability to work with the court(s) and within its procedures, and the mix of service providers.
- 8) The proposal is consistent with the needs and best interests of the state as a whole. Among the factors PDSC may consider are the other service methods and mix of service providers available, and the applicant's ability to work with other groups affected by the contract, legislative mandates, or other directives that affect the entire statewide contracting patterns or terms.

In addition to the criteria listed above, PDSC will evaluate the available caseload, the current number of contractors or private bar providers, and the relative cost of administering current contracts and/or new contract proposals.

PDSC has the sole discretion to apportion or not to apportion caseloads between applicants AND to award or not to award contracts.

## **1.9 Proposal Records**

Materials submitted by applicants will not be available for public review until all contracts awarded pursuant to this RFP have been fully executed.

Written inquiries on preparing applications may be directed to Caroline Meyer, Contracts Manager at OPDS at:

caroline.meyer@opds.state.or.us

## **PART II -- PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS**

This part of the RFP contains the instructions and requirements for preparing and submitting proposals for public defense legal services contracts.

### **2.1 Submitting Proposals**

The applicant is responsible for any costs incurred in preparing or delivering the proposal. The applicant is responsible for ensuring that the proposal is received timely by the Public Defense Services Commission.

There is no implied promise to award a contract to any applicant based upon the submission of a proposal.

#### **A. Form of Submission**

**Proposals MUST be submitted as an email attachment in a searchable Portable Document Format (PDF). The PDF must not be password protected nor copy protected.**

Any text in the body of the transmitting email will not be reviewed and will not be considered to be part of the proposal.

The email should be sent to: mail@opds.state.or.us

#### **B. Deadline**

Proposals must be received by PDSC no later than 11:59 p.m. on the submission deadline date.

**The submission deadline for proposals is June 26, 2015.**

If the applicant fails to submit the proposal(s) in accordance with the deadline to PDSC, PDSC will disqualify the proposal(s), unless authorization for late submission is granted in writing by PDSC. Consideration for late submission will be based on PDSC's needs, both regional and by case type, and the reason for the late submission.

### **2.2 Application Format**

Applicants must use the attached application format for submission of all proposals and must answer all questions or state the reason why a specific question is not relevant to the particular proposal. PDSC may disqualify any proposal that is not in the required format or is incomplete.

### **2.3 Acceptance of RFP and General Contract Terms**

- A. Applicants are responsible for reviewing the terms and conditions of the RFP and the general terms of the contract.
- B. By signing and returning the application form, the applicant acknowledges that the applicant accepts and intends to abide by the terms and conditions of the RFP. Further, the applicant accepts the terms and conditions of the general terms of the contract contained in Part IV, unless and only to the extent that the applicant proposes exceptions as described below.
- C. The applicant must clearly state in the proposal any proposed exceptions to the general terms of the contract, including reasons to support the exceptions and estimated efficiencies and/or cost savings. PDSC reserves the right to accept, reject, or negotiate exceptions to the contract terms.
- D. Any changes to the general terms of the contract terms proposed by PDSC will be provided, in writing, to each applicant.

### **2.4 Multiple Proposals**

An applicant may submit more than one proposal. Each proposal must be complete in itself. The proposal must state whether it is in addition to or an alternative to other proposals submitted by the applicant.

### **2.5 Modification of Proposals**

#### **A. When Permitted**

Applicants may not modify proposals after the submission deadline, unless PDSC agrees thereto, upon written request by applicant. Until that date, an applicant may modify its proposal(s) in writing. Modifications must be:

- 1) prepared on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) must state whether the new document supersedes or modifies the prior proposal.

#### **B. Delivery**

Applicants must deliver any modifications in the same manner as required by Section 2.1.A for original proposals.

#### **C. Included in Proposal File**

All documents relating to the modification of proposals will be made part of the proposal file.

## **2.6 Mistakes in Submitted Proposals**

### **A. When Corrections Permitted**

PDSC will permit applicants to correct mistakes on a proposal only to the extent correction is not contrary to PDSC's interest or to the fair treatment of other applicants. PDSC has sole discretion to allow an applicant to correct a mistake. PDSC will notify the applicant if and when PDSC allows corrections to proposals.

### **B. Procedure When PDSC or Applicant Discovers Mistake**

If PDSC or the applicant discovers a mistake before the proposal deadline, the applicant may amend the error using the procedures for proposal modification in Section 2.5 above.

PDSC will proceed as follows when PDSC discovers or is notified of mistakes in proposals after the submission deadline but before contract awards are made:

#### **1) Minor Inaccuracies**

PDSC may waive or correct minor inaccuracies or insignificant mistakes. Minor inaccuracies are:

- a) matters of form rather than substance that are evident from the proposal documents; or
- b) insignificant mistakes that do not prejudice other applicants; e.g., the inaccuracy or mistake does not affect price, quantity, quality, delivery, or contractual conditions.

#### **2) Mistakes Where Intended Correct Proposal is Evident**

If the mistake and the intended correct proposal are clearly evident on the face of the proposal or can be determined from accompanying documents, PDSC may consider the proposal. Examples of mistakes that may be clearly evident on the face of the proposal are typographical errors, transposition errors, and mathematical errors.

#### **3) Mistakes Where Intended Correct Proposal is Not Evident**

PDSC may not consider a proposal in which a mistake is clearly evident on the face of the proposal but the intended correct proposal is not evident or cannot be determined from accompanying documents, including requests for correction or modification under Sections 2.5 and 2.6.

### **C. Included in Proposal File**

All documents relating to correcting a mistake will be made part of the proposal file.

## **2.7 Withdrawal of Proposals**

### **A. Request to Withdraw**

An applicant may withdraw a proposal at any time by written request. Requests to withdraw a proposal from consideration must be:

- 1) on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) submitted to PDSC in the same manner as required by Section 2.1.A for original proposals.

### **B. Included in Proposal File**

All documents relating to the withdrawal of proposals will be made a part of the proposal file.

## **2.8 Evaluation of Proposals**

PDSC will begin to evaluate proposals upon receipt, subject to the procedures and criteria described in Part I.

## **2.9 Categories of Cases Available for Contract**

A proposal for public defense legal services may include coverage of all, some, or any of the following categories of cases for which financially eligible persons have a right to appointed counsel payable from the Public Defense Services Account:

- Capital Murder (death penalty)
- Noncapital Murder
- Felony
- Misdemeanor
- Probation Violation
- Juvenile
- Post-Conviction Relief
- Habeas Corpus
- Civil Commitment
- Extradition
- Contempt
- Psychiatric Security Review Board
- Post-Conviction Relief and Habeas Corpus Appeals

Applicants should refer to Part IV, the General Terms of the contract, section 10 for specific definitions of the categories.

## **2.10 Number of Cases**

### **A. Available Caseload**

To obtain the number of contract cases and/or workload likely for a particular court, county, or case type, the applicant should contact the Office of Public Defense Services at (503) 378-2478.

### **B. Fixed Caseloads and Value- or Hourly-Based Workloads**

PDSC will contract for:

- 1) fixed workload by value of cases for non-death penalty contracts; or
- 2) hourly-based workloads for death penalty contracts.

### **C. Proposed Caseload**

The applicant should propose no more than the number of cases or hours for which the applicant can provide effective and efficient representation and adequate staff support resources.

## **2.11 Cost of Services**

### **A. Expenses Included in Contract Price**

Public defense contractors are responsible for all reasonable and necessary expenses that are ordinary and related to the proper preparation and presentation of the case.

PDSC bears the costs outside of any public defense contract for:

- 1) discovery;
- 2) transcripts;
- 3) witness fees and expenses; and
- 4) non-routine case expenses that are preauthorized (e.g., expert witnesses; psychiatric exams; and investigation requiring an investigator's services, unless applicant has staff investigator(s) for this purpose).

Applicants should not include these case-related expenses in calculating the cost of providing contract services.

### **B. Reasonable Expenses**

Applicants should project the cost of occupancy, staff, or other contract expenses at rates no greater than customary for the community and the type of service or expense. PDSC will not pay premium rates. PDSC expects contractors to provide facilities reasonably adequate to ensure an environment conducive to providing effective and efficient legal services and to maintaining the dignity of attorney, staff, and clients.

C. Factors to Consider

In calculating overall case cost figures, applicants should consider the percentage of appointments by case type (the "mix" of cases) and the percentage of appointments that:

- 1) usually terminate before trial or contested adjudication, and at what stages and why they terminate (such as, withdrawals, dismissals, multiple cases negotiated together, and bench warrants); and
- 2) usually go to trial or contested adjudication.

The applicant may consider any other relevant factors in constructing costs, as long as these factors do not jeopardize the delivery of adequate legal services at the prices proposed. Applicants must describe in the application all factors or premises on which costs are based.

**2.12 Proposal Application Format (Part III of RFP)**

The application format consists of:

- 1) Application Summary;
- 2) Certification Form; and
- 3) Proposal Outline divided in the following sections:
  - a) Service Delivery Plan
  - b) Proposed Estimated Allocation of Contract Funds
  - c) Proposed List of Contract Attorneys
  - d) Proposed List of Contract Non-Attorney Staff
  - e) Certificate of Attorney Qualification and Supplemental Questionnaire
  - f) Proposed Contractor Certificate of Compliance with Applicable Oregon Tax Laws
  - g) Proposed Contractor Independent Contractor Certification Statement

**THE FOLLOWING PAGES APPL. 1 THROUGH APPL. 16 ARE THE RFP APPLICATION AND PROPOSAL OUTLINE.**

PUBLIC DEFENSE SERVICES COMMISSION  
REQUEST FOR PROPOSALS  
FOR  
PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

PART III

PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE

**(TO BE COMPLETED AND SUBMITTED TO PDSC  
BY APPLICANTS WHO DO NOT CURRENTLY CONTRACT WITH PDSC)**

**PART III  
PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE**

**3.1 APPLICATION SUMMARY**

<b>APPLICANT INFORMATION</b>
County or Counties to be served: _____
Formal Name of Applicant: _____
Contact Person for Proposal: _____
Address: _____ _____
Telephone: _____ Fax: _____
Email (required): _____
Fed. I.D. No.: _____ <b>or</b> S.S.N.: _____
Type of Business Entity ( <i>e.g. LLC, Non-Profit, Corporation</i> ): _____

## CASELOAD INFORMATION

A. Case Types Covered: All case types as defined in the general terms of the contract document that are subject to this RFP excluding:

B. Complete the section below:

Case Types	Value	# of Cases	Total Value
First Year			
	\$		\$
	\$		\$
	\$		\$
	\$		\$
First-Year Total			\$
Second Year			
	\$		\$
	\$		\$
	\$		\$
	\$		\$
Second-Year Total			\$
Contract Total			\$

(Add additional years if necessary.)

### A. METHODOLOGY, EXPLANATIONS AND ESTIMATES

1) Service Cost Basis. For the types of cases, extent of coverage, and services proposed, explain how costs were projected and the premises underlying the projection.

2) Case Costs.

Explain:

- a) how the various case types were weighted;
- b) how the cost varies by case type; and
- c) how staff investigator, paralegal, and/or interpreter costs were factored.

Estimate:

- d) what percentage of each case type is disposed by jury trial, court trial, plea, dismissal, withdrawal, and bench warrant;

- e) the average number of hours required for each case type proposed;
  - f) the cost of providing contract counsel at arraignments to advise defendants regarding plea offers or resolution of probation violation or contempt matters if a program were established to facilitate early resolution of cases. Describe the time required and the potential number of cases involved; and
  - g) the percentage of attorney time and staff time required for administrative duties, CLE, and other professional duties not related to a particular case.
- 3) Other Information. Include any other relevant information that PDSC should consider in evaluating proposal costs.

**B. PROPOSAL STAFFING SUMMARY** ("FTE" means "full-time equivalent"; e.g., four attorneys each committing 50% of their full time to contract work equals two FTEs.)

Number of Attorneys \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Secretarial/Receptionist Staff \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Paralegals/Legal Assistants \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Administrative Staff \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Investigators \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Interpreters \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Other Staff \_\_\_\_\_ / FTE\_\_\_\_\_

Identify "Other Staff" type: \_\_\_\_\_

**3.2 CERTIFICATION FORM**

I hereby certify that I have the authority to submit this proposal on behalf of the applicant and that I have read and understand the terms and conditions of the general terms of the contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name of Authorized Representative

\_\_\_\_\_  
Title or Representative Capacity

\_\_\_\_\_  
Applicant Name

### 3.3 PROPOSAL OUTLINE

**The following is an outline of the information each applicant must provide.** All questions must be answered and all requested information must be completed. If a certain question or requested information is "Not Applicable" to the applicant's proposal, please note "NA."

#### **A. SERVICE DELIVERY PLAN**

The purpose of a public defense legal services contract is to provide cost-effective delivery of legal services that meet Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice. Please describe, in detail, applicant's service delivery plan and how it will ensure effective and efficient legal representation. Include information on the following:

1. Contractor Staff Services. Describe legal, support, and other services to be provided under the contract. Include any express limitations on the range of services.

In addition to providing the information requested above, each attorney included within applicant's proposal must complete a Certificate of Attorney Qualification and Supplemental Questionnaire, to be included with applicant's proposal (see pages Appl. 12-14).

2. Case Services. Describe the caseload and case types to be covered. Include any limitations in coverage by case type. Include any differing values per type of case that applicant proposes.
3. Service Delivery. Describe how applicant will provide timely, effective, and efficient case-related services. Include:
  - a) how the court would assign cases to applicant;
  - b) how applicant would ensure representation at first appearances;
  - c) how applicant would assign cases to attorneys;
  - d) how applicant would provide for interviews with both in-custody and out-of-custody clients in accordance with the general terms of the contract;
  - e) how applicant would process cases from assignment through reporting to PDSC; and
  - f) how applicant would work with the court to coordinate services with other contractors and with the court.
4. Facilities. Describe applicant's office(s). Include information on:
  - a) office sharing arrangements;
  - b) conference room(s);
  - c) library (size and contents);
  - d) disabled access (if none, describe alternative arrangements for meeting disabled clients or witnesses) (if applicant is a consortium, describe the disabled access or alternative arrangements for each consortium member's office); and
  - e) number of separate law firms/sole practitioners included.

Does each of applicant's attorneys have his/her own office?

Are any offices housed in a residence?

Does applicant or any of its members own or have an interest in the office building(s)?

If yes, please explain: \_\_\_\_\_

5. Equipment. Describe equipment or information systems applicant has or will obtain to improve the provision of services under the proposal. If applicant uses or will use a computer system, please specify hardware and software to be used.
6. Professional Education and Supervision Plan. Describe plans for professional development and supervision of all attorneys, direct support, and administrative staff. Include:
  - a) training;
  - b) CLE;
  - c) educational methods to maintain current awareness of new developments in criminal and public defense-related case law and procedures; and
  - d) supervision and development of less experienced attorneys.
7. Readiness Status. Describe what applicant needs to do to be ready and able to begin services on the proposed contract effective date. If more time is needed, explain why and when applicant will be available. Include information on positions that need to be filled and equipment or facilities that need to be procured. If positions need to be filled, describe recruitment procedures and affirmative action plans.
8. Local Factors. Identify and discuss, in detail, local factors that affect caseload and case processing that may affect cost.
9. Board of Directors. Contractor shall be governed by a board of directors that includes at least two independent members who do not provide services under the entity's contract and are not elected by those who do. In lieu of a board of directors, Contractor shall demonstrate effective and appropriate financial safeguards and quality assurance mechanisms. Describe either the composition of applicant's board of directors, or the financial safeguards and quality assurance mechanisms.
10. Other Information. Include any other information you believe is important or relevant to PDSC's review of the service delivery plan.
11. Contract Terms. Include any requests to modify terms in the general terms of the contract. Explain the purpose of and need for modification and how it will affect the service delivery plan and cost. Again, PDSC has sole discretion to allow modification of any contract term.

## **B. PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS**

All applicants must complete the forms contained on the following five pages and estimate how contract funds would be allocated to cover service costs.

If applicant is a consortium, submit a separate form for each firm or member. In addition, you must compile all members' estimated allocations into one, overall consortium contract fund allocation form. To arrive at allocation figures, each member should estimate by line item the amount of funds reasonably necessary to perform the public defense services contemplated under the proposal. Generally, an attorney who would be spending 50 percent of his/her total billable time on public defense contract cases may allocate no more than 50 percent of total rent and other overhead costs to the proposed allocation.

**Under no circumstances will the PDSC fund any lobbying or other political activities for a public defense contractor.**

**Each consortium must provide expense information in the allocation categories for all members, not just for the umbrella corporation or other umbrella entity.** Any nonprofit organization or consortium that has expenses related to its Board of Directors' or Trustees' meetings should include that expense information with the proposed estimated allocation as well as any other expenses not otherwise listed.

## APPLICANT'S PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

**Directions:** Provide estimated cost information for all applicable categories. If a category is not applicable, list "N/A." Add any necessary categories not listed below. **Prorate all estimated expenses for part-time attorneys or staff by the percentage of time they will spend on contract work.** (Use additional pages if needed for longer-term proposals.)

	<u>First Year</u>	<u>Second Year</u>
<b>1. GROSS SALARIES</b>		
Attorneys (estimated gross income to attorneys after attorneys' overhead and F.I.C.A. self-employment taxes are deducted) _____ # _____ FTE	_____	_____
Secretarial/Reception/Clerical Staff _____ # _____ FTE	_____	_____
Paralegal/Legal Assistant Staff _____ # _____ FTE	_____	_____
Investigation Staff _____ # _____ FTE	_____	_____
Other Staff (identify _____ ) _____ # _____ FTE	_____	_____
<b>SUBTOTAL:</b>	_____	_____
<b>2. STAFF BENEFITS</b>		
F.I.C.A. Self-Employment Tax (if applicable)	_____	_____
F.I.C.A. (Employer's portion or Social Security only)	_____	_____
Unemployment Insurance	_____	_____
Health and Other Insurance	_____	_____
Workers' Compensation	_____	_____
Retirement Program	_____	_____
<b>SUBTOTAL:</b>	_____	_____
<b>3. STAFF EXPENSES</b>		
Malpractice Insurance check _____ PLF or _____ NLADA	_____	_____
Other Professional Insurance (describe _____ )	_____	_____
OCDLA--Membership Dues	_____	_____
OSB--Membership Dues	_____	_____
Other Membership Dues Necessary to Contract (explain _____ )	_____	_____

**3. STAFF EXPENSES (continued)**

First Year

Second Year

Professional Licenses/Certificates  
(explain \_\_\_\_\_)  
\_\_\_\_\_)

\_\_\_\_\_

\_\_\_\_\_

Education Training/CLE's--Attorneys

\_\_\_\_\_

\_\_\_\_\_

Education Training--Other Staff  
(explain \_\_\_\_\_)  
\_\_\_\_\_)

\_\_\_\_\_

\_\_\_\_\_

Attorney Travel

\_\_\_\_\_

\_\_\_\_\_

Other Staff Travel

\_\_\_\_\_

\_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**4. OVERHEAD (OCCUPANCY)**

Office Rent/Lease

\_\_\_\_\_

\_\_\_\_\_

Office Insurance

\_\_\_\_\_

\_\_\_\_\_

Building Utilities

\_\_\_\_\_

\_\_\_\_\_

Building Maintenance

\_\_\_\_\_

\_\_\_\_\_

Real Estate Taxes (if separate from rent)

\_\_\_\_\_

\_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**5. OVERHEAD (OPERATIONS)**

Phone Services (Equipment/Local Calls)

\_\_\_\_\_

\_\_\_\_\_

Long Distance Calls

\_\_\_\_\_

\_\_\_\_\_

Office Supplies

\_\_\_\_\_

\_\_\_\_\_

Postage

\_\_\_\_\_

\_\_\_\_\_

Outside Photocopying/Printing

\_\_\_\_\_

\_\_\_\_\_

Library

\_\_\_\_\_

\_\_\_\_\_

Subscriptions

\_\_\_\_\_

\_\_\_\_\_

Other Case Expenses  
(explain \_\_\_\_\_)  
\_\_\_\_\_)

\_\_\_\_\_

\_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**6. OVERHEAD (NONCAPITAL EXPENSES)**

Furniture & Equipment Leases  
Description

Annual Cost

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**6. OVERHEAD (NONCAPITAL EXPENSES) (continued)**

First Year

Second Year

Equipment Repairs/Maintenance \_\_\_\_\_

**SUBTOTAL:** \_\_\_\_\_

**7. OVERHEAD (OTHER)**

Personal Property Taxes \_\_\_\_\_

Professional Contract Services (specify) \_\_\_\_\_

Miscellaneous (specify) \_\_\_\_\_

**SUBTOTAL:** \_\_\_\_\_

**8. TOTAL OPERATIONS (total of 1-7)** \_\_\_\_\_

**9. CAPITAL (Items costing over \$500 each and funded separately)**

Computer--Hardware \_\_\_\_\_

Description	Quantity	Unit Cost

Computer--Software \_\_\_\_\_

Description	Quantity	Unit Cost

Office Furniture \_\_\_\_\_

Description	Quantity	Unit Cost

Office Equipment \_\_\_\_\_

Description	Quantity	Unit Cost

**SUBTOTAL:** \_\_\_\_\_

**GRAND TOTAL\* (total of 8 and 9):** \_\_\_\_\_

**\* Grand total must equal total proposed annual contract price.**

**C. PROPOSED LIST OF CONTRACT ATTORNEYS**

Directions: List every attorney performing work under the 2016-17 contract, by firm where applicable, the number of projected annual cases (both criminal and juvenile) to be assigned under the contract, and the amount expected annually from contract funds. List vacant positions as well. Additionally, Contractor certifies that each attorney performing services under the 2016-17 contract is listed in Appendix A, that the percentage of contract work and annual funds represented on Appendix A is true and accurate to the best of their knowledge, and that each attorney listed satisfies the qualification standards that PDSC has established for the types of cases to which that attorney is or will be assigned.

Firm or Office	Attorney Name (Last, First)	Bar #	Annual Projected Caseload		Annual Hours Dedicated to Other Work		Current Annual Projected Distribution of Contract Funds (dollar amount)
			Criminal	Juvenile	Type of Work (i.e. contract administration, retained work, pro-tem judge)	Hours	

**D. PROPOSED LIST OF CONTRACT NON-ATTORNEY STAFF**

Directions: List every non-attorney position performing work under the 2016-17 contract, by firm where applicable, the name of the employee in each position, the percentage of their time annually allocated to work under the contract, and the amount they receive annually from contract funds. List vacant positions as well. Contractor certifies that each non-attorney performing services under the 2016-17 contract is listed in Appendix B, and that the percentage of contract work and annual funds represented on Appendix B is true and accurate to the best of their knowledge.

<b>Firm or Office</b>	<b>Employee Name (Last, First)</b>	<b>Position Title</b>	<b>FTE Contract Work</b>	<b>Current Annual Projected Distribution of Contract Funds (dollar amount)</b>
-----------------------	--	-----------------------	------------------------------	--

**Total FTEs:** \_\_\_\_\_

**E. CERTIFICATE OF ATTORNEY QUALIFICATION AND SUPPLEMENTAL QUESTIONNAIRE FOR NON-CAPITAL CASES**

(Submit one certificate and questionnaire for each attorney proposed to provide contract services.)

Name: \_\_\_\_\_ Bar Number: \_\_\_\_\_  
 Address: \_\_\_\_\_ Email: \_\_\_\_\_  
 \_\_\_\_\_ Foreign language fluency in: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Years of Experience: \_\_\_\_\_  
 Fax Number: \_\_\_\_\_ Practice of Law \_\_\_\_\_ Criminal \_\_\_\_\_  
 Cell/Pager: \_\_\_\_\_ Juvenile \_\_\_\_\_ Appellate \_\_\_\_\_

For appointments in the following county(ies): \_\_\_\_\_

**TRIAL LEVEL**

- Murder
  - Lead Counsel \_\_\_\_\_
  - Co-counsel \_\_\_\_\_
- Major Felony \_\_\_\_\_
- Lesser Felony \_\_\_\_\_
- Misdemeanor \_\_\_\_\_

- Juvenile Delinquency
  - Major Felony \_\_\_\_\_
  - Lesser Felony \_\_\_\_\_
  - Misdemeanor \_\_\_\_\_
- Juvenile Dependency \_\_\_\_\_
- Juvenile Termination \_\_\_\_\_

- Civil Commitment \_\_\_\_\_
- Contempt \_\_\_\_\_
- Habeas Corpus \_\_\_\_\_

- Post-Conviction Relief
  - Murder \_\_\_\_\_
  - Other Criminal \_\_\_\_\_

**APPELLATE LEVEL**

- Murder
  - Lead Counsel \_\_\_\_\_
  - Co-counsel \_\_\_\_\_
- Major Felony \_\_\_\_\_
- Lesser Felony \_\_\_\_\_
- Misdemeanor \_\_\_\_\_

- Juvenile Delinquency
  - Major Felony \_\_\_\_\_
  - Lesser Felony \_\_\_\_\_
  - Misdemeanor \_\_\_\_\_
- Juvenile Dependency \_\_\_\_\_
- Juvenile Termination \_\_\_\_\_

- Civil Commitment \_\_\_\_\_
- Contempt \_\_\_\_\_
- Habeas Corpus \_\_\_\_\_

- Post-Conviction Relief
  - Murder \_\_\_\_\_
  - Other Criminal \_\_\_\_\_

**Please check only one box below:**

\_\_\_ I certify that I have read the PDSC Qualification Standards for Court-Appointed Counsel (Rev. 5-21-09) and that I meet the requirements of those standards and wish to be listed as available to accept appointment to the case types checked above. If I have checked any case types because I believe I possess equivalent skill and experience, pursuant to Standard III, section 2.B, I have submitted supporting documentation and explained how I am qualified for those case types.

**or**

\_\_\_ I certify that the above-named attorney will be working at a public defense organization as described in Standard III.2.C, which has provided the information required under Standard V.3.B.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

If this questionnaire does not address important aspects of your experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:
  
5. Number of years and location(s) of legal practice outside Oregon:
  
6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)
  
7. What percentage of your present practice involves handling public defense cases?
  
8. Briefly describe the nature and extent of your work experience in the area(s) of law which you have certified and any related areas of law.
  
  
  
  
  
  
  
  
  
  
9. Before which courts and judges have you regularly appeared in case proceedings which you have certified?
  
  
  
  
  
  
  
  
  
  
10. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with law related to the case types you have certified?

11. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling the case types you have certified.
  
12. List the most recent two cases by county and case number that have been tried and submitted to a jury, or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge, in which you served as counsel or co-counsel.
  
13. Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction. (Do not answer yes or provide information for convictions that have been expunged or sealed.)
  
14. Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.
  
15. Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?
  
16. Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.
  
17. Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.

I certify that the above information is true and complete.

---

SIGNATURE

---

DATE

**F. PROPOSED CONTRACTOR CERTIFICATE OF COMPLIANCE WITH APPLICABLE OREGON TAX LAWS**

Must be provided for a consortium (corporation) as well as for each consortium member.

I, the undersigned, being first duly sworn,

Mark only one: ( X )

\_\_\_\_\_ hereby certify under penalty of perjury that I am not in violation of any Oregon tax laws.

\_\_\_\_\_ authorized to act in behalf of \_\_\_\_\_,  
*(name and address of firm, corporation, or partnership [PLEASE TYPE])*

\_\_\_\_\_ hereby certify under penalty of perjury that \_\_\_\_\_  
*(name of firm, corporation, or partnership [PLEASE TYPE])*

is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118, 119, and 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Federal ID # or  
Social Security #: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**G. PROPOSED CONTRACTOR INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT**

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapters 316, 656, 657 and 670:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.
3. You furnish the tools or equipment necessary to do the work.
4. You have the authority to hire and fire employees to perform the work.
5. You are paid on completion of the project or on the basis of a periodic retainer.
6. You filed federal and state income tax returns for the business for the previous year, if you performed labor or services as an independent contractor in the previous year.
7. You represent to the public that you are an independently established business, as follows:

YOU MUST MEET FOUR (4) OR MORE OF THE FOLLOWING:

- A. You work primarily at a location separate from your residence.
- B. You have purchased commercial advertising, business cards, or have a trade association membership.
- C. You use a telephone listing and service separate from your personal residence listing and service.
- D. You perform labor or services only pursuant to written contracts.
- E. You perform labor or services for two or more different persons within a period of one year.
- F. You assume financial responsibility for defective workmanship and breach of contract, as evidenced by performance bonds or liability insurance coverage.

I hereby certify that the above information is correct.

Signature \_\_\_\_\_ Date

Entity

**PART III OF 2015 REQUEST FOR PROPOSALS  
FOR PUBLIC DEFENSE LEGAL SERVICES CONTRACTS  
BEGINNING JANUARY 1, 2016  
(for existing contractors)**

Parts I, II and IV of the 2015 Request For Proposals apply to this proposal and are available online at [www.oregon.gov/opds](http://www.oregon.gov/opds).

Formal Name of Applicant \_\_\_\_\_

Contact Person for Proposal \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

Email address \_\_\_\_\_

Please provide the following information.

1. Describe any changes to your current contract that would be required to enable you to continue to provide legal representation without a reduction in the quality of representation. Examples might include the need to increase employee salaries to address issues of recruitment and retention; the need to add additional attorneys to reduce caseloads; the need to upgrade hardware/software. Include an explanation as to why the changes are needed and the estimated additional funding that would be required to achieve these goals.
2. Describe any measures you plan to take to meet the revised Section 7 provisions of the Contract General Terms concerning obligations of Contractor, including the quality assurance obligations of contract administrator set out in those provisions. Include any costs that may be associated with these measures.
3. Describe any system or resource changes which occurred during the current contract term or will likely occur in the future, that have or will affect the contract workload.
4. Are the types of cases you propose to accept under a new contract different from your current contract? If yes, please indicate what changes you propose.
5. Are there any terms or conditions in your current contract or in the General Terms included in the 2015 Request For Proposals you propose be modified or clarified for a new contract? If so, please explain.
6. Every contractor for public defense legal services shall be governed by a board of directors that includes at least two independent members who do not provide services under the entity's contract and are not elected by those who do. In lieu of a board of directors, a contractor shall demonstrate to OPDS staff and the commission effective and appropriate financial safeguards and quality assurance mechanisms. Describe either the composition of your board of directors, or the financial safeguards and quality assurance mechanisms you have in place.

7. Additional information you request be considered.

**8. A. For non-death penalty contracts:**

Section 7.2.3 of the 2016-17 Contract General Terms contains specific CLE requirements for each contract attorney. Beginning in 2016 we will collect this information annually for all attorneys working under contract, to provide the data necessary to comply with PDSC Key Performance Measures.

Section 7 of the Specific Terms of the current contract contains the following provision:

All lawyers representing children, parents, or guardians in dependency cases are required to attend at least 16 hours of continuing legal education related to the practice of juvenile law during the term of this Contract.

Please provide documentation of the CLE hours to date for the lawyers to whom this applies using the form provided at the end of this document.

**B. For death penalty contracts:**

Please complete the 2015 Revised Capital Attorney Certification Form and include it with this response to the Request For Proposals, if you have not previously completed this form. If you have previously completed this form, please provide an update if your answers to Section IV(e) have changed. Please also provide a listing of the CLE programs that you have attended since January 2014 that satisfy the requirements set forth in Section VII of the form.

I hereby certify that:

1. the information contained in this summary proposal and its appendices is, to the best of my knowledge, accurate;
2. I have the authority to submit this proposal on behalf of the applicant; and
3. I have read and understand the terms and conditions of the relevant General Terms of the contract.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name of Authorized Representative

\_\_\_\_\_  
Title or Representative Capacity

\_\_\_\_\_  
Applicant Name

**APPENDIX A**

**PROPOSED LIST OF CONTRACT ATTORNEYS**

Directions: List every attorney performing work under the 2016-17 contract, by firm where applicable, the number of projected annual cases (both criminal and juvenile) to be assigned under the contract, and the amount expected annually from contract funds. List vacant positions as well. Additionally, Contractor certifies that each attorney performing services under the 2016-17 contract is listed in Appendix A, that the number of projected cases, description and hours of other work, and annual funds represented on Appendix A is true and accurate to the best of their knowledge, and that each attorney listed satisfies the qualification standards that PDSC has established for the types of cases to which that attorney is or will be assigned.

Firm or Office	Attorney Name (Last, First)	Bar #	Annual Projected Caseload		Annual Hours Dedicated to Other Work		Current Annual Projected Distribution of Contract Funds (dollar amount)
			Criminal	Juvenile	Type of Work (i.e. contract administration, retained work, pro-tem judge)	Hours	

**APPENDIX B**

**PROPOSED LIST OF CONTRACT NON-ATTORNEY STAFF**

Directions: List every non-attorney position performing work under the 2016-17 contract, by firm where applicable, the name of the employee in each position, the percentage of their time annually allocated to work under the contract, and the amount they receive annually from contract funds. List vacant positions as well. Contractor certifies that each non-attorney performing services under the 2016-17 contract is listed in Appendix B, and that the percentage of contract work and annual funds represented on Appendix B is true and accurate to the best of their knowledge.

<b>Firm or Office</b>	<b>Employee Name (Last, First)</b>	<b>Position Title</b>	<b>FTE Contract Work</b>	<b>Current Annual Projected Distribution of Contract Funds (dollar amount)</b>
-----------------------	--	-----------------------	------------------------------	--

**APPENDIX C**  
**(To Be Completed by Not-for-Profit Public Defenders Only)**  
**PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS**

**Directions:** Provide estimated cost information for all applicable categories. If a category is not applicable, list "N/A." Add any necessary categories not listed below. **Prorate all estimated expenses for part-time attorneys or staff by the percentage of time they will spend on contract work.**

	<u>First Year</u>	<u>Second Year</u>
<b>1. GROSS SALARIES</b>		
Attorneys (estimated gross income to attorneys after attorneys' overhead and F.I.C.A. self-employment taxes are deducted) _____# _____FTE	_____	_____
Secretarial/Reception/Clerical Staff _____# _____FTE	_____	_____
Paralegal/Legal Assistant Staff _____# _____FTE	_____	_____
Investigation Staff _____# _____FTE	_____	_____
Other Staff (identify _____ ) _____# _____FTE	_____	_____
<b>SUBTOTAL:</b>	_____	_____
 <b>2. STAFF BENEFITS</b>		
F.I.C.A. Self-Employment Tax (if applicable)	_____	_____
F.I.C.A. (Employer's portion or Social Security only)	_____	_____
Unemployment Insurance	_____	_____
Health and Other Insurance	_____	_____
Workers' Compensation	_____	_____
Retirement Program	_____	_____
<b>SUBTOTAL:</b>	_____	_____
 <b>3. STAFF EXPENSES</b>		
Malpractice Insurance check _____ PLF or _____ NLADA	_____	_____
Other Professional Insurance (describe _____ ) _____ )	_____	_____
OCDLA--Membership Dues	_____	_____
OSB--Membership Dues	_____	_____
Other Membership Dues Necessary to Contract (explain _____ ) _____ )	_____	_____

<b>3. STAFF EXPENSES (continued)</b>	<b><u>First Year</u></b>	<b><u>Second Year</u></b>
Professional Licenses/Certificates (explain _____)	_____	_____
Education Training/CLE's--Attorneys	_____	_____
Education Training\Other Staff (explain _____)	_____	_____
Attorney Travel	_____	_____
Other Staff Travel	_____	_____
<b>SUBTOTAL:</b>	_____	_____
 <b>4. OVERHEAD (OCCUPANCY)</b>		
Office Rent/Lease	_____	_____
Office Insurance	_____	_____
Building Utilities	_____	_____
Building Maintenance	_____	_____
Real Estate Taxes (if separate from rent)	_____	_____
<b>SUBTOTAL:</b>	_____	_____
 <b>5. OVERHEAD (OPERATIONS)</b>		
Phone Services (Equipment/Local Calls)	_____	_____
Long Distance Calls	_____	_____
Office Supplies	_____	_____
Postage	_____	_____
Outside Photocopying/Printing	_____	_____
Library	_____	_____
Subscriptions	_____	_____
Other Case Expenses (explain _____)	_____	_____
<b>SUBTOTAL:</b>	_____	_____
 <b>6. OVERHEAD (NONCAPITAL EXPENSES)</b>		
Furniture & Equipment Leases	_____	_____
Description                      Annual Cost		
_____		
_____		
_____		
Equipment Repairs/Maintenance	_____	_____
<b>SUBTOTAL:</b>	_____	_____

**7. OVERHEAD (OTHER)**

**First Year**

**Second Year**

Personal Property Taxes

\_\_\_\_\_

\_\_\_\_\_

Professional Contract Services (specify)

\_\_\_\_\_

\_\_\_\_\_

Miscellaneous (specify)

\_\_\_\_\_

\_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**8. TOTAL OPERATIONS (total of 1-7)**

\_\_\_\_\_

\_\_\_\_\_

**9. CAPITAL**

Computer--Hardware

\_\_\_\_\_

\_\_\_\_\_

Description      Quantity      Unit Cost

\_\_\_\_\_

\_\_\_\_\_

Computer--Software

\_\_\_\_\_

\_\_\_\_\_

Description      Quantity      Unit Cost

\_\_\_\_\_

\_\_\_\_\_

Office Furniture

\_\_\_\_\_

\_\_\_\_\_

Description      Quantity      Unit Cost

\_\_\_\_\_

\_\_\_\_\_

Office Equipment

\_\_\_\_\_

\_\_\_\_\_

Description      Quantity      Unit Cost

\_\_\_\_\_

\_\_\_\_\_

**SUBTOTAL:**

\_\_\_\_\_

\_\_\_\_\_

**GRAND TOTAL (total of 8 and 9):**

=====

=====

**APPENDIX D  
PROPOSED CONTRACTOR  
CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS**

Must be provided for a consortium (corporation) as well as for each consortium member.

I, the undersigned, being first duly sworn,

Mark only one: ( X )

\_\_\_\_\_ hereby certify under penalty of perjury that I am not in violation of any Oregon tax laws.

\_\_\_\_\_ authorized to act in behalf of

\_\_\_\_\_  
*(name and address of firm, corporation, or partnership [PLEASE TYPE])*

hereby certify under penalty of perjury that

\_\_\_\_\_  
*(name of firm, corporation, or partnership [PLEASE TYPE])*

is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118, 119, and 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Federal ID # or  
Social Security #: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**APPENDIX E  
PROPOSED CONTRACTOR  
INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT**

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapters 316, 656, 657 and 670:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.
3. You furnish the tools or equipment necessary to do the work.
4. You have the authority to hire and fire employees to perform the work.
5. You are paid on completion of the project or on the basis of a periodic retainer.
6. You filed federal and state income tax returns for the business for the previous year, if you performed labor or services as an independent contractor in the previous year.
7. You represent to the public that you are an independently established business, as follows:

YOU MUST MEET FOUR (4) OR MORE OF THE FOLLOWING:

- A. You work primarily at a location separate from your residence.
- B. You have purchased commercial advertising, business cards, or have a trade association membership.
- C. You use a telephone listing and service separate from your personal residence listing and service.
- D. You perform labor or services only pursuant to written contracts.
- E. You perform labor or services for two or more different persons within a period of one year.
- F. You assume financial responsibility for defective workmanship and breach of contract, as evidenced by performance bonds or liability insurance coverage.

I hereby certify that the above information is correct.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Entity \_\_\_\_\_

Office of Public Defense Services

Juvenile CLE Contract Compliance Form

*(Please type responses. Hand written forms will not be accepted.)*

Contract Specific Term: "All lawyers representing children, parents, or guardians in dependency cases are required to obtain at least 16 hours of continuing legal education credit related to the practice of juvenile law during the term of this Contract."

Last Name:

First Name:

OSB No:

Date	CLE (Title)	Sponsored By	General Credit(s)	Ethic Credit(s)

I certify I have attended the above listed CLEs during the 2014 through 2015 contract term and am in compliance with the specific term included in the contract under which I represent children, parents, or guardians in dependency cases.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date:

*(Typed or electronic signature and date stamp is required.)*

PUBLIC DEFENSE SERVICES COMMISSION  
REQUEST FOR PROPOSALS  
FOR  
PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

PART IV

CONTRACT GENERAL TERMS

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT  
GENERAL TERMS**

**JANUARY 1, 2016 TO DECEMBER 31, 2017**

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# GENERAL TERMS

## 1 DEFINITIONS AND CASE CREDIT RULES

### 1.1 Interpretation of Terms

Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

### 1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

### 1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

### 1.4 Definitions

#### 1.4.1 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

#### 1.4.2 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

#### 1.4.3 Public Defender

A "public defender" is a nonprofit organization employing attorneys and other staff established to provide contract services to persons qualifying for court-appointed legal representation.

#### 1.4.4 Law Firm

A "law firm" is a sole practitioner, partnership, or professional corporation which provides contract services to persons qualifying for court-appointed legal representation and which may also engage in non-court-appointed legal representation.

#### 1.4.5 Consortium

A "consortium" is a group of attorneys or law firms that is formed for the sole purpose of providing contract services to persons qualifying for court-appointed legal representation. In addition to participating jointly to provide contract services, Consortium members retain their separate identities and may engage in non-court-appointed legal representation.

#### 1.4.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

#### 1.4.7 Appointment

An "appointment" is the assignment of a contractor to represent or advise an eligible person on any matter under the terms of this contract.

#### 1.4.8 Case

A "case" is any action in this state in which Contractor has been appointed to represent a client under the terms of this contract in a matter to which there is a right to appointed counsel at state expense. Specific definitions of case types are listed in Section 10.

#### 1.4.9 Credit

A "credit" is an event or circumstance which counts toward Contractor's satisfaction of this contract.

#### 1.4.10 Value

The "value" of a credit is the rate by type of credit as set forth in the Caseload and Case Value Matrix.

#### 1.4.11 Complex Case

A "complex case" is an appointment on a case type valued at \$2,600 or more. Withdrawal or substitution for any reason from a complex case changes the credit type to "Other" (OTHR).

## 1.5 Rules for Counting Appointments

An appointment is credited, according to the following provisions:

### 1.5.1 Criminal Complex Case Credit

An appointment to a client indicted on a complex case is one credit. No extra credit may be taken for multiple incident dates or charges.

### 1.5.2 Criminal Appointment Case Credit (Non-Complex Case Credit)

(a) An appointment on criminal charges alleged to have occurred on specific calendar days is one credit for each count charged in the charging instrument alleged to have occurred on different specific calendar days, regardless of the number of victims involved, up to a maximum of

five credits per case.

(b) An appointment on criminal charges alleged to have occurred on indeterminate dates (e.g., "on or between January 1, 1996, and July 1, 1996") is a credit for each count charged in the charging instrument which can be determined to allege different calendar days, up to a maximum of five credits per case.

(c) Separate counts in a charging instrument that allege alternative theories of criminal liability on the same date are only one credit.

(d) One additional OTHR credit may be claimed when Contractor is appointed on a criminal matter that includes one or more counts of criminal forfeiture.

(e) No additional credit may be taken due to the following circumstances:

(i) more than one charging instrument (including Uniform Traffic Citation) is filed; or

(ii) more than one case number is assigned.

### **1.5.3 Case Type Credit**

Unless Section 1.4.11 applies, the case type credited is for the most serious offense alleged to have occurred on a specific calendar day, even if the charge is later changed to a different case type. For cases in which the most serious charge is a Class C felony, the most serious offense is assault IV domestic violence, DUII felony, or Class C felony, in this order.

### **1.5.4 Credit for Recommended Representation**

Except for complex cases, if a contract case proceeding has been interrupted for the following reasons and time intervals, Contractor receives a new credit if:

#### **(a) 365 Days After Aid and Assist Delay**

More than 365 days have passed since the client was originally found unable to aid and assist and the client is brought before the court for a rehearing on the issue or trial; or

#### **(b) 180 Days After Bench Warrant**

More than 180 days have passed since a bench warrant was issued; or

#### **(c) 18 Months with Repeated Bench Warrants**

More than 18 months have passed since Contractor was originally appointed and the case is recommenced and no additional credit has been received because of Section 1.5.4(b); or

#### **(d) 180 Days After Dismissal**

More than 180 days have passed since a dismissal of a case; or

#### **(e) After Appeal or Post-Conviction Relief**

A new trial or sentencing follows an appeal or post-conviction relief; or

#### **(f) After Interlocutory Appeal**

A case resumes at the trial level, following an interlocutory appeal by the state; or

#### **(g) After Mistrial or Hung Jury**

A new trial is scheduled after a mistrial or hung jury.

### **1.5.5 Probation Violation Credit**

An appointment on a probation violation proceeding arising out of a criminal or civil contempt sentencing(s) is one probation violation credit for each court case number to which Contractor is appointed. Provided, however, that if Contractor is appointed to more than one case number, additional credit is received only for those case numbers in which the convictions involve different incident dates. Contractor receives no additional credit for appointments on new alleged probation violations if the original probation violation matter on which Contractor was appointed has not been adjudicated.

### **1.5.6 Show Cause Hearing for Diversion or Conditional Discharge Agreement**

An appointment for a show cause hearing to address non-compliance issues related to a diversion agreement, conditional discharge agreement or any other type of deferred or delayed adjudication agreement is an SCDV credit if:

(a) Contractor did not receive a credit for the underlying charge; or

(b) more than 180 days have passed since Contractor represented the eligible person at a previous court appearance.

### **1.5.7 Juvenile Case Credit**

#### **1.5.7.1 General Provisions**

A petition which is amended from or to a delinquency or dependency petition or the dismissal of one type of petition and refile of another type of petition is not a new credit.

#### **1.5.7.2 Prepetition Matters**

The prepetition appointment to represent a youth in a delinquency matter or a child in a dependency matter continues through disposition on any petition that is later filed on the prepetition allegations and no additional case credit is received.

#### **1.5.7.3 Delinquency Petitions**

An appointment on a delinquency case is credited under the provisions set out in Sections 1.5.2 - 1.5.4.

#### **1.5.7.4 Dependency and Termination Petitions**

An appointment to represent children, parents, or legal guardians on a dependency petition is one credit regardless of the number of petitions filed (see Section 1.5.7.4.1 for exceptions). Case credit in a dependency proceeding covers representation from appointment to the court's entry of the dispositional order required under ORS 419B.325, or as otherwise authorized by PDSC. An appointment to represent children, parents, or legal guardians on a termination of parental rights petition is always one credit.

##### **1.5.7.4.1 Representation of Multiple Children**

An appointment to represent two or more related children in a dependency proceeding is a maximum of two credits

if:

- (a) the petition names as parents different mothers of different children; or
- (b) the petition names as parents different fathers of different children, not including any putative father unless the putative father also appears in the case; or
- (c) the children are living in more than one location.

#### **1.5.7.4.2 Maximum Credit for Representing Parents**

The maximum number of credits that may be counted when a Contractor attorney represents more than one parent or legal guardian in a dependency proceeding is one.

#### **1.5.7.5 Postdispositional Juvenile Hearings**

A postdispositional juvenile hearing is limited to a hearing before the court or Citizen Review Board (CRB) that is held after the juvenile court enters the dispositional order required under ORS 419B.325 or ORS 419C.440, or as otherwise authorized by PDSC. Postdispositional juvenile matters are a new credit for each hearing attended by Contractor. A single postdispositional hearing, even if it involves matters relating to more than one original juvenile petition, counts as only one postdispositional credit. Postdispositional hearings do not include probation violation hearings.

#### **1.5.7.6 Juvenile Probation Violation Hearings**

Juvenile probation violation hearings are governed by Section 1.5.5.

#### **1.5.7.7 Waiver Proceedings**

Contractor shall receive one additional "Juvenile Other" (JUDO) credit beyond that assigned for the original appointment for each waiver proceeding under ORS 419C.349.

#### **1.5.8 Mental Health Case Credit**

An appointment to represent an allegedly mentally ill, pursuant to ORS 426.070, or a person alleged to have an intellectual disability, pursuant to ORS 427.235, is one credit. The appointment ends at the original disposition of that matter.

#### **1.5.9 Contempt Case Credit**

An appointment to represent a client on a contempt case is one credit. Contractor receives no additional credit for appointments on new allegations of contempt if the original contempt allegation on which Contractor was appointed has not been adjudicated.

#### **1.5.10 Post-Conviction Relief Case Credit**

An appointment to represent a client on petitions filed at the same time or petitions with sequential numbers counts as one credit for each separate prosecution that is challenged by the petitions, with a maximum of five credits. The appointment ends at the original disposition of that matter.

#### **1.5.11 Habeas Corpus Case Credit**

An appointment to represent a client on a petition for a writ of habeas corpus is one credit if Contractor does not represent the petitioner on the charge to which the habeas corpus case is related. Petitions filed at the same time or petitions with sequential numbers count as one credit. The appointment ends at the original disposition of that matter.

### **1.6 Appointments That Do Not Qualify for Credit**

#### **1.6.1 Verification Removal**

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case credit where:

##### **(a) Finding of Ineligibility**

The court finds, after screening or verification, that the client is not financially eligible for appointed counsel at state expense; or

##### **(b) Withdrawal of Application for Counsel**

The court withdraws counsel because the client withdraws the application for appointed counsel before the court completes verification.

#### **1.6.2 Client Retains Counsel**

An appointment to represent a client who later retains Contractor or, in the case of a consortium, retains the same consortium member, on the same case does not qualify for credit.

#### **1.6.3 Reassignment Within Consortium**

If a case is reassigned within a consortium for any reason, no new credit may be claimed.

## **2 MUTUAL RIGHTS**

### **2.1 Waiver**

Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

### **2.2 Attorney Fees**

If a party brings any action, suit, or proceeding to enforce this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

### **2.3 Termination**

The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

### **3 RIGHTS OF PDSC**

#### **3.1 Subcontracts**

Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

#### **3.2 Assignment of Contract**

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

#### **3.3 PDSC Rights for Failure to Obtain Workers Compensation**

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and
- (c) terminate this contract:
  - (i) for repeated instances of failure to comply; or
  - (ii) for failure to comply within 30 days after PDSC suspends this contract.

#### **3.4 De Minimis Changes in Contractor Reports/Documents**

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

- (a) format or content of any report or other document to be submitted by Contractor;
- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document. (See Section 6.1)

#### **3.5 Termination by PDSC for Cause**

##### **3.5.1 Reasons for Contract Termination**

PDSC may terminate this contract for cause, for the

following reasons:

- (a) Contractor's material breach of any duty or obligation under this contract;
- (b) Contractor's willful or repeated disregard of the procedures required by the courts in which Contractor provides services; provided, however, that good faith actions of counsel undertaken to advance or preserve a constitutional or statutory right of a client shall not be deemed cause for termination;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by standards of performance and rules of professional conduct; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate legal services under this contract or fulfill the obligations of this contract.

##### **3.5.2 No Appointments After Notice**

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

#### **3.6 Funding Modification, Suspension, or Termination**

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

#### **3.7 Increasing Workload: Renegotiation at PDSC Option**

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the probable number of available cases increases substantially;
- (b) Contractor demonstrates that it has a sufficient number of attorneys and other staff to manage the additional workload; and
- (c) PDSC determines that renegotiation is in the state's interest.

PDSC will not pay Contractor for credits in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor's assignment to such excess cases.

### **3.8 Review, Verification and Inspection of Records**

#### **3.8.1 Request**

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) as often as PDSC reasonably may deem necessary during the contract term.

#### **3.8.2 Access to Facilities and Provision of Records**

PDSC may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval. PDSC and its agents will comply with the American Bar Association's "Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor" (2002) when conducting any fiscal or performance audit or review.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory, or common law right or privilege of any client or Contractor employee are waived by Contractor.

#### **3.8.3 Other Information**

Upon the PDSC's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.4, 4.5 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the question or concern identified.

#### **3.8.4 Timely Reports by PDSC**

When PDSC undertakes a review of Contractor, PDSC shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

### **3.9 Use of Equipment Purchased with Contract Funds**

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract. Any equipment Contractor acquires with funds expressly provided by this contract shall be used for these purposes.

### **3.10 Return of Equipment Purchased with Contract Funds**

Any equipment purchased with expressly identified contract funds shall accrue to PDSC when this contract is terminated or expires and no new contract is agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:

- (a) Contractor purchased the equipment with separately identified funds from this contract or public defense services contracts with similar provisions or with insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;
- (b) had an original dollar value of \$500 or more; and
- (c) whose useful life exceeds the term of this contract.

### **3.11 Limit on Return of Equipment to PDSC**

Section 3.10 does not apply to any Contractor that is a nonprofit, tax-exempt corporation whose articles of incorporation require the transfer or distribution of equipment to another nonprofit, tax-exempt corporation that provides public defense services in the event of full or partial wind-down.

## **4 RIGHTS OF CONTRACTOR**

### **4.1 Termination By Contractor For Cause**

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

### **4.2 Court Appointments Outside Contract**

Contractor may accept additional court appointments to cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional appointments do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "representation", set forth in Section 7.1, for cases assigned under this contract.

### **4.3 Request for Additional Credit**

Contractor may make a written request for additional credit for cases Contractor believes required an extraordinary amount of time, effort, or expense, on cases closed since the preceding periodic review (see Section 5.7). Only PDSC may approve additional credit for cases assigned under this contract. Contractors shall not make requests of the court or court staff to approve additional credit.

#### **4.3.1 In General**

Contractor shall submit in writing any materials needed to show extra services beyond the contract and the amount

of additional credit proposed.

#### **4.3.2 Complex Cases in Which Contractor Withdraws**

Contractor shall submit any materials needed to show extra services performed prior to a withdrawal for any reason on a complex case and the amount of additional credit proposed beyond one OTHR credit.

#### **4.4 Client Records**

Contractor grants no right to PDSC or designee of PDSC to observe attorney/client consultations or to review information in case files that is:

(a) privileged because of the attorney/client relationship; or

(b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

#### **4.5 Personnel Records**

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

### **5 MUTUAL OBLIGATIONS**

#### **5.1 Successors in Interest**

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

#### **5.2 Compliance with Applicable Law**

##### **5.2.1 In General**

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and independent contractor status.

##### **5.2.2 Laws Incorporated by Reference**

The provisions of ORS 279B.220, 279B.230, and 279B.235 are incorporated herein by reference as conditions of this contract and shall govern performance

of this contract.

#### **5.3 Notice of Contract Modification, Suspension, or Termination**

A notice to modify, suspend, or terminate this contract shall:

(a) be in writing;

(b) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;

(c) become effective for willful breach not less than 14 days from delivery; and

(d) become effective not less than 60 days from delivery for non-willful breach.

#### **5.4 Modification or Termination Due to Legislative Action or Court Interpretation**

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

#### **5.5 Modification or Termination Due to Decreased Caseload**

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

#### **5.6 Renegotiation Shall Minimize Reductions in Staff**

PDSC shall renegotiate with all Contractors affected by case decreases to apportion decreases in a manner that minimizes reductions in staff. Such renegotiations shall:

(a) reduce the total number of cases for the contract period and adjust the monthly payments to Contractor accordingly; or

(b) have Contractor refund or otherwise repay to the State any moneys saved.

#### **5.7 Periodic Review**

At the request of either party, PDSC and Contractor will periodically review case assignment trends, requests for additional credit and any other matters needed to determine contract compliance or any necessary contract modifications.

##### **5.7.1 Review of Assignments to Multiple Contractors and Mixture of Cases**

In counties where more than one Contractor provides legal services, periodic review shall include a review by

PDSC of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates and the rates contemplated under the contracts, PDSC shall notify the court and Contractors that appointment rates must be adjusted and corrected, to the extent total cases are available. Similarly, if the periodic review discloses a substantial disparity between the case mix under the contract and the case mix actually assigned to Contractor, PDSC shall notify the court and Contractors that appointment case mix must be adjusted and corrected, to the extent total cases are available. (See Section 7.8.2.5)

### 5.7.2 Fungibility

The parties agree that PDSC is contracting for the provision of legal representation by Contractor, as measured by value, and that the estimated workload, by case type, is the parties' expectation as to the distribution of the cases which may be available during the contract period. The parties expressly agree that Contractor may substitute one type of case for another, for the purposes of contract performance, with cases being fungible, except as specifically provided to the contrary in this contract.

### 5.8 Other Contractors and Vendors

PDSC may undertake or award other contracts for additional or related work. Contractor shall cooperate with PDSC and the courts to coordinate appointment procedures and other court activities necessary for efficient and effective administration of this and other contracts for public defense services.

Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

### 5.9 Management Conference

Contractor's administrator or administrator's designee shall attend an educational conference on the topic of public defense management each year one is sponsored by either the Oregon Criminal Defense Lawyers Association, the Office of Public Defense Services (OPDS) or another sponsor approved by PDSC. If no representative of Contractor is available to attend such a conference, Contractor will make arrangements, in consultation with the assigned OPDS contract analyst to ensure that the community served by Contractor is represented at such a management conference.

## 6 OBLIGATIONS OF PDSC

### 6.1 State Funding Shortfall

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers, including the private bar. PDSC shall seek first to modify the contract

through negotiation with Contractor. In negotiating any modification, the parties will consider the funds available, the requirement to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

### 6.2 Contract Payment

Payment under this contract shall be based on the Payment Schedule included in the Specific Terms.

### 6.3 Payments in Addition to Contract Price

PDSC shall pay for the following case expenses from funds available for the purpose:

#### (a) Discovery

Discovery expenses include material provided by DHS or a county juvenile department for representation in a juvenile case. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, district attorney or court files pertaining to the underlying case;

#### (b) Preauthorized Non-Routine Expenses

Non-routine case expenses requested by Contractor and preauthorized by PDSC or other authority designated to approve non-routine expenses in compliance with the requirements of ORS 151.216 and ORS 135.055(3). Unless the services are performed by Contractor's staff or subcontractors, non-routine expenses include, but are not limited to:

- (i) medical and psychiatric evaluations;
- (ii) expert witness fees and expenses;
- (iii) interpreters who charge a rate above the guideline amount as shown in the payment policy, or interpreters for services other than attorney/client communication;
- (iv) polygraph, forensic and other scientific tests;
- (v) investigation expenses; and
- (vi) any other non-routine expenses PDSC or other authority designated to approve non-routine expenses preauthorizes and finds necessary and reasonable for the investigation, preparation, negotiation, and presentation of a case;

#### (c) Lay Witness Fees

Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

#### (d) Copying Clients' Files

The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

#### (e) Copying Direct Appeal Transcripts for PCR Trial-Level Representation

The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;

**(f) Records**

Medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and

**(g) Process Service**

The cost for the service of a subpoena as long as the rate per location does not exceed the guideline amount as shown in the payment policy.

## **7 OBLIGATIONS OF CONTRACTOR**

### **7.1 Performance Obligations of Appointed Counsel**

#### **7.1.1 Standard of Representation**

Appointed counsel shall fulfill applicable state and national standards of performance, including those of the Oregon State Bar, American Bar Association, National Juvenile Defender Center and National Legal Aid and Defender Association. Counsel shall also satisfy applicable state and federal constitutional requirements for the provision of adequate and effective assistance of counsel, and meet state and federal statutory requirements for counsel in the applicable proceedings. And counsel shall satisfy the requirements of the Oregon Rules of Professional Conduct.

#### **7.1.2 Representation at all Stages of a Proceeding**

Contractor shall provide representation in all proceedings related to the legal matter that is the subject of the representation, including but not limited to proceedings below. Representation under this contract does not include related Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations and probate proceedings, and other civil proceedings not otherwise provided for under this contract.

##### **7.1.2.1 Pre-appointment representation**

Subject to the express prior approval of PDSC, where an individual would be eligible for appointed counsel at state expense if charged with a crime or served with a petition in juvenile court but exigent circumstances preclude an appointment order, contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of a client.

##### **7.1.2.2 Appearance at first proceedings**

(a) Contractor shall provide representation at all scheduled arraignments, shelter hearings and other initial appearances in criminal and juvenile cases.

(b) Notwithstanding subsection (a), Where PDSC has approved in writing other arrangements for representation

at first proceedings, contractor is not required to provide representation.

(c) Contractor shall establish and follow procedures to ensure prompt notification to the court and client of the specific attorney assigned to each case.

##### **7.1.2.3 Representation following the commencement of proceedings**

Contractor shall provide representation, meeting the standard of representation set forth in Section 7.1.1 of the contract, during the pendency of a case through judgment or other final order of the court on the case, including but not limited to:

- (a) Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions;
- (b) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705;
- (c) Filing a petition for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,
- (d) To the extent ethically permitted, representing a client at a show cause hearing to determine the client's financial eligibility for appointed counsel.

##### **7.1.2.4 Post-judgment proceedings**

Following the entry of judgment or other final order in a case, counsel shall:

- (a) Seek modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- (b) Complete questionnaires, forms or other process necessary to obtain appellate counsel for clients requesting an appeal;
- (c) Seek court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- (d) Consult with counsel representing the client on appeal or in post-conviction relief

proceedings arising from the subject of the representation; and

- (e) Upon request, provide copies of the entire file to appellate or post-conviction relief counsel.

### 7.1.3 Client Contact

#### 7.1.3.1 In-custody Initial Contacts

Contractor shall, whenever possible, speak to and conduct initial interviews in person with in-custody clients:

- (a) Within 24 hours of appointment; or
- (b) By the next working day if the court appoints Contractor on a Friday, or if the day following the appointment is a holiday.

#### 7.1.3.2 Out-of-Custody Contacts

Within 72 hours of the appointment, Contractor shall arrange for contact with out-of-custody clients, including notification of a scheduled interview time or what the client must do to schedule an interview time.

#### 7.1.4 Contractor Responsibilities Regarding Financially Ineligible Clients

Contractor shall consult Oregon State Bar Formal Ethics Opinion 2005-34, in conjunction with state and federal constitutional provisions, in determining what course to follow if Contractor learns that a client is ineligible for state-funded legal services under this contract.

#### 7.1.5 Withdrawal From Case Only on Court Approval

Contractor may withdraw from representation following appointment by the court only with the court's approval. Contractor shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the case shall be reassigned in the normal course. Contractor shall ensure continuous representation of a client until withdrawal is approved and then assist in the prompt establishment of a new attorney/client relationship.

### 7.2 Quality Assurance Obligations of contract administrator

#### 7.2.1 Training and Supervision

Contractor shall establish and implement, as appropriate for contractor's entity structure, written quality assurance procedures consistent with the practices set forth in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010), including but not limited to procedures for recruiting high quality attorneys and staff, procedures for training and supervising contract attorneys and staff, regular performance evaluations of contract attorneys and staff, procedures to receive and promptly address complaints about the performance of contract attorneys and staff, and procedures to remedy performance deficiencies by contract attorneys and staff.

### 7.2.2 Case Assignment and Workload

Contractor shall ensure that the attorney assigned to represent a client under this contract:

- (a) Possesses the qualifications for representation of the case-type involved, as set forth in the PDSC's Qualification Standards for Court-Appointed Counsel, and has been approved for appointment to the applicable case type by PDSC. Contractor shall provide to PDSC the name and current qualifications, including a Certificate of Attorney Qualification and Supplemental Questionnaire, of any attorney providing representation under this contract, including attorneys who begin providing representation during the term of the contract.
- (b) Has a current workload, including private practice cases not covered by this contract, that will not interfere with competent and diligent representation that fulfills the Standard of Representation set forth in Section 7.1.1 of this Contract.
- (c) Will provide continuous representation by the same attorney, when possible, from the commencement of proceedings continuously until the final disposition of the case.

### 7.2.3 Continuing Legal Education Requirements

Contractor shall ensure that all contract attorneys providing representation under this contract:

- (a) Obtain 12 hours of continuing legal education credits related to the practice of juvenile law during each year of this contract, if the attorney is handling juvenile court cases;
- (b) Obtain 12 hours of continuing legal education credits related to the practice of criminal law during each year of this contract, if the attorney is handling criminal court cases; and
- (c) For attorneys with mixed caseloads including both juvenile and criminal cases, obtain 12 hours of continuing legal education credits during each year of this contract, apportioning those credits between programs related to juvenile and criminal law according to the percentage of the attorney's cases assigned under this contract in each of those practice areas.

#### **7.2.4 Report to PDSC**

Upon request, Contract shall provide to PDSC copies of its written quality assurance procedures, including documentation demonstrating current compliance with those procedures; provided, however, that PDSC shall not have access to client information that is privileged because of the attorney/client relationship, or confidential personnel information, unless the client or Contractor personnel expressly, knowingly, and voluntarily provides such access in writing or unless such permission is not legally required.

### **7.3 Special Obligations To State of Oregon**

#### **7.3.1 Indemnity of PDSC By Contractor**

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

#### **7.3.2 Independent Status of Contractor**

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

##### **7.3.2.1 Ineligibility for Public Employee Benefits**

Payment from contract funds does not entitle Contractor, its employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

##### **7.3.2.2 Wages and Taxes**

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

##### **7.3.2.3 Workers' Compensation**

As an independent contractor, Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter 656 and for the entire contract term.

##### **7.3.3 State Tort Claims Act Not Applicable**

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms

are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

#### **7.3.4 Equal Rights of Contractor's Employees**

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

#### **7.3.5 Contractor Insurance To Protect State of Oregon**

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

##### **7.3.5.1 General Liability Insurance**

At its expense, in whole or in part from contract funds, Contractor and each law firm or sole practitioner member of a consortium shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

##### **7.3.5.2 Casualty Insurance**

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

##### **7.3.5.3 Additional Insured**

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

##### **7.3.5.4 Cancellation or Change**

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

#### **7.3.6 Malpractice Insurance**

During the entire contract period, and at the Contractor's own expense in whole or in part from contract funds, Contractor shall ensure that each of its attorneys has malpractice insurance coverage in the minimum amount

required by the Oregon State Bar. Contractor shall provide proof of such insurance to PDSC on request.

### **7.3.7 Internal Controls**

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly receipted, expended, and accounted for.

### **7.3.8 Oregon Judicial Case Information Network (OJCIN)**

For juvenile cases, Contractor shall limit use of OJCIN, including the Oregon Judicial Information Network (OJIN) and the Oregon eCourt Case Information Network (OEI) to access only those cases that involve parties Contractor represents.

### **7.3.9 Protection of Consumer Personal Information**

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

## **7.4 Staff and Equipment**

### **7.4.1 Staffing Levels**

Contractor shall secure, at its own expense in whole or in part from contract funds, all personnel or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support staff to perform its contract obligations.

### **7.4.2 Certification to PDSC**

Contractor shall provide a certification from any attorney added during the contract that the attorney has read this contract, including the payment schedules and other specific terms, and understands the obligations of attorneys providing services under the contract and the duties and responsibilities of the contract administrator.

### **7.4.3 Interpreters**

For out-of-court attorney/client communications, Contractor may use staff who are either qualified, as defined by ORS 45.275(9)(c), or who are certified by the Office of the State Court Administrator (OSCA), under ORS 45.291. For in-court interpretation, Contractor shall ensure that all interpreters who are staff employees or who subcontract with Contractor comply with all certification requirements established by OSCA and the Code of Professional Responsibility for Interpreters in Oregon.

## **7.5 Record Keeping**

### **7.5.1 Case Records**

Contractor shall preserve all case documents, notes, files, physical evidence or any other items created or received in the course of the representation of a client in an orderly and organized manner such that it can readily be made available to successor counsel, if one is appointed or retained. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection by PDSC, or PDSC's designee or agent.

### **7.5.2 Financial Records**

Contractor shall maintain financial records on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

### **7.5.3 Retention Period**

For purposes of this contract only, Contractor agrees to preserve all appointment, service and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to preserve all case files a minimum of ten (10) years from the date the case is closed for all cases except aggravated murder and Measure 11 cases. Case files in aggravated murder and Measure 11 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

## **7.6 Reports to PDSC**

### **7.6.1 Case Inventory**

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly case inventory report for the preceding month. Contractor may submit amended case inventory reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly case inventory report to be amended.

### **7.6.2 Case Activity, Disposition, and Withdrawal Data**

Contractor shall maintain data, using codes specified by PDSC, to track the disposition of, or withdrawal from, all cases reported under the contract. Contractor shall maintain data on other case activity upon the request of PDSC. Contractor shall make the data available for PDSC review upon request.

### **7.6.3 Caseload Reports**

Contractor shall maintain data, at the request of PDSC and in a format authorized by PDSC, on the current number and type of open cases of each contract attorney, including any private practice noncontract cases. Contractor shall make the data available for PDSC review upon request.

#### **7.6.4 Penalty for Late Reports**

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment until PDSC receives the report and supporting documentation.

#### **7.6.5 Enforceability**

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

### **7.7 Costs, Expenses and Client Clothing**

#### **7.7.1 Costs and Expenses**

Except for the expense items listed in Section 6.4, Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial; and
- (c) staff services, including routine travel expenses, if Contractor has staff investigators, interpreters, or polygraphers.

Contractor shall not expend contract funds for out-of-state travel or other costs unrelated to a specific case without the express written authorization of PDSC.

#### **7.7.2 Client Clothing**

Prior to requesting preauthorization to purchase clothing for a client's court appearance, Contractor agrees to contact contractors who maintain "clothing rooms" to determine whether suitable clothing is available. (Contact PDSC for a current list.) If Contractor receives preauthorization to purchase clothing for a client, that clothing shall be provided to a "clothing room" upon completion of the case.

### **7.8 Special Notices**

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

- (a) Contractor's ability to carry out this contract, including changes in staff attorney names, staffing levels and office location;
- (b) Contractor's ability to meet financial obligations; and
- (c) matters affecting Contractor's ability to provide services to clients.

#### **7.8.1 Time Requirement for Notices**

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

### **7.8.2 Specific Notices and Responses Required**

#### **7.8.2.1 Insurance Cancellation or Change**

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 - 7.3.6 and immediate notice of the cancellation of any such policies.

#### **7.8.2.2 Staffing**

Contractor shall provide, to PDSC and the affected court, notice of the names of attorneys who are hired or leave Contractor's employ and any other substantial staffing changes. Upon request by PDSC, Contractor shall provide a current list of attorneys and staff positions by full time equivalent, and provide timely responses to PDSC surveys or other inquiries concerning the diversity of attorneys and staff employed by or otherwise performing services for Contractor.

#### **7.8.2.3 Change in Contractor's Organization**

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall demonstrate to PDSC its continued ability to meet contract requirements or shall propose reductions in caseload and/or value if Contractor is unable to meet contract requirements because of such organizational change.

#### **7.8.2.4 Events Which Could Impair the Contract**

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

##### **(a) Criminal Charges**

A member of Contractor's attorney or investigator staff has been charged with a crime.

##### **(b) Criminal Conviction**

A member of Contractor's attorney or investigator staff has been convicted of a crime.

##### **(c) Formal Bar Complaint**

A formal accusation of misconduct has been filed by the Oregon State Bar against a member of Contractor's attorney staff.

##### **(d) Bar Discipline**

Disciplinary action is taken by the Oregon State Bar against one of Contractor's attorney staff.

##### **(e) Uninsured Practice of Law**

A member of Contractor's attorney staff has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.

#### **7.8.2.5 Nonassignment of Available Cases or Early Quota**

Contractor shall notify PDSC immediately upon determining that:

- (a) the court is not assigning Contractor to cases available for appointment; or
- (b) Contractor will reach its total contract quota before

the expiration of the contract.

Within forty-five (45) days of notification to PDSC that the court is not assigning Contractor to cases available for appointment, PDSC shall propose a plan to Contractor and the court to resolve the nonassignment of available cases.

**7.9 No Dual Payments for Contract Work**

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract without PDSC authorization;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
- (c) accept or keep credit for a case for which Contractor's attorney is subsequently retained.

**7.10 Independent Audit Required**

Contractor shall, from contract funds, be subject to an annual independent audit by a CPA firm and shall provide a copy to PDSC.

**7.11 Limits on Full Time Public Defender Attorneys**

Attorneys employed full time by nonprofit public defender offices shall not accept employment for legal services on a retained basis and shall not accept appointment to a public defense case outside this contract without the authorization of PDSC.

**7.12 Limits on Pro Bono Work**

Nonprofit public defenders may provide pro bono representation only for:

- (a) cases covered by contractor's or another's malpractice insurance; and
- (b) cases that are:
  - (i) related to cases to which contractor's attorneys have been appointed; or
  - (ii) unrelated to contract cases, provided the pro bono services are rendered outside of the contract.

**8 MUTUAL RISKS**

**8.1 Impossibility of Performance**

Neither party shall be held responsible for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible,

either party may terminate this contract, or the affected part, by written notice.

**8.2 Tort Liability**

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

**9 RISKS OF CONTRACTOR**

**9.1 Refund for Shortage**

If Contractor's actual caseload value, at the expiration or termination of the contract, is less than the workload value set forth in this contract, Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.

**9.2 Wind-Down Procedures**

Unless PDSC agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall complete timely and adequate legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination.

**9.2.1 Negotiations**

If the contract expires or terminates, PDSC and Contractor shall negotiate wind-down procedures. Whenever possible, Contractor shall wind down pending cases within three months of contract expiration or termination by completing or, with PDSC's agreement, reassigning the cases.

**9.2.1 Negotiations**

Except when PDSC terminates the contract for cause under Section 3.5 and unless otherwise agreed, the parties shall, whenever possible, agree on wind-down procedures before the contract expires or terminates. If the parties cannot agree on wind-down procedures, PDSC alone shall decide what state funds, if any, will finance wind-down procedures based on what PDSC reasonably believes is necessary to ensure that the clients' right to adequate assistance of counsel and that Contractor's legal obligations are met.

**9.2.2 Reduction in Contractor's Caseload**

If Contractor's caseload or contract amount is reduced significantly resulting in layoffs, whether as a result of contract modification or contract renewal, PDSC and Contractor may negotiate wind-down procedures.

**10 APPOINTMENT TYPE DEFINITIONS**

( ) denotes the applicable appointment code.

## **10.1 CRIMINAL CASES**

### **10.1.1 Appointments After Diversion or Conditional Discharge Agreement (SCDV)**

For all criminal cases, Contractor shall report separately on cases where Contractor is first appointed:

- (a) after the defendant enters into a diversion or conditional discharge agreement or any other type of deferred or delayed adjudication agreement, and
- (b) when the court orders the defendant to show cause why the agreement should not be terminated.

Contractor shall report these cases as SCDV rather than as the original case type.

### **10.1.2 Capital Murder Case (CMUR)**

A capital murder case is any appointment to represent a person charged with aggravated murder as defined by ORS 163.095 except as provided under paragraph 10.1.3., below.

### **10.1.3 Noncapital Murder Case (MURD)**

A noncapital murder case is any appointment to represent a person charged with:

- (a) murder as defined by ORS 163.115; and
- (b) aggravated murder where the person is a juvenile under 15 years of age who is waived to circuit court on the charge (a convicted juvenile cannot be sentenced to death or life without parole under ORS 161.620) or aggravated murder where the person was 15, 16 or 17 years of age on the date the crime is alleged to have occurred (no death sentence may be imposed under ORS 137.707(2)).

### **10.1.4 Felony Case**

A felony case is any appointment to represent a person charged with one or more crimes described by ORS 161.525, excluding capital murder and noncapital murder. It includes manslaughter and negligent homicide. A case is a felony case if it includes a felony charge at any time after defendant appears in circuit court, even if later reduced to a misdemeanor.

#### **10.1.4.1 Measure 11 Felony (AM11, BM11, JM11)**

Other than murder, a felony that is the subject of ORS 137.700 or ORS 137.707. AM11 is a Class A Measure 11 felony with an adult defendant; BM11 is a Class B Measure 11 felony with an adult defendant; and JM11 is a Class A or Class B Measure 11 felony where a 15-, 16- or 17-year-old is indicted as an adult in circuit court.

#### **10.1.4.2 Class A Felony (AFEL)**

A Class A felony is a crime that a statute expressly designates as a Class A felony, other than an AM11 case.

#### **10.1.4.3 Class B Felony (BFEL)**

A Class B felony is a crime that a statute expressly designates as a Class B felony, other than a BM11 case.

#### **10.1.4.4 Class C Felony (CFEL)**

A Class C felony is a crime that a statute expressly designates as a Class C felony, other than a DUII felony (DFEL), or domestic violence Class C felony (DVIO).

#### **10.1.4.5 DUII Felony (DFEL)**

A DUII felony is a DUII case in which an element of the crime charged is that the defendant has at least three prior DUII convictions within the past ten years (ORS 813.010(5)).

#### **10.1.4.6 Domestic Violence Class C Felony (DVIO)**

An Assault IV case which is elevated to a Class C felony under ORS 163.160(3).

#### **10.1.4.7 Unclassified Felony (UFEL)**

A felony crime that the statute(s) do not expressly designate as a Class A, B, or C Felony.

### **10.1.5 DUII (DUIS)**

A DUII case is any appointment to represent a person charged with driving under the influence of intoxicants, other than DUII felony (DFEL).

### **10.1.6 Misdemeanor Case (MISS)**

A misdemeanor case is any appointment to represent a person charged with one or more crimes described by ORS 161.545 or by local ordinance as a misdemeanor, excluding DUII, misdemeanor contempt and the misdemeanor traffic cases defined below.

#### **10.1.7 Misdemeanor Traffic Case**

A misdemeanor traffic case is any appointment to represent a person on a misdemeanor traffic charge for which a convicted defendant may be incarcerated as an original sentence under the Oregon Vehicle Code, other than a traffic offense charged as a felony or DUII. For statistical purposes, report cases in the following categories:

- (a) Misdemeanor Driving While Suspended (DWSS).
- (b) Other Traffic Misdemeanor (OTMS).

#### **10.1.8 Extradition Case (EXTR)**

An extradition case is any appointment to represent a person in a proceeding under the Uniform Criminal Extradition Act, ORS 133.743 - 133.857. It includes representation on a writ of habeas corpus filed in a pending extradition proceeding.

## **10.2 PROBATION VIOLATIONS**

### **10.2.1 Probation Violation**

A probation violation is any appointment or reappointment to represent a person in a proceeding concerning an order of probation, including but not limited to the revoking thereof, arising out of a criminal or civil contempt

conviction(s) and sentencing(s), under Section 1.5.5. For reporting purposes, Contractor shall report each type of probation violation case by the following subcategories:

#### **10.2.1.1 Felony Probation Violation (FPV)**

A felony probation violation case is any appointment to represent a person in a probation proceeding arising out of a felony conviction.

#### **10.2.1.2 Misdemeanor Probation Violation (MPV)**

A misdemeanor probation violation case is any appointment to represent a person in a probation proceeding arising out of a contempt case, or a misdemeanor conviction, except DUII.

#### **10.2.1.3 DUII Probation Violation (DPV)**

A DUII probation violation is any appointment to represent a person in a DUII probation proceeding arising out of a DUII conviction.

### **10.3 CONTEMPT CASES**

#### **10.3.1 Contempt Case**

A contempt case is any appointment to represent a person charged with contempt of court. For statistical purposes, report cases in the following three categories:

##### **10.3.1.1 Family Abuse Prevention Act (FAPA)**

Contempt for violating a Family Abuse Prevention Act (ORS 107.700 - 107.735) restraining order.

##### **10.3.1.2 Support (SUPP)**

Contempt for failure to comply with an order or judgment in domestic relations or juvenile court proceeding for the payment of suit money, attorney's fees, spousal support, child support, maintenance, nurture, or education.

##### **10.3.1.3 Contempt (CONT)**

Misdemeanor contempt or any other contempt that is not a FAPA or SUPP contempt.

### **10.4 CIVIL COMMITMENT CASES**

#### **10.4.1 Civil Commitment Case (MHMI)**

A civil commitment case is any appointment to represent a person in a proceeding brought under ORS Chapter 426 or 427.

### **10.5 JUVENILE CASES**

#### **10.5.1 Juvenile Case**

A juvenile case is any appointment or a reappointment to represent a person(s) in a proceeding brought under ORS Chapter 419B or 419C. For statistical purposes, report juvenile cases in the following categories:

##### **10.5.1.1 Juvenile Felony (JUDF)**

If committed by an adult, alleged act would constitute a felony.

##### **10.5.1.2 Juvenile Misdemeanor (JUDM)**

If committed by an adult, alleged act would constitute a misdemeanor.

##### **10.5.1.3 Juvenile Other (JUDO)**

(a) if committed by an adult, alleged act would constitute a violation or infraction;

(b) alleged act is a status offense;

(c) an emancipation case (any appointment to represent a child in a proceeding under ORS 419B.550 - 419B.558);

(d) a waiver case (any appointment to represent a child in a proceeding to waive the child to adult court for further proceedings under ORS 419C.340);

(e) appointments under ORS 420A.203 (Eligibility for second look; report to sentencing court; hearing; disposition);

(f) appointments under ORS 181.823(12) (Relief from reporting requirement; juvenile offenders); and

(g) appointment to a juvenile case for which no other juvenile case type applies.

##### **10.5.1.4 Probation Violation or Motion to Modify (JPV)**

Proceeding based on allegation(s) that the child has violated the terms of probation or a proceeding based on a motion to modify a disposition.

##### **10.5.1.5 Juvenile Dependency Case**

A juvenile dependency case is any appointment to represent a person based on a new petition alleging that a child is within the jurisdiction of the juvenile court under ORS 419B.100(1)(a) - (h).

(a) Parent (JDEP): Appointment to represent parent(s) or guardian(s).

(b) Child (JDEC): Appointment to represent child(ren).

##### **10.5.1.6 Postdispositional Proceeding**

A postdispositional proceeding is any appointment in a juvenile court proceeding to represent a person at a court or CRB review hearing and shelter care hearings held after the original disposition. It does not include probation violation proceedings or family unity meetings. Probation violation proceedings are a separate category under delinquency.

(a) Parent (JPDP): Appointment to represent parent(s) or guardian(s).

(b) Child (JPDC): Appointment to represent child(ren).

##### **10.5.1.7 Termination of Parental Rights Case**

A termination of parental rights case is any appointment to represent the parent or child in a proceeding under

ORS 419B.498 - 419B.530 or in a contested adoption matter under ORS 109.330 and *Zockert v. Fanning*, 310 Or 514 (1990) or in a contested permanent guardianship proceeding under ORS 419B.365. Guardianship proceedings under ORS Chapter 125 are excluded.

(a) Parent (JUTP): Appointment to represent parent(s) or guardian(s), including contested adoption proceedings.

(b) Child (JUTC): Appointment to represent child(ren), including contested adoption proceedings.

## **10.6 OTHER CIVIL CASES**

### **10.6.1 Habeas Corpus Case (CVHC)**

A habeas corpus case is any appointment to represent a person in a proceeding for a writ of habeas corpus under ORS 34.355, excluding:

(a) habeas corpus petitions filed in a pending extradition proceeding; and

(b) habeas corpus petitions filed for a client whom

Contractor represents on a related matter (not a separate appointment under the contract).

### **10.6.2 Post-Conviction Relief Case (CVPC)**

A post-conviction relief case is any appointment to represent a person under ORS 138.510 - 138.686.

### **10.6.3 Psychiatric Security Review Board Case (PSRB)**

A Psychiatric Security Review Board case is any appointment by the PSRB to represent a person under ORS 161.346(11).

## **10.7 OTHER CASES (OTHR)**

An other case is: a complex case from which Contractor withdraws; an appointment under ORS 136.611 (Material Witness Order); an appointment under ORS 137.771(2) (Sexually Violent Dangerous Offenders); an appointment under ORS 138.694 (DNA testing); a criminal forfeiture credit; or an appointment to a case for which no other case type applies.



## CONTRACT BETWEEN PDSC AND CONTRACTOR PAYMENT SCHEDULE

End of Month (Unless noted)	Monthly Payment
January 2016	
February 2016	
March 2016	
April 2016	
May 2016	
June 2016	
July 2016	
August 2016	
September 2016	
October 2016	
November 2016	
December 2016	
<i>First-Year Subtotal</i>	\$0
January 2017	
February 2017	
March 2017	
April 2017	
May 2017	
June 2017	
July 2017	
August 2017	
September 2017	
October 2017	
November 2017	
December 2017	
<i>Second-Year Subtotal</i>	\$0
<b>Total Payments</b>	<b>\$0</b>

## CONTRACT BETWEEN PDSC AND CONTRACTOR CASELOAD AND CASE VALUE MATRIX

Case Types 1/1/16 - 12/31/16	Value	Number of Cases	Total Value
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
First-Year Total		0	\$0
1/1/17 - 12/31/17			
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0

**PUBLIC DEFENSE SERVICES COMMISSION**

**REQUEST FOR PROPOSALS**

**FOR**

**TRIAL-LEVEL CAPITAL MURDER & DEATH SENTENCE  
POST-CONVICTION RELIEF  
PUBLIC DEFENSE MITIGATION INVESTIGATIVE SERVICES  
CONTRACTS**

**BEGINNING JANUARY 2016**



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## **PART I – GENERAL INFORMATION**

### **1.1 Request For Proposals (RFP) Description**

The Public Defense Services Commission (PDSC) is seeking contract proposals to provide effective and efficient mitigation investigative services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense.

**PDSC is accepting proposals for trial-level capital murder and death sentence post-conviction relief cases. The contracts awarded may have a one- or two-year term beginning January 1, 2016, or other such length of term and beginning date as determined by PDSC.** The basic services required are mitigation investigative services as necessary to provide adequate and effective legal representation that meets established professional standards of practice.

This RFP contains the applicable procedure, instructions and requirements for proposals. It is organized in four parts:

- Part I General Information
- Part II Proposal Application Instructions and Requirements
- Part III Proposal Application Summary and Proposal Outline
- Part IV Contract Terms

### **1.2 Applicable Contracting Procedure**

ORS 151.216 authorizes the PDSC to adopt policies and procedures for the contracting of public defense services. As part of the Judicial Branch, PDSC is not subject to the Department of Administrative Services administrative rules and procedures that govern contracting for personal services contracts. The PDSC adopts the policies, procedures, instructions, requirements and other provisions of this RFP as the PDSC procedures for contracting for personal services. The model rules of the Oregon Attorney General do not apply to PDSC contracting but will be reviewed each time the Attorney General modifies them to determine whether PDSC should modify the policies and procedures contained herein.

### **1.3 Authority**

ORS 151.219 authorizes the PDSC executive director to contract for legal services for financially eligible persons in proceedings in which:

- 1) a state court or magistrate has the authority to appoint counsel to represent the financially eligible person, and
- 2) PDSC is required to pay compensation for that representation and the related expenses.

PDSC may contract with individual mitigation investigators for these services.

Awarding these contracts is a proprietary function of PDSC. All such contracts are:

- 1) subject to PDSC's express approval under ORS 151.216(1)(d), and
- 2) contracts with independent contractors for personal services.

PDSC reserves the right to reject any or all proposals received by reason of this RFP or to negotiate separately in any manner necessary to serve the best interests of the PDSC and the state. PDSC reserves the right to seek clarifications of proposals and to award a contract(s) without further discussion of the proposals submitted. PDSC reserves the right to amend or cancel this RFP without liability if it is in the best interest of the state and public to do so.

#### **1.4 Funding Source**

Under ORS 151.225, the Public Defense Services Account in the General Fund is continuously appropriated to PDSC to pay attorney compensation and other expenses related to the legal representation of financially eligible persons for which PDSC is responsible, including contract payments under ORS 151.219.

#### **1.5 Minorities, Women and Emerging Small Businesses**

Pursuant to ORS 200.035, PDSC shall provide timely notice of RFPs and contract awards to the Advocate for Minorities, Women and Emerging Small Businesses if the estimated value of the contract exceeds \$5,000.

Responses to RFPs shall include a certification, on a form provided by PDSC, that the applicant has not and will not discriminate against a subcontractor in the awarding of any subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

#### **1.6 Schedule of Events**

Release of RFP	May 1, 2015
Proposal Submission <u>Deadline</u> (Received via email by 11:59pm)	June 26, 2015
Commission review of statewide plan	July 30, 2015
Notice of intent to award contracts	October 15, 2015
Commission review of proposals and award of contracts	October 23, 2015

PDSC presently intends to award public defense legal services contracts according to the above time schedule. By publishing this schedule, PDSC does not represent, agree, or promise that any contract will be awarded on a specified date or any other time in any particular county or judicial district. PDSC intends, however, to adhere to these time frames as closely as possible.

PDSC will provide notice of its intent to award contracts to all applicants at least seven (7) days before the award of contracts, unless exigent circumstances require a shorter period of notice.

#### **1.7 General Proposal Review Procedures**

The instructions and information necessary to prepare and submit proposals are found in Part II of this RFP. PDSC will evaluate proposals based on the contents of the applications and any other information available to PDSC. Applicants must submit a completed application using the forms and format provided. Applications MUST be received by PDSC by 11:59 p.m. on the submission deadline date. The following events will then occur.

A. Inadequate Proposals

PDSC may immediately reject proposals that do not meet the minimum RFP requirements. If a proposal is unclear or appears inadequate, PDSC may give the applicant an opportunity to further explain or provide additional information. If PDSC finds the explanation or additional information inadequate, PDSC's decision to reject the proposal will be final and not subject to appeal.

B. Facially Adequate Proposals

PDSC will evaluate proposals that meet the administrative and contractual minimum requirements as set forth in Part II of the RFP. PDSC will evaluate each proposal based on its total characteristics and any other information available to PDSC. During the evaluation period, PDSC may:

- 1) request additional information from applicants to clarify information or material in the proposal; and
- 2) consult with public defense attorneys and others who have knowledge of the applicant to aid in the review of the proposal's merits; and

C. Negotiations

PDSC must ensure that each contract is compatible with:

- 1) the needs of the public defense legal services providers for the types of cases covered by the contract; and
- 2) budget allocations.

During negotiations, PDSC may discuss adjustments to proposed costs, case types, coverage, level of services, or service providers necessary to meet these objectives.

D. Contract Awards

**Award of any contract will be final only when the applicant and the PDSC have properly completed and executed the contract documents.**

E. Contract Terms

PDSC will offer all applicants the same standard contract provisions. Successful applicants will enter into a contract substantively similar to the contract document in Part IV of this RFP, unless otherwise specifically agreed by PDSC.

An applicant may request in the proposal to amend standard terms of the contract. PDSC must approve any change. Applicants who do not otherwise accept the standard contract terms in Part IV may be disqualified.

## **1.8 Proposal Evaluation Criteria**

PDSC shall evaluate proposals based on the criteria listed below. PDSC reserves the right to reject any proposals that do not comply with the RFP requirements. PDSC shall be the sole determiner of the relative weight given any criterion. Although price is an important criterion, the intent is to provide financially eligible persons with effective mitigation investigation. The applicant with the lowest cost proposed will not necessarily be awarded a contract. PDSC reserves the sole right to make this determination.

### **CRITERIA:**

- 1) The proposal and any modification is complete and timely, in conformance with the RFP.
- 2) The proposed plan for delivery of services is adequate to ensure effective mitigation investigation. Among the factors PDSC may consider are the quality of services and the experience of the applicant.
- 3) The applicant has the ability to perform the contract effectively and efficiently and to provide services in the types of cases proposed. PDSC may consider the applicant's qualifications and experience providing public defense mitigation investigative services.
- 4) The cost for services is reasonable.
- 5) The proposal is consistent with the needs and best interests of the legal services providers involved. Among the factors PDSC may consider are the other service methods and service providers available and the applicant's ability to work with public defense legal services providers and other providers.
- 6) The proposal is consistent with the needs and best interests of the state as a whole. Among the factors PDSC may consider are the other service methods and mix of service providers available, and the applicant's ability to work with other groups affected by the contract, legislative mandates, or other directives that affect the entire statewide contracting patterns or terms.

In addition to the criteria listed above, PDSC will evaluate the available workload, the current number of contractors or hourly-paid providers, and the relative cost of administering current contracts and/or new contract proposals. PDSC has the sole discretion to apportion or not to apportion workloads between applicants AND to award or not to award contracts.

## **1.9 Proposal Records**

Materials submitted by applicants will not be available for public review until all contracts awarded pursuant to this RFP have been fully executed.

Written inquiries on preparing applications may be directed to Caroline Meyer, Contracts Manager at:

caroline.meyer-@opds.state.or.us

## **PART II -- PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS**

This part of the RFP contains the instructions and requirements for preparing and submitting proposals for public defense mitigation investigative services contracts.

### **2.1 Submitting Proposals**

The applicant is responsible for any costs incurred in preparing or delivering the proposal. The applicant is responsible for ensuring that the proposal is received timely by the Public Defense Services Commission.

There is no implied promise to award a contract to any applicant based upon the submission of a proposal.

#### **A. Form of Submission**

**Proposals MUST be submitted as an email attachment in a searchable Portable Document Format (PDF). The PDF must not be password protected nor copy protected.**

Any text in the body of the transmitting email will not be reviewed and will not be considered to be part of the proposal.

The email should be sent to: mail@opds.state.or.us

#### **B. Deadline**

Proposals MUST BE RECEIVED by PDSC no later than 11:59 p.m. on the submission deadline date.

**The submission deadline for proposals is June 26, 2015.**

If the applicant fails to submit the proposal(s) in accordance with the deadline to PDSC, PDSC will disqualify the proposal(s), unless authorization for late submission is granted in writing by PDSC.

### **2.2 Application Format**

Applicants must use the attached application format for submission of all proposals and must answer all questions or state the reason why a specific question is not relevant to the particular proposal. PDSC may disqualify any proposal that is not in the required format or is incomplete.

### **2.3 Acceptance of RFP and Contract Terms**

- A. Applicants are responsible for reviewing the terms and conditions of the RFP and the standard terms of the contract.
- B. By signing and returning the application form, the applicant acknowledges that the applicant accepts and intends to abide by the terms and conditions of the RFP. Further, the applicant accepts the standard terms and conditions of the contract contained in Part

IV, unless and only to the extent that the applicant proposes exceptions as described below.

- C. The applicant must clearly state in the proposal any proposed exceptions to the general terms of the contract, including reasons to support the exceptions and estimated efficiencies and/or cost savings. PDSC reserves the right to accept, reject, or negotiate exceptions to the contract terms.
- D. Any changes to the standard terms of the contract proposed by PDSC will be provided, in writing, to each applicant.

## **2.4 Multiple Proposals**

An applicant may submit more than one proposal. Each proposal must be complete in itself. The proposal must state whether it is in addition to or an alternative to other proposals submitted by the applicant.

## **2.5 Modification of Proposals**

### **A. When Permitted**

Applicants may not modify proposals after the submission deadline, unless PDSC agrees thereto, upon written request by applicant. Until that date, an applicant may modify its proposal(s) in writing. Modifications must be:

- 1) prepared on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) must state whether the new document supersedes or modifies the prior proposal.

### **B. Delivery**

Applicants must deliver any modifications in the same manner as required by Section 2.1.A for original proposals.

### **C. Included in Proposal File**

All documents relating to the modification of proposals will be made part of the proposal file.

## **2.6 Mistakes in Submitted Proposals**

### **A. When Corrections Permitted**

PDSC will permit applicants to correct mistakes on a proposal only to the extent correction is not contrary to PDSC's interest or to the fair treatment of other applicants. PDSC has sole discretion to allow an applicant to correct a mistake. PDSC will notify the applicant if and when PDSC allows corrections to proposals.

### **B. Procedure When PDSC or Applicant Discovers Mistake**

If PDSC or the applicant discovers a mistake before the proposal deadline, the applicant may amend the error using the procedures for proposal modification in Section 2.5 above.

PDSC will proceed as follows when PDSC discovers or is notified of mistakes in proposals after the submission deadline but before contract awards are made:

1) Minor Inaccuracies

PDSC may waive or correct minor inaccuracies or insignificant mistakes. Minor inaccuracies are:

- a) matters of form rather than substance that are evident from the proposal documents; or
- b) insignificant mistakes that do not prejudice other applicants; e.g., the inaccuracy or mistake does not affect price, quantity, quality, delivery, or contractual conditions.

2) Mistakes Where Intended Correct Proposal is Evident

If the mistake and the intended correct proposal are clearly evident on the face of the proposal or can be determined from accompanying documents, PDSC may consider the proposal. Examples of mistakes that may be clearly evident on the face of the proposal are typographical errors, transposition errors, and mathematical errors.

3) Mistakes Where Intended Correct Proposal is Not Evident

PDSC may not consider a proposal in which a mistake is clearly evident on the face of the proposal but the intended correct proposal is not evident or cannot be determined from accompanying documents, including requests for correction or modification under Sections 2.5 and 2.6.

C. Included in Proposal File

All documents relating to correcting a mistake will be made part of the proposal file.

## **2.7 Withdrawal of Proposals**

A. Request to Withdraw

An applicant may withdraw a proposal at any time by written request. Requests to withdraw a proposal from consideration must be:

- 1) on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) submitted to PDSC in the same manner as required by Section 2.1.A for original proposals.

B. Included in Proposal File

All documents relating to the withdrawal of proposals will be made a part of the proposal file.

## **2.8 Evaluation of Proposals**

PDSC will begin to evaluate proposals upon receipt, subject to the procedures and criteria described in Part I.

## **2.9 Categories of Cases Available for Contract**

A proposal for public defense mitigation investigative services may include coverage of all, some, or any of the following categories of cases for which financially eligible persons have a right to appointed counsel in state court at state expense:

- Capital Murder
- Death Sentence Post-Conviction Relief

## **2.10 Cost of Services**

### **A. Expenses Included in Contract Price**

Public defense contractors are responsible for all reasonable and necessary expenses that are considered overhead.

PDSC bears the costs outside of any public defense contract for:

- 1) copies;
- 2) long distance telephone expenses;
- 3) in-state mileage;
- 4) non-routine case expenses that are preauthorized such as out-of-state travel.

Applicants should not include these case-related expenses in calculating the cost of providing contract services.

### **B. Reasonable Expenses**

Applicants should project the cost of contract expenses at rates no greater than customary for the community and the type of service or expense. PDSC will not pay premium rates. PDSC expects contractors to provide facilities reasonably adequate to ensure an environment conducive to providing effective and efficient services.

## **2.11 Proposal Application Format (Part III of RFP)**

The application format consists of:

- 1) Application Summary;
- 2) Certification Form; and
- 3) Proposal Outline divided in the following sections:

- a) Service Delivery Plan
- b) Proposed Contractor Certificate of Compliance with Applicable Oregon Tax Laws
- c) Proposed Contractor Independent Contractor Certification Statement

**THE FOLLOWING PAGES APPL. 1 THROUGH APPL. 5 ARE THE RFP APPLICATION AND PROPOSAL OUTLINE.**

PUBLIC DEFENSE SERVICES COMMISSION  
REQUEST FOR PROPOSALS  
FOR  
PUBLIC DEFENSE MITIGATION INVESTIGATIVE SERVICES CONTRACTS

PART III

PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE

**(TO BE COMPLETED AND SUBMITTED TO PDSC)**



\_\_\_\_\_  
Signature Date \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name of Authorized Representative

\_\_\_\_\_  
Title or Representative Capacity

\_\_\_\_\_  
Applicant Name

### **3.3 PROPOSAL OUTLINE**

**The following is an outline of the information each applicant MUST provide.** ALL questions must be answered and all requested information must be completed. If a certain question or requested information is "Not Applicable" to the applicant's proposal, please note "NA."

#### **A. SERVICE DELIVERY PLAN**

The purpose of a public defense mitigation investigative services contract is to provide cost-effective delivery of services that will allow counsel to meet constitutional, statutory, and other legally mandated standards of representation. Please describe, in detail, applicant's service delivery plan and how it will ensure effective and efficient service. Include information on the following:

1. Case Services. Describe the workload and case types to be covered. Include any limitations in coverage by case type, county or region.
2. Service Delivery. Describe how applicant will provide timely, effective, and efficient case-related services. Include how applicant will comply with ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, June 2008 (available at [www.oregon.gov/opds](http://www.oregon.gov/opds));
3. Equipment. Describe equipment or information systems applicant has or will obtain to improve the provision of services under the proposal. If applicant uses or will use a computer system, please specify hardware and software to be used.
4. Professional Development Plan. Describe plans for professional development and training methods to maintain current awareness of new developments regarding mitigation services in capital murder cases.
5. Readiness Status. Describe what applicant needs to do to be ready and able to begin services on the proposed contract effective date. If more time is needed, explain why and when applicant will be available.
6. Other Information. Include any other information you believe is important or relevant to PDSC's review of the service delivery plan.
7. Contract Terms. Include any requests to modify the standard terms of the contract. Explain the purpose of and need for modification and how it will affect the service delivery plan and cost. Again, PDSC has sole discretion to allow modification of any contract term.

**B. PROPOSED CONTRACTOR CERTIFICATE OF COMPLIANCE WITH APPLICABLE OREGON TAX LAWS**

Must be provided for a consortium (corporation) as well as for each consortium member.

I, the undersigned, being first duly sworn,

Mark only one: ( X )

\_\_\_\_\_ hereby certify under penalty of perjury that I am not in violation of any Oregon tax laws.

\_\_\_\_\_ authorized to act in behalf of \_\_\_\_\_,  
*(name and address of firm, corporation, or partnership [Please type])*

hereby certify under penalty of perjury that \_\_\_\_\_  
*(name of firm, corporation, or partnership [Please type])*

is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118, 119, and 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Federal ID # or  
Social Security #: \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**C. PROPOSED CONTRACTOR INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT**

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapters 316, 656, 657 and 670:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.
3. You furnish the tools or equipment necessary to do the work.
4. You have the authority to hire and fire employees to perform the work.
5. You are paid on completion of the project or on the basis of a periodic retainer.
6. You filed federal and state income tax returns for the business for the previous year, if you performed labor or services as an independent contractor in the previous year.
7. You represent to the public that you are an independently established business, as follows:

YOU MUST MEET FOUR (4) OR MORE OF THE FOLLOWING:

- A. You work primarily at a location separate from your residence.
- B. You have purchased commercial advertising, business cards, or have a trade association membership.
- C. You use a telephone listing and service separate from your personal residence listing and service.
- D. You perform labor or services only pursuant to written contracts.
- E. You perform labor or services for two or more different persons within a period of one year.
- F. You assume financial responsibility for defective workmanship and breach of contract, as evidenced by performance bonds or liability insurance coverage.

I hereby certify that the above information is correct.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Entity \_\_\_\_\_

PUBLIC DEFENSE SERVICES COMMISSION  
REQUEST FOR PROPOSALS  
FOR  
PUBLIC DEFENSE MITIGATION INVESTIGATIVE SERVICES CONTRACTS

PART IV  
CONTRACT GENERAL TERMS

**PUBLIC DEFENSE MITIGATION INVESTIGATION CONTRACT**

**BETWEEN PUBLIC DEFENSE SERVICES COMMISSION AND**

**CONTRACTOR NAME**

**GENERAL TERMS**

**AND**

**SPECIFIC TERMS**

**CAPITAL MURDER CASES**

**JANUARY 1, 20XX TO DECEMBER 31, 20XX**

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# GENERAL TERMS

## 1 DEFINITIONS

### 1.1 Interpretation of Terms

Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

### 1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

### 1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

### 1.4 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

### 1.5 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

### 1.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

### 1.7 Case

A "case" is any action in this state in which court-appointed counsel has been appointed to represent a client in a matter to which there is a right to appointed counsel at state expense.

## 2 MUTUAL RIGHTS

### 2.1 Waiver

Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

### 2.2 Attorney Fees

If a party brings any action, suit, or proceeding to enforce this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

### 2.3 Termination

The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

## 3 RIGHTS OF PDSC

### 3.1 Subcontracts

Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor.

### 3.2 Assignment of Contract

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

### 3.3 PDSC Rights for Failure to Obtain Workers Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and

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- (c) terminate this contract:
  - (i) for repeated instances of failure to comply; or
  - (ii) for failure to comply within 30 days after PDSC suspends this contract.

**3.4 De Minimis Changes in Contractor Reports/Documents**

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

- (a) format or content of any report or other document to be submitted by Contractor;
- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document. (See Section 6.1)

**3.5 Termination by PDSC for Cause**

**3.5.1 Reasons for Contract Termination**

PDSC may terminate this contract for cause, for the following reasons:

- (a) Contractor's material breach of any duty or obligation under this contract;
- (b) Contractor's willful or repeated disregard of the procedures required by the courts in which Contractor provides services; provided, however, that good faith actions of counsel undertaken to advance or preserve a constitutional or statutory right of a client shall not be deemed cause for termination;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by standards of performance and rules of professional conduct; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate mitigation investigation under this contract or fulfill the obligations of this contract.

**3.5.2 No Acceptance of Cases After Notice**

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

**3.6 Funding Modification, Suspension, or Termination**

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably determines that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

**3.7 Increasing Workload: Renegotiation at PDSC Option**

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the workload will increase substantially due to the number of available cases; and
- (b) Contractor demonstrates that it has a sufficient number of staff to manage the additional workload
- (c) PDSC determines that renegotiation is in the state's interest.

PDSC will not pay Contractor for hours in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor performing the work.

**3.8 Review, Verification and Inspection of Records**

**3.8.1 Request**

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) as often as PDSC reasonably may deem necessary during the contract term.

**3.8.2 Access to Facilities and Provision of Records**

PDSC may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory, or common law right or privilege of any client or Contractor employee are waived by Contractor.

**3.8.3 Other Information**

Upon the PDSC's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.3, 4.4 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the question or concern identified.

**3.8.4 Timely Reports by PDSC**

When PDSC undertakes a review of Contractor, PDSC

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shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

**3.9 Use of Equipment Purchased with Contract Funds**

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract. Any equipment Contractor acquires with funds expressly provided by this contract shall be used for these purposes.

**3.10 Return of Equipment Purchased with Contract Funds**

Any equipment purchased with expressly identified contract funds shall accrue to PDSC when this contract is terminated or expires and no new contract is agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:

- (a) Contractor purchased the equipment with separately identified funds from this contract or public defense services contracts with similar provisions or with insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;
- (b) had an original dollar value of \$500 or more; and
- (c) whose useful life exceeds the term of this contract.

**3.11 Limit on Return of Equipment to PDSC**

Section 3.10 does not apply to any Contractor that is a nonprofit, tax-exempt corporation whose articles of incorporation require the transfer or distribution of equipment to another nonprofit, tax-exempt corporation that provides public defense services in the event of full or partial wind-down.

**4 RIGHTS OF CONTRACTOR**

**4.1 Termination By Contractor For Cause**

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

**4.2 Public Defense Cases Outside Contract**

Contractor may accept additional public defense cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional cases do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "mitigation investigation", set forth in Section 7.1, for cases accepted under this contract.

**4.3 Client Records**

Contractor grants no right to PDSC or designee of PDSC to observe mitigation investigator/client or mitigation investigator/attorney consultations or to review

information in case files that is:

- (a) privileged because of the mitigation investigator/client or mitigation investigator/attorney relationship; or
- (b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

**4.4 Personnel Records**

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

**5 MUTUAL OBLIGATIONS**

**5.1 Successors in Interest**

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

**5.2 Compliance with Applicable Law**

**5.2.1 In General**

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and independent contractor status.

**5.2.2 Laws Incorporated by Reference**

The provisions of ORS 279.312, 279.314, 279.316, and 279.320 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

**5.3 Notice of Contract Modification, Suspension, or Termination**

A notice to modify, suspend, or terminate this contract shall:

- (a) be in writing;
- (b) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;
- (c) become effective for willful breach not less than 14 days from delivery; and

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(d) become effective not less than 60 days from delivery for non-willful breach.

**5.4 Modification or Termination Due to Legislative Action or Court Interpretation**

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

**5.5 Modification or Termination Due to Decreased Workload**

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

**6 OBLIGATIONS OF PDSC**

**6.1 State Funding Shortfall**

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider the funds available, the requirement to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

**6.2 Payments in Addition to Contract Price**

PDSC shall pay for case expenses as described in the Public Defense Payment Policies and Procedures and this section of the contract from funds available for the purpose.

Contractor agrees to request reimbursement under this agreement for those types of expenses defined and enumerated herein;

(a) such case-related expenses that are reasonable and necessary to provide an adequate defense that are defined as expenses under ORS 135.055 AND which are not related to office overhead, salaries, benefits, out-of-state travel, airfare, personal services (such as psychologists, interpreters, expert witnesses). Routine expenses, for the purpose of reimbursement, primarily include in-state travel expenses, audio and video tapes, records and copy services from outside sources;

(b) such case-related expenses that there would be a significant risk of error in the proceedings if the service were not provided or the expense were not incurred; and

(c) such case-related expenses that are reasonable. In instances where the policy establishes maximum allowable costs and unless otherwise specifically agreed herein, the presumed "reasonable amount" of an expense is the policy guideline rate. In other instances, a "reasonable amount" is presumed to be the market value of the service or expense or the amount necessary for the provider of the service or expense to recover only its actual cost of providing the service or item. For services or items where there is no opportunity for competitive services or production of items (where the provider is a captive entity) (for example, cost of medical records), Contractor should notify the director of any costs that exceed what Contractor believes is reasonable.

**6.2.1 Types of Expenses Subject to Reimbursement**

**6.2.1.1 In-state Lodging**

Reimbursement for in-state lodging is limited to actual costs incurred when Contractor cannot reasonably avoid incurring this expense and the expense is necessary. Contractor shall seek commercial or government rates. The maximum allowable amount for lodging is the current rate for reimbursement according to the policy. Amounts exceeding the lodging expense maximums will be disallowed unless the higher rate has been preauthorized by the the Office of Public Defense Services.

**6.2.1.2 Meals in Conjunction with Overnight Travel**

Contractor is entitled to claim a meal allowance for meal expenses incurred in conjunction with overnight travel. Meal allowance amounts are those set forth in the policy. Receipts need not be submitted when requesting a meal allowance

**6.2.1.3 Meals for Day Trips**

If Contractor does not incur lodging costs but, due to departure or return times, could justify a lodging expense, Contractor is entitled to claim a meal allowance based upon the following travel times. The amounts allowed are those set forth in the policy for that meal.

- (a) If Contractor leaves home before 5:00 a.m., Contractor is entitled to the breakfast allowance amount.
- (b) If Contractor leaves home before 5:00 a.m. and does not return until after 2:00 p.m., Contractor is entitled to the breakfast and lunch meal allowance amounts.
- (c) If Contractor does not return home until after 9:00 p.m., Contractor is entitled to the dinner allowance amount.

**6.2.1.4 Telephone Expenses While Traveling**

Contractor may be reimbursed for case-related telephone

## SEC. 7 OBLIGATIONS OF CONTRACTOR

charges incurred while traveling.

Contractor may be reimbursed for one telephone call per day to Contractor's office to conduct business not related to a contract case when the travel requires an overnight stay. The amount of reimbursement shall be the actual cost of the telephone call not to exceed \$5.00.

Contractor may be reimbursed for one personal telephone call per day when the travel requires an overnight stay. The amount of reimbursement shall be the actual cost of the telephone call not to exceed \$5.00.

### 6.2.1.5 Routine Expenses Not Related to Travel

- (a) Discovery costs.
- (b) On-line computer research charges.
- (c) Photocopy and printing costs, not to exceed the maximum amounts listed in the policy.
- (d) Postage and delivery costs, if the cost of sending an individual item is \$1.00 or greater and is supported by a receipt.
- (e) Long-distance and collect telephone charges when the cost of an individual call is \$1.00 or greater.
- (f) Potentially relevant medical, mental health, school, corrections, child welfare, internal affairs, and arrest/conviction records;
- (g) Film and photograph processing;
- (h) Copies of audio or video recordings, logs and photographs, including but not limited to those obtained from law enforcement, prosecution and emergency communication services;
- (i) Service of process fees where counsel documents the necessity of incurring such expenses (rather than utilizing the sheriff's office(s) or case investigators) was outside counsel's reasonable control;
- (j) Materials other than ordinary office supplies for, or items that will serve as exhibits for court proceedings where the cost per item does not exceed \$25 and the total expense for the type of exhibit(s) does not exceed \$100; and
- (k) Other items similar to those described in this section with proper documentation that shows the expense to be both reasonable and necessary and properly payable from public defense funds. Provider should submit a written explanation with any request for payment of an out-of-pocket expense not listed in this section unless the OPDS has preauthorized the expense. An original receipt, invoice or copy of a cancelled check is required if item is obtained from an outside vendor.

### 6.2.2 Types of Expenses Excluded From Payment Unless Preauthorized

- (a) Expenses not specifically described in the contract that require preauthorization as non-routine expenses or that are presumed to be covered under the base contract as overhead expenses.
- (b) Airfare and vehicle maintenance.
- (c) Non-direct travel expenses, such as dry cleaning or

laundry services.

- (d) Direct client expenses, such as haircuts, clothing or glasses.
- (e) Transcripts.
- (f) Expenses required to secure the attendance of an out-of-state witness.
- (g) Computer software programs.

## 7 OBLIGATIONS OF CONTRACTOR

### 7.1 Standards of Mitigation Investigation

Contractor shall provide mitigation investigation for the purpose of providing cost-effective delivery of services that will allow counsel to meet constitutional, statutory, and other legally mandated standards of representation. Contractor will provide timely, effective, and efficient case-related services in compliance with the ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases (June 2008).

### 7.2 Contractor Responsibilities Regarding Financially Ineligible Clients

Contractor shall notify the client's court-appointed counsel if Contractor learns that a client is ineligible for state-funded mitigation investigation under this contract.

### 7.3 Special Obligations To State of Oregon

#### 7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

#### 7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

##### 7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

##### 7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

##### 7.3.2.3 Workers' Compensation

As an independent contractor, Contractor shall provide workers' compensation coverage for all subject workers

## SEC. 7 OBLIGATIONS OF CONTRACTOR

performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter 656 and for the entire contract term.

### **7.3.3 State Tort Claims Act Not Applicable**

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

### **7.3.4 Equal Rights of Contractor's Employees**

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

### **7.3.5 Contractor Insurance To Protect State of Oregon**

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

#### **7.3.5.1 General Liability Insurance**

At its expense, in whole or in part from contract funds, Contractor shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

#### **7.3.5.2 Casualty Insurance**

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

#### **7.3.5.3 Additional Insured**

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

### **7.3.5.4 Cancellation or Change**

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

### **7.3.6 Internal Controls**

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly received, expended, and accounted for.

### **7.3.7 Protection of Consumer Personal Information**

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

## **7.4 Record Keeping**

### **7.4.1 Service Records**

Contractor shall maintain current information on individual cases assigned pursuant to this contract showing services provided and hours of time expended. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection of PDSC, or PDSC's designee or agent.

### **7.4.2 Financial Records**

Contractor shall maintain financial records on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

### **7.4.3 Retention Period**

For purposes of this contract only, Contractor agrees to preserve all service records and supporting documentation regarding contract work performed for a period of three (3) years after the expiration of this contract.

## **7.5 Reports to PDSC**

### **7.5.1 Time Records**

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly time report for the preceding month. Contractor may submit amended time reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly time report to be amended.

## SEC. 7 OBLIGATIONS OF CONTRACTOR

### 7.5.2 Penalty for Late Reports

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment and subsequent payments until PDSC receives the report and supporting documentation.

### 7.5.3 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

### 7.6 Costs and Expenses

Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial, except for those described in 6.2; and
- (c) staff services, unless specifically authorized by PDSC to be paid outside this contract.

Contractor shall not expend contract funds for out-of-state travel or other costs unrelated to a specific case without the express written authorization of PDSC.

### 7.7 Special Notices

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

- (a) Contractor's ability to carry out this contract, including changes in office location;
- (b) Contractor's ability to meet financial obligations; and
- (c) matters affecting Contractor's ability to provide services to clients.

#### 7.7.1 Time Requirement for Notices

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

#### 7.7.2 Specific Notices Required

##### 7.7.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 and immediate notice of the cancellation of any such policies.

##### 7.7.2.2 Change in Contractor's Organization

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall demonstrate to PDSC its continued ability to meet contract requirements or shall propose reductions in caseload and/or value if Contractor is unable to meet contract requirements because of such organizational change.

### 7.7.2.3 Events Which Could Impair the Contract

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

#### (a) Criminal Charges

A member of Contractor's staff has been charged with a crime.

#### (b) Criminal Conviction

A member of Contractor's staff has been convicted of a crime punishable by a term of incarceration of one or more years or involving moral turpitude.

### 7.7.2.4 Early Quota

Contractor shall notify PDSC immediately upon determining that Contractor will reach its total contract quota before the expiration of the contract.

### 7.8 No Dual Payments for Contract Work

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract without PDSC authorization;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds.

## 8 MUTUAL RISKS

### 8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

### 8.2 Tort Liability

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

## 9 RISKS OF CONTRACTOR - REFUND FOR SHORTAGE

If Contractor's actual workload value, at the expiration or termination of the contract, is less than the workload value set forth in this contract, Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.



## CONTRACT BETWEEN PDSC AND CONTRACTOR PAYMENT SCHEDULE

End of Month (Unless noted)	Monthly Payment
January 2016	
February 2016	
March 2016	
April 2016	
May 2016	
June 2016	
July 2016	
August 2016	
September 2016	
October 2016	
November 2016	
December 2016	
<i>First-Year Subtotal</i>	\$0
January 2017	
February 2017	
March 2017	
April 2017	
May 2017	
June 2017	
July 2017	
August 2017	
September 2017	
October 2017	
November 2017	
December 2017	
<i>Second-Year Subtotal</i>	\$0
<b>Total Payments</b>	<b>\$0</b>

**CONTRACT BETWEEN PDSC AND CONTRACTOR  
CASELOAD AND CASE VALUE MATRIX**

	Hourly Rate	Number of Hours	Total Value
1/1/16 - 12/31/16			
	\$0	0	\$0
			\$0
First-Year Total		0	\$0
1/1/17 - 12/31/17			
	\$0	0	\$0
			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0

# Attachment 7



## Oregon Government Ethics Law: Overview and Developments

Presented to the Public Defense Services Commission

By Paul Levy, General Counsel

December 9, 2010

**I. Introduction.** The Oregon Government Ethics Law, which applies to all public officials in Oregon, including members of the Public Defense Services Commission (PDSC) and the staff of the Office of Public Defense Services (OPDS), has undergone several significant changes since it was first enacted by initiative in 1974. A major legislative overhaul of the law in 2007 included new definitions and limitations on gifts to public officials and enhanced reporting requirements for many public officials. The PDSC received training on these changes at a retreat on March 21, 2008. In 2009 the Legislative Assembly, responding to widespread dissatisfaction with some provisions of its 2007 enactment, made further changes to the law's gift and reporting requirements, among other changes.

**II. Scope of the Law.** The Oregon Government Ethics Law is codified in Chapter 244 of the Oregon Revised Statutes.<sup>1</sup> It applies to any Oregon "public official," defined as any person serving the State of Oregon or any of its political subdivisions or any other public body as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services. ORS 244.020(14).

A defining feature of the law is the imposition of personal responsibility for complying with its provisions and personal liability for any sanction imposed for violations of the law. ORS 244.260; 244.350

**III. Operation of the Law.** The Oregon Government Ethics Commission (OGEC) and its staff are responsible for enforcement of the law. The OGEC has issued administrative rules in Chapter 199 of the Oregon Administrative Rules.<sup>2</sup> In addition to investigating complaints concerning violation of the law, the OGEC staff will provide prompt informal and written advisory opinions to public officials. Reliance on those opinions may mitigate a sanction for violation of the law. ORS 244.282-244.284. The OGEC will also issue formal advisory opinions. The OGEC cannot impose a penalty on a public official who relies upon one of its formal opinions, although a person who does so may still be found in violation of the law. ORS 244.280. In other words, as the OGEC explains in

<sup>1</sup> <http://www.leg.state.or.us/ors/244.html>.

<sup>2</sup> [http://arcweb.sos.state.or.us/rules/OARS\\_100/OAR\\_199/199\\_tofc.html](http://arcweb.sos.state.or.us/rules/OARS_100/OAR_199/199_tofc.html).

their newly updated *Guide for Public Officials*<sup>3</sup>, there is no “safe harbor” for violations of the law.

The OGEC maintains a website with a variety of resources for understanding the law, including the *Guide for Public Officials*.

**IV. Major Provisions of the Law.** The following are provisions that members of the PDSC and its staff will encounter most frequently. This outline does not discuss other significant provisions, such as those addressing nepotism and restrictions upon former public officials. The *Guide for Public Officials*, referenced above, is an excellent overview of the entire law.

**1. Use of position or office for financial gain.** A cornerstone of the Government Ethics law prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the benefit would not otherwise be available but for the position held by the public official. ORS 244.040(1). A “financial benefit” can be either an opportunity for gain or avoidance of an expense. Government employees violate this provision if they conduct personal business on an agency’s time or with government equipment. Similarly, a public official could not make personal purchases from a vendor offering discounted prices for services or supplies to a government agency unless those discounted prices were also available to a significant portion of the general public.

A corollary of this rule is the prohibition on the use or attempted use of confidential information gained because of the public position to further the public official’s personal gain. ORS 244.040(4).

Public officials are permitted to accept certain statutorily identified financial benefits that would not otherwise be available but for holding a public position. ORS 244.040(2). These include official compensation, publicly paid reimbursement of expenses, certain honoraria and awards for professional achievement, and gifts that do not exceed the limitations set forth elsewhere in the Government Ethics Law.

**2. Conflicts of Interest.** Public officials must respond as directed by the Government Ethics Law to conflicts of interest when participating in official action that “would or could” result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either the public official or a relative is associated. ORS 244.120. Different responses are required depending upon the position held by the public official and whether the conflict of interest is “potential” (“could” result in a personal benefit) or “actual” (“would” result in a personal benefit). Public employees must provide written notice of actual or potential conflicts of interest to the person who appointed or employed them, and request that the appointing or employing authority dispose of the matter giving rise to the conflict. Members of commissions must publicly announce the nature of the conflict before participating in any official action on the issue giving rise to the conflict, and then:

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<sup>3</sup> <http://www.oregon.gov/OGEC/index.shtml>.

- For potential conflicts of interest, following the public announcement, the commissioner may participate in official action on the issue that gave rise to the conflict.
- For actual conflicts of interest, following the public announcement, the public official must refrain from further participation in official action on the issue that gave rise to the conflict, unless the official's vote is necessary to meet a number of votes required for the official action, in which case the public official may vote but must otherwise refrain from any discussion of the matter. This exception does not apply when there are insufficient votes because of a member's absence when the governing body is convened.

There are a number of important exemptions from the law's conflict of interest provisions, including when a conflict arises from a membership or interest held in a business, occupation, industry or other class that is a prerequisite for holding the public office or position; when the financial impact would affect a public official to the same degree as all other inhabitants of the state or a smaller class or identifiable group; and when the conflict arises from an unpaid position as officer or member in a nonprofit corporation that is tax-exempt under Sec. 501(c) of the Internal Revenue Code. ORS 244.020(12).

3. **Gifts.** The gift sections of the Government Ethics Law are among its most vexing provisions, and also among those provisions that were significantly modified by the 2009 legislation. Generally, public officials may receive gifts. Indeed, the acceptance of lawful gifts is an exception to the general prohibition, discussed above, on the use of an official position to gain personal financial benefits. In most instances, the questions for public officials concern whether a gift may be accepted with or without limitations and the nature of any applicable limitations.

Generally, the law prohibits a public official from receiving gifts that exceed \$50 in a calendar year from a source that has a "legislative or administrative interest" in the decisions or votes of the public official. ORS 244.025. If the source does not have such an interest, the public official can receive unlimited gifts from that source. ORS 244.040(2)(f). Thus, the analytical framework for the law's gift provisions require an understanding of what it means to have a "legislative or administrative" interest, and how the law defines "gifts."

- A. **Definition of "legislative or administrative interest."** **CHANGED!** This concept was significantly modified by the 2009 legislation in a way that narrows the application of the gifts provisions. Prior to the 2009 amendments, the focus was on whether the source of a gift had an economic interest, distinct from that of the general public, in any official action of the public official's governmental agency. Now the focus is on an interest in the decisions or votes of the particular public official to whom a gift is offered. ORS 244.020(9); ORS 244.040(2)(f). Thus, now it's possible that one public official may be able to accept a gift without limitations while another, working in the same setting, may not because the authority of the public officials may differ. For instance, the OGEC, by administrative rule, has said that making a recommendation or giving advice in an advisory capacity does not constitute a "decision." OAR 199-005-0003. If a

person does not have authority to make a decision or to vote on a matter of interest from a source, or the particular interest is not subject to a vote or decision by a person, that person may be permitted to accept a gift from the source without limitation.

B. **Definition of “gifts.”** A “gift” means something of economic value that is offered to a public official, or to relatives or members of the household of the public official, without cost or at a discount or as forgiven debt, and the same offer is not made or available to the general public. ORS 244.020(6)(a). This is a fairly unremarkable meaning. The crux of the “gift” definition, however, is the many things of economic value that are statutorily exempted from the definition. Some of these include:

- a. “An unsolicited token or award of appreciation in the form of a plaque, trophy, desk item, wall memento or similar item, with a resale value reasonably expected to be less than \$25.” ORS 244.020(6)(b)(C).
- b. **CHANGED!** The cost of admission to or the cost of food or beverage consumed by a public official at a reception, meal or meeting held by an organization when the public official appears as a representative of a public body. ORS 244.020(6)(b)(E). Prior to the 2009 legislation, this provision only applied if the public official was a scheduled speaker at the event.
- c. **CHANGED!** The reasonable expenses for attendance by a public official at a convention or other meeting at which the person is scheduled to deliver a speech or make a presentation or appeal on a panel if the expenses are paid by any unit of federal, state or local government, a recognized Native American tribe, a membership organization to which the public body pays membership dues or a not-for-profit corporation that is tax exempt under Sec. 501(c)(3) of the Internal Revenue Code.
  - i. Prior to the 2009 legislation, the “not-for-profit” corporation, in order to qualify, had to receive “less than five percent of its funding from for-profit organizations or entities. This language, which effectively excluded the Oregon Criminal Defense Lawyers Association (OCDLA), was deleted from the law. Thus, for instance, with the change, assuming that OCDLA had a legislative interest in a public official’s vote or decision, that public official may receive travel expenses in excess of \$50 from OCDLA in connection with the appearance of that official as a presenter at an OCDLA program.
  - ii. However, even before this amendment, the OPDS had received a staff advisory opinion from the OGEC that *any* public official could receive such payment from OCDLA because OPDS paid for staff membership in the organization, making it a “membership organization to which a public body pays membership dues.”

- d. Contributions to a legal expense trust fund established for the benefit of the public official for purposes of defending against actions brought in connection with performance of the person's public duties. ORS 244.020(6)(b)(G).
- e. Waiver or discount of registration expenses or material at a continuing education event that bears a relationship to the public official's office and at which the person participates in an official capacity. 244.020(6)(b)(J).
- f. Food or beverage consumed by the public official where no cost is placed on it, and entertainment that is incidental to the main purpose of an event attended by the public official. ORS 244.020(6)(b)(L)&(K).
- g. **NEW!** Anything of economic value that is received as "part of the usual and customary practice" of the person's private business or employment or volunteer activities, and the thing bears no relationship to the person's public office or position. 244.020(6)(b)(O).

C. **Entertainment expenses. REPEALED!** Prior to the 2009 legislation, public officials were prohibited from soliciting or accepting any gifts of entertainment by ORS 244.025(4). This provision was repealed. Now such "gifts" cannot exceed \$50 in a calendar year from a single source with a legislative or administrative interest.

4. **Statements of Economic Interest. CHANGED!** The 2007 legislation required quarterly and annual "verified statements" from many public officials that were widely condemned as overly intrusive and unnecessarily burdensome. In response to these concerns, the 2009 legislation eliminated entirely the requirement of quarterly filings and narrowed and simplified the matters to be reported on the annual filing. The 2009 legislation did add the Executive Director of OPDS to the list of public officials required to file annual statements. ORS 244.050(1)(g)(MM). Members of the PDSC are not among those required to file reports.