

Members

Barnes H. Ellis, Chair
Shaun S. McCrea, Vice-Chair
Michael Greenfield
Henry H. Lazenby, Jr.
John R. Potter
Janet C. Stevens



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Ingrid Swenson

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, June 14, 2007 Meeting
9 a.m. to 1 p.m.

Mt. Jefferson Room
Inn of the Seventh Mountain
Bend, Oregon

AGENDA

- 1. **Action Item:** Approval of the Minutes of PDSC's March 8, 2007 and May 10, 2007 Meetings
(Attachments 1 and 2) Barnes Ellis
- 2. Budget Report
(Attachment 3) Ingrid Swenson and Kathryn Aylward
- 3. **Action Item:** Approval of contract
(Attachment 4) Kathryn Aylward
- 4. **Action Item:** Proposed Changes to Payment Policy
(Attachment 5) Lorrie Railey
- 5. **Action Item:** Review and Possible Approval of Death Penalty Representation Plan
(Attachment 6) Barnes Ellis
- 6. Review of Proposed Service Delivery Plan for Washington County
(Attachment 7) Barnes Ellis
- 7. OPDS's Monthly Report
Site visit report
Legislative report
Discussion of August meeting and retreat
OPDS's Management Team

Please note: Lunch will be provided at the end of the meeting for Commission members and others who ordered lunches in advance.

Next meeting: Please note that the Commission's next meeting will be in Coos Bay on August 9th from 9:00 a.m. to 1:00 p.m.; the Commission retreat will be held on August 9th and 10th immediately following the PDSC meeting.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

March 8, 2007

Room 103, Oregon State Library
250 Winter Street, NE
Salem, Oregon 97301-3950

MEMBERS PRESENT: Barnes Ellis
Chip Lazenby
Mike Greenfield
John Potter
Janet Stevens
Hon. Paul J. De Muniz

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Paul Levy
Rebecca Duncan
Billy Strehlow

[Tape 1, Side A]

Agenda Item No. 1 Approval of the minutes of the February 8, 2007 meeting

003 - 012 **MOTION:** Mike Greenfield moved to approve the minutes; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE: 5-0**

019 Chair Ellis noted the resignation of Commissioner James M. Brown and expressed appreciation for his years of service on the Commission.

Agenda Item No. 2 Delivery of Services in Death Penalty Cases

034 -
[Tape 1; Side B] 001 Rebecca Duncan described how the Legal Services Division handles death penalty cases. She discussed the differences between death penalty cases and other criminal appeals, the considerations affecting the assignment of counsel in these cases, the need to work closely with trial counsel and post conviction counsel during transition, the status of the death penalty cases currently in the office, and new best practices regarding the number of appellate attorneys assigned to each case and the appropriate amount of contact with the client.

- 015 – 084 Death Penalty contractor Richard Wolf talked about access to clients on death row and the need for timely assignment of post conviction relief counsel.
- 096 –
[Tape 2; Side A]
223 Ingrid Swenson described the structure and content of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, and Commission members, OPDS staff and guests then discussed the identification of the “responsible agency”, the assignment of counsel in death penalty cases, the composition of defense teams, the need for more mitigation specialists and post conviction counsel, and training for death penalty attorneys
- Agenda Item No. 3 Amendment to the Compensation Plan**
- 226 – 244 Kathryn Aylward outlined a proposed amendment to the compensation plan to add two new positions – Human Resource Analyst 1 and Human Resource Analyst 2. She explained that the Contract and Business Services Division already had an employee who was performing the human resource function but whose existing designation did not accurately describe her responsibilities. She noted that the amendment would have no budget impact.
- 244 - 248 **MOTION:** Mike Greenfield moved to approve the compensation plan amendment; John Potter seconded the motion; hearing no objection, the motion carried. **VOTE: 5-0**
- Agenda Item No. 4 OPDS’s Monthly Report**
- 248 -
[Tape 2; Side B] 154 Ingrid Swenson reported on the initial hearing in the Public Safety Subcommittee of the Joint Ways and Means Committee on the Public Defense Services Commission’s 2007-2009 budget request and on SB 411 which would increase compensation for juvenile dependency representation. Rebecca Duncan discussed three legislative proposals submitted by the Legal Services Division. Jim Hennings and Greg Hazarabedian discussed the progress of United States Senate Bill No. 442 which would create a loan forgiveness program for public defenders and district attorneys. Ingrid Swenson and Rebecca Duncan reported on their participation in attorney recruitment fairs. Olcott Thompson updated the Commission on the status of the litigation between the Marion County Association of Defenders and two former members of the consortium and also discussed the difficulty finding post conviction relief counsel in death penalty cases. Ingrid Swenson described the amendments which had been made to the Commission’s Affirmative Action Plan and Rebecca Duncan discussed steps that had been taken to continue to reduce the appellate backlog.
- 161 **MOTION:** Shaun McCrea moved to adjourn the meeting; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 5-0**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Room 103, **Oregon State Library**
250 Winter St. NE
Salem, Oregon 97301-3950

MEMBERS PRESENT: Barnes Ellis
Chip Lazenby
Mike Greenfield
John Potter
Shaun McCrea
Hon. Paul J. De Muniz

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Paul Levy
Peter Gartlan
Rebecca Duncan
Billy Strehlow

TAPE 1, SIDE A

[The meeting was called to order at 9:09 a.m.]

Agenda Item No. 1 Minutes of the February meeting

003 Chair Ellis The first item on the agenda is approval of the minutes of February 8, 2007. Are there any additions or corrections to the summary minutes or the official minutes?

MOTION: Mike Greenfield moved to approve the minutes; John Potter seconded the motion; hearing no objection, the motion carried.

VOTE 5-0.

007 Chair Ellis On the transcript I had a couple of changes. Page 7, line 470, the word "fairs" should be "fares" and on Page 20, line 188, I think the word "defenders" should be "offenders." Other than that I thought they were fine and again, I find them very helpful.

015 I. Swenson Mr. Chair, I do have one correction. Rich Wolf let me know that on page 35, the comment at line 153 is actually his rather than Dennis Balske's. That entire paragraph should be attributed to Rich Wolf.

Agenda Item No. 2 Delivery of Services in Death Penalty cases, cont'd

019 Chair Ellis Alright. I do want to note for the record that since our last meeting, I received a copy a letter from Commissioner Brown to Chief Justice De Muniz tendering his resignation, which the Chief Justice has accepted. I think all of us are very appreciative of Jim Brown's service on this Commission and we regret his decision to resign. I am sure the Chief will find a good replacement, but I did want to acknowledge that he has been an outstanding contributor. The next item on the agency is the Delivery of Services in Death Penalty cases. We had, I

thought, a very interesting meeting at Portland State a month ago on this subject. We are here as sort of the second installment. Ingrid, do you want to introduce the people who you have lined up?

034 I. Swenson Certainly, Mr. Chair. Today, the only piece that you haven't heard about is appellate representation in death penalty cases and that was just because we didn't have time to get to it at the last meeting. Both Becky and Pete are here to talk about that today. Then, if this is the way you wish to proceed, once that presentation has been made, Kathryn and I can answer any questions that you might have and that I didn't address in the draft report. If there are questions for Kathryn and me on costs or other aspects of representation in these cases, then I would propose that we review those issues one by one.

044 Chair Ellis Alright. Becky and Peter, you are the designated presenters.

046 B. Duncan Yes, Mr. Chair. I will be doing the death penalty presentation this morning. What I am here to do is to provide some background information about how our office handles these cases, describing the filings that we make in the cases, the timelines that we are working under and the current cases that we have in the office. Then I can respond to any questions the Commission has. Obviously, the death penalty cases in our office are different from the direct appeal cases that we have in many ways. First, obviously, these cases have automatic and direct review in the Oregon Supreme Court. We do not have to file a notice of appeal. The case is automatically noticed to the court and you go directly to the Supreme Court; you don't go through the Court of Appeals. The cases are more difficult and more complex than our direct appeals in several ways. First, there is the length of these cases in terms of the transcript. These cases have thousands of pages, even the cases we are getting that just involve the penalty stage. The transcripts are thousands of pages long which takes a significant amount of time to review. The issues involved can be complex and unique so we need to have death penalty experienced attorneys in these cases. The death penalty cases are more involved than a direct appeal case because of the number of issues that they present and because of the number of issues that we must raise in these cases. Obviously, we would want to raise every possible issue whether it is preserved or unpreserved. We have two attorneys in our office who have handled several cases, Robin Jones and Eric Johansen. I spoke with them and they said that, at a minimum, the number of assignments of error they would raise in a death penalty case is in the 20s, so these cases have numerous assignments of error. The assignments, of course, can relate to what we might call standard criminal issues and then death penalty unique issues. What is important to know about the standard issues that come up is that, whether it is a motion to suppress because of the bad search or involuntary statements or an issue about the admissibility of evidence, because these death penalty cases go straight to the Oregon Supreme Court, all of these standard criminal issues like motions to suppress, have to be litigated at the highest level because that is what will be setting precedent for the Oregon Court of Appeals and the lower state courts. Basically these death penalty cases can involve several (inaudible) with Supreme Court cases which cause them to be more demanding and involved than our regular cases. The death penalty cases have some unique issues relating to the qualification for the death penalty, the constitutionality of the death penalty statute, and the admissibility of evidence in the penalty phase. So the issues involved are more numerous; we have to litigate it at the highest level; and they have some unique issues. With respect to the filings that our office makes in these cases, there are usually more filings in death penalty cases than in regular cases. Just to give you a very quick outline of the process of the case, we get the transcript in, and under current Oregon Rules of Appellate Procedure we have 180 days from the time that the transcript comes in within which to file our appellant's brief. We file the opening brief and the state has 180 days to file their response brief. We generally will file a reply brief to the state's response brief. We have 90 days to do that. The case proceeds to oral argument. After oral argument, when the opinion issues, we will always explore the possibility of writing a petition for reconsideration and often file a petition for reconsideration provided that we have a basis under the statute for doing so. If we don't prevail at that point in the Oregon courts, then we file a petition for

certiorari in the United States Supreme Court and then if we don't prevail there the case comes back to Oregon and we help the defendant by guiding him to the post conviction relief process and helping him prepare an initial post conviction relief petition and then making sure that counsel gets appointed. So, in the death penalty cases there are a couple of filings that we make routinely in these cases that are in addition to those filed in direct appeals. Reply briefs are almost always done; petitions for reconsideration are often done; petitions for certiorari are always done; and then we have the PCR transition.

- 111 Chair Ellis Do you handle the appeal from denial of PCR?
- 112 B. Duncan No, we do not.
- 113 Chair Ellis Who does that?
- 113 B. Duncan The appellate panel would do that.
- 116 K. Aylward Private attorneys before the appellate panel was created.
- 117 Chair Ellis But to get to the federal habeas, do they have to go through an appeal from denial of a PCR?
- 120 P. Gartlan Yes, Mr. Chair it has to go through the direct appeal and through the post conviction relief process and then it goes into federal habeas.
- 124 Chair Ellis That is the point in the process that I was asking about. PCR is denied, do they have to appeal that, and have cert denied on that, before they get to the federal habeas?
- 128 P. Gartlan No.
- 128 O. Thompson Mr. Chair, Olcott Thompson. To preserve their remedies in federal court they have to exhaust the PCR process, which means they have to appeal.
- 129 Chair Ellis That is what I thought.
- 130 Audience Excuse me Mr. Chair. They have to present the issue to highest state court.
- 133 P. Gartlan State court, not U.S. Supreme Court.
- 133 Chair Ellis Becky, you used two words that were very significant. You said on the appeals, in the death area, you raise all issues preserved or unpreserved. My question is, on the unpreserved issues are you finding problems there? Are death penalty trial lawyers, some of them, not raising below, the issues in a way that you think they should?
- 140 B. Duncan I do have to say, Mr. Chair, that Robin Jones and Eric Johansen and Meredith Allen are the attorneys who are currently handling death penalty cases in our office and I have not reviewed the transcripts in these cases. I know that we do raise unpreserved issues. I know that with respect to several of the issues that we raised in recent cases, the Oregon Supreme Court has declined review on the ground that they were unpreserved, but as far.... I know we have issues that we raise that are unpreserved.
- 150 Chair Ellis No one in this room likes that word "unpreserved". It is just fraught with problems, so my question is, are we doing all we can do at the LSD level to stay in touch with the trial lawyers who are handling the death penalty cases, to do everything we can to make sure they are aware. I know these are very hard issues, maybe that is the word, but they are not self-evident to an ordinary practitioner. You have to really be on top of your game to know about them. Are we doing all we can to try to get to the trial level lawyers to advise them "Here are

some issues that may be in your case, watch for them, be sure to preserve them,” because it just seems to me that our system ought to do that.

- 165 B. Duncan I don't think that we are doing all that we can, in particular with the outreach to the death penalty providers at the trial level. We don't have a system in place where we make sure that we communicate all the errors that we identify on appeal.
- 171 Chair Ellis How can we do better on that? In terms of numbers of cases, it couldn't be that big of a number. In terms of the number of trial level lawyers it is not that big a number.
- 173 B. Duncan No. I think our office could, for example, connect with the death penalty trial bar at, for example, OCDLA's October annual death penalty seminar if there are death penalty specific issues that we are not seeing preserved, that we think should be preserved. We could certainly reach out to the trial level providers at the annual death penalty CLE. As far as unpreserved issues regarding regular criminal issues, the suppression issues, routine issues, our office does reach out to the trial bar, in general, through CLE presentations throughout the year through both the Oregon State Bar and OCDLA. On those types of non-death penalty specific issues, we are out at CLEs. We could certainly increase our communication with death penalty practitioners and specifically at the OCDLA death penalty conference and improve our personal connections with them.
- 191 Chair Ellis If there are unpreserved errors, that is a big part of what the PCR process is about and it just seems to be preventable.
- 194 B. Duncan It certainly can be frustrating for appellate attorneys to see a good issue not raised or not raised well enough for the appellate courts so that we can research and brief it.
- 199 Chair Ellis I would really like to see the practice institutionalized more than just speaking at CLEs. It is a very small number of death penalty trials that occur. They are big trials but there are few of them. I just know that we ought to be doing everything that we can to make sure that these issues get properly raised.
- 206 I. Swenson Mr. Chair, I really think that having Matt Rubenstein in the position of the resource attorney can help to coordinate those efforts.
- 209 Chair Ellis Exactly the kind of thing that we were hoping for.
- 210 B. Duncan I think it would be interesting, either at different stages of the briefing or after the opinion comes down, and certain issues are briefed for preservation purposes, to have members of the death penalty community and resource center come together and talk about what issues were raised in these cases and what issues were not raised.
- 217 Chair Ellis On the other side of the process, the PCR piece, you indicated that your office does facilitate getting that process started? How much do we do to help the PCR attorney identify issues?
- 223 B. Duncan I can speak generally. When the case goes to PCR and the PCR attorney is appointed our office, or course, makes all the materials that we have available to the new attorney. Robin Jones is currently handling death penalty cases and when she reviews the case, she identifies for the client, after reviewing the transcript, all of the issues that she has seen in the case and all of the issues that she believes she can raise on direct appeal. If there is something that she doesn't think she can raise on direct appeal, but that could possibly be a post conviction relief claim, she identifies those issues as well to the client. So there is written documentation of potential PCR issues that she has already recorded and that information is available to the PCR attorney as well. I don't have specific information about other people's practice in handing off the case.

- 240 Chair Ellis Given what we were told last month, and I think I have come to understand, that in the federal system there are lots of traps for the unwary, that if it wasn't handled correctly in the state's system, you can't raise those issues in the federal habeas piece. Shouldn't we be doing more to alert our PCR lawyers as to what potential issues are and make sure the defendant isn't denied that possible issue later in habeas?
- 249 B. Duncan I think it would be helpful when a case is transferred from direct appeal to PCR for the direct appeal attorney to always sit down with the PCR attorney and talk about the case.
- 253 Chair Ellis This is again something you picture Matt helping with.
- 254 I. Swenson Not necessarily in this situation just because, well of course he would be there to assist any lawyer who thought that they needed that, but this really is a one-on-one situation involving that specific case.
- 257 Chair Ellis Right.
- 258 I. Swenson I think that probably happens routinely. It is one of the obligations that attorneys, post conviction attorneys including appellate lawyers, have under the guidelines --to help the client through the next stage of the process.
- 261 P. Levy Mr. Chair, under the ABA Standards that we are using as both a guide and a yard stick for our own work, it is one of the duties of counsel to facilitate the transfer to successor counsel.
- 265 Chair Ellis I assume that. I am just trying to make sure that we are doing it.
- 266 B. Duncan I don't know if those meetings are happening in person. I do believe Eric Johansen, who is the only attorney in our office that has a case at that stage right now, is in contact with the post conviction attorney when he is transferring the case. I don't know if he is sitting down with him for a meeting, but I know that he has had phone conversations with him. I think we can make the process more formal and make it clear that a meeting is required when the cases are transferred between our office and post conviction counsel.
- 277 G. Hazarabedian Mr. Chair, if I might, along those lines I think the communication between trial counsel and appellate counsel, when that handoff is happening, is also real crucial and some of my former colleagues in the capital defense bar, I have heard anecdotally over years past, are not satisfied with the amount of time the appellate lawyer was able to give the trial lawyer to discuss the appellate issues and potential PCR issues. I don't know the current state of that, but I would just say that in the past I have heard a little bit of concern that that process wasn't as full as it might be, along with some of the other things that you talked about.
- 287 Chair Ellis I would think that from the point of view of the appellate lawyer handling one of these cases that is the conversation that I would have every incentive to want to have in depth. Any comment?
- 291 B. Duncan As far as what is happening in our cases so far? No, I don't know if there have been problems but I agree that there should be those communications between sending counsel and receiving, both with cases coming into our office and when the cases leave our office. That is something that we could establish as a standard practice in our office. I think that it is dependent on the particular attorney sending the case.
- 300 Chair Ellis But I thought you said there are only two, I thought you said, of our LSD lawyers that are active in death penalty cases.
- 301 B. Duncan We have Eric Johansen who has had numerous death penalty cases and he is currently not taking them, and then we have Robin Jones who has three active death penalty cases right

now. I don't know how Eric received the cases, what he did. I don't know how much contact Robin Jones had with the trial attorneys in her three particular cases.

309 Chair Ellis

You said in your opening comments you wanted to talk about volume. I don't think we have gotten there yet.

311 B. Duncan

Sure. I wanted to tell the Commission about the current number of cases we have in the office. We have three open cases. They are all being handled by Robin Jones. One of them is *State v. Bowen* and in February the petition for certiorari was pending but that has been denied. That case is at the stage where it will be being handed off to post conviction counsel. Robin also has a case, *State v. Zweigart* that has been argued in the Supreme Court and we are waiting an opinion. She has another case, *State v. Davis*, that she has briefed and we are waiting on the state's response. So those are the three active cases that we have right now. I would like to let the Commission know how our practice in staffing these cases has changed. Several years ago we had a death penalty team. We had a set number of three attorneys or so in our office who would handle all of the death penalty cases. When a death penalty case came in, it would be assigned to one of them. They would already be working on a death penalty case. What happened with this is that it created a backlog because you would be working on a case and then receive a new case, and that case would wait until you were finished with the existing case. Because of our concerns about backlog, because of our concerns about delay on the case, and because of our concerns about the fatigue that was happening when an attorney would basically accrue more and more death penalty clients, we decided to change our staffing on these cases. We had eliminated the backlog by letting the people who were on the death penalty team, including Eric Johansen, finish their existing cases and we are now going to a process where an attorney like Robin Jones will handle a few death penalty cases and then rotate out of receiving those cases. The reason for that is we want to ensure that our death penalty attorneys do not, basically, become fatigued. We use their expertise as much as we can, but we don't overuse them and another attorney can start working on the brief right away. That obviously was essential, given that we now have a six-month timeline from when the transcript comes in until we have to file the opening brief.

349 Chair Ellis

Where does that come from?

350 B. Duncan

That is Oregon Rule of Appellate Procedure 12.10 and that requirement is just a few years old.

353 Chair Ellis

Specific to death penalty cases?

353 B. Duncan

Specific to death penalty cases. Six months for us to file our opening brief and the same six months for the state to file its respondent's brief. When that rule was put in place it was very disruptive for us because we had death penalty cases waiting and then we got new ones and we had to complete everything within six months. So we did have to bring on new attorneys to handle the cases that were not on the death penalty team. That included Robin and it also included Rankin Johnson who was in our office at the time but has since gone into private practice. What we do now, what we envision doing going forward, is having people rotate through handling these cases using the death penalty qualified attorneys in our office. We are using Eric Johansen as a resource since he has significant experience, but he is not inclined to take additional cases.

370 Chair Ellis

Is that his choice?

370 B. Duncan

Yes.

371 Chair Ellis

Burnout?

- 371 B. Duncan He handled several of these cases and is willing to serve as a resource for us, but does not want to be counsel on any more death penalty cases because of the fatigue and just the demands of these cases. He is serving us well handling regular, direct appeal cases now. He is available as a resource. Robin Jones is serving as our current death penalty attorney on our three active cases, but we are also bringing on new people. One of our attorneys, Meredith Allen, has been working with Robin on one of these cases so that she will be – well, she is briefing discreet issues and the idea is that she will gain some experience in the death penalty area before becoming lead counsel on a death penalty case. We are also asking one of our more senior attorneys, Shawn Wiley, to do the same thing, to be able to handle discreet issues in a death penalty case and attend death penalty trainings before taking on the lead counsel role. So we are trying to grow the number of attorneys in our office who handle death penalty cases. Talking with Robin and Eric, we think it would be good to have six or so attorneys in the office who would be available to take these cases so that we could have different pairs of attorneys take each case, with one being a primary and the other being a backup attorney. We think it is useful for supporting the primary attorney through the case and also making sure that all of the issues are identified, briefed, and discussed, and provide as much support as possible.
- 403 Chair Ellis Can you estimate the percentage of LSD's total costs that is devoted to death penalty? It sounds like there are 27 or so lawyers –
- 406 B. Duncan Right.
- 407 Chair Ellis It sounds like one and half FTE devoted to death penalty?
- 408 B. Duncan When we had a death penalty team, we had three attorneys working full-time on death penalty cases. That was when we had a backlog. In the past two years, I think it was two years, with Robin Jones on; she has been basically full-time death penalty.
- 414 Chair Ellis So it is somewhere between eight and 10 percent of the entire effort at LSD?
- 415 B. Duncan Yes and that is with a kind of manageable inflow of these cases. The timing has been such that Robin has been able to handle three cases in sequence without too much overlap in the cases. If there is a large number – if we were to get just one or two more death penalty cases, what that does is, when a death penalty case comes it takes away an attorney from regular, direct appeals for a minimum of six months for the briefing alone, and that is just the initial briefing. They are full time unavailable at that stage. Then they are partially unavailable for the rest of the case -- for the reply brief and the argument and the petition for certiorari.
- 431 Chair Ellis This is an area, though, that you can see a glut coming. As you sit here today can you indicate in the next, say two years, do you expect more demand, the same demand, reduced demand?
- 439 K. Aylward We have been watching the new, aggravated murder cases, and it has been really steady. From an historic high of 40 cases a year, it is now, in the last five or six years, been between 20 and 25 a year. I don't expect to see an increase or decrease.
- 445 Chair Ellis If it doesn't lead to a death sentence then your regular lawyers would handle the case?
- 447 B. Duncan Right. So, if it remains steady we will probably have one full-time attorney handling these cases as we have had in the last couple of years.
- 450 Chair Ellis I had the impression from Bill Long that this glut, this number of 18 or so current convicted persons, that there was going to be an increase in demand for our services at the appellate level from them. I can't remember quite what, but I had the feeling that we were looking at an –

462 I. Swenson I think, Mr. Chair, he was talking about post conviction appeals.

464 Chair Ellis Right.

465 I. Swenson He didn't know whether this office handled them or not. That was where he expected to see an increase and I think he was talking about 2012 or something like that, where people would actually be approaching execution.

470 B. Duncan The convergence would be the people who are going through the appeal process right now, at a faster rate than perhaps the older group, that those people are going to approach execution at the same time that the people who have been slow going through the process. They are all going to converge at the same time around 2012, because the current cases are going to catch up with the people who have gone through slowly. The increase, I think, in the demand on OPDS's resources, will be at the post conviction stage and post conviction appeals for the people who have moved slowly through the system. I believe the Attorney General has indicated that they intend to have more of the post conviction trials in these capital cases.

487 Chair Ellis They told us that last month.

487 B. Duncan OPDS will have demands at the trial level and then those will proceed to post conviction.

490 Chair Ellis Kathryn, I know at the budget presentation to the E-Board, we made a point that a lot of our expense that we needed extra funding for came from the backlog of capital cases. How long do we see that happening?

497 K. Aylward I actually think that it may have crested. I'm hoping. I know it is still going up but looking at new filings, as I said before, there were as many as 40 a year and now we are down to 25, so we are still feeling the impact of a large caseload because all the cases are still at some level in the system, with the exception of two or four which are now in the federal system. I am thinking it is going to get a little bit worse and then it is probably going to get better. I am hoping it is.

508 Chair Ellis It does seem to me, and you know it is probably not up to us to get into the ultimate issue on this, whether the death penalty is a good thing or bad thing politically, but it does seem to me that the public and the legislature ought to be given good information about the cost, and the cost is very high. Are we able to somehow, at least, break out the costs that our part of the system is incurring, specific to death penalty, and publish that in some fashion so that both the voters and the legislators know?

524 K. Aylward Yes, I think the problem is that again, there are so few cases where we can say what the total cost was, because it is still racking up costs. The few that we have go back as far as '88 or '89, so are data is not great. We know it is at least this much money.

533 Chair Ellis If you do it on a specific case, I understand that, but we certainly ought to be able to capture it for a specific time period, per year or biennium. I just don't know, I haven't seen that data broken out in a way that really communicates this is what we are having to incur because of the –

543 K. Aylward For expenditures from the Public Defense Services accounts, all of our spreadsheets and our tracking, do separate aggravated murder costs, both at the trial level and for post conviction relief, and appeal of post conviction relief. I don't think in our budget with Legal Services Division we have ever divided it by any kind of case type. That would be the component that isn't isolated.

551 Chair Ellis Would that be hard to do?

551 K. Aylward We have done it before in terms of estimates, in term of the costs. I think for fiscal impact statements we use the figure of about \$80,000 for death sentence appeals. We just did that very crudely in terms of if it taking six months and this is the cost of an employee. As you say, it is 1/27th of our total – it is a really rough estimate but it is about \$80 or \$85,000.

561 Chair Ellis That actually strikes me as low.

562 K. Aylward It is actually not far off what the AG’s office, in fact Ingrid just provided some information that came from the AG’s office that states something like 776 attorney hours on a direct capital appeal. It is comparable to the time that they spend in terms of hours.

570 Chair Ellis Becky, you said there was this six month timeline on the direct appeal? Is there a similar timeline on the PCR appeal?

576 B. Duncan I don’t know for sure whether that rule also applies to the appeals for the post conviction.

579 Chair Ellis Does your same specialist, Robin or formerly Eric, do the PCR appeal?

581 B. Duncan No. They are not done by our office.

591 Chair Ellis Those are done through the appellate panel? Are we getting the benefit of death penalty specialists at the appellate panel?

596 K. Aylward I think there are either two or four who have done PCR appeals.

601 P. Gartlan There is a death qualified list of appellate attorneys, so somebody who is qualified to do direct appeal in a death penalty case is also qualified to do the post conviction appeals.

608 Chair Ellis Right.

608 P. Gartlan The post conviction appeal goes to the trial court, then to the Court of Appeals, then to the Oregon Supreme Court. A direct appeal goes right from the trial court to the Supreme Court.

612 Chair Ellis Right. Anything you guys see that we could do better on the appellate side.

617 B. Duncan We have been talking about best practices and things that we would like to do to improve our representation. We are always interested in improving it and we have made improvements by eliminating the backlog, changing the staffing to eliminate fatigue. There are things that have come up when we have been looking at the ABA guidelines that have caused us to look at how we handle the cases. I think, as we discussed this morning, we can improve how we transition the case from the trial attorney to our office and from our office to the PCR attorney. There are also other things that we can do to comply with the ABA guidelines. The ABA guidelines can be read to require two attorneys in a death penalty case. There is a question whether that requirement should apply to appeals, but Pete did look at other states, including Washington, California and Illinois to see if two attorneys are assigned to death penalty appeals. In California, they are not. One attorney is assigned but a second attorney can be brought in on a case-by-case, day-by-day basis. In Illinois, the primary attorney is appointed and then there is a backup attorney who doesn’t necessarily read the full transcript but is there to assess the case and is also charged with the case in way to ensure that they provide support for the first attorney. What our office would like to do is to follow the Illinois model so that we have, as we started to with our most recent case, a primary attorney who is responsible for the case, but then a backup attorney who is also invested in the case, who can work on select portions, can explore issues and brief discreet issues in the case. Also, they will serve not only as support for the client and for the primary attorney, but will also ensure that if a person already has experience that person can maintain and increase their experience. If the person is new, it can be a training and learning opportunity that will help us grow our

pool of attorneys. Those are specific areas that we can and want to improve on. Another issue which came up at last month's meeting, and was also raised by the ABA guidelines concerns client contact. Our client contact has varied with the particular attorney handling the case. It has varied both in terms of its frequency and the nature of it, whether it is primarily by letter, by phone or by visit or a combination of those things. Obviously, on appeal, the need for client contact is different than it is at the trial level because we are not gathering evidence for the direct appeal, although there is some evidence gathering that we might have to do to preserve evidence for future events. But it is less important to preparing the direct appeal to have the client contact. It doesn't compare with what is necessary at the trial level. That said, we recognize the value of having frequent client contact and good client relations with all of our clients, but especially the death penalty clients. Obviously it is important to establish good working relationships so that the client understands what our role is, and what issues can be raised, how we are handling the case. It is important to improve our representation of our client, and if you have a good relationship with your client, I think that you are more personally invested in the case and that can improve your representation. It is important to maintain a good relationship so we are aware of the client's mental health status and their ability to participate in their case at the appellate level. It also can facilitate communications so that if there are issues that may not be relevant to direct appeal, but important to later challenges, that the client can communicate those to our attorney. For example, in a recent case, Robin Jones had a situation come up where it became apparent that evidence that would be necessary in a retrial was degrading. She discovered this and had to take steps, file a motion to make sure that the evidence was properly preserved at the law enforcement agency. There are some things that we have to do that are not directly related to the direct appeal, but necessary for preserving the client's later claims and interests in the event that there is a retrial. Obviously, having a good working relationship with our clients is important. We want to look at the area and make sure that we are doing all that we can, all that is necessary, to facilitate that contact, whether it is through phone or letter.

TAPE 1; SIDE B

001 B. Duncan

We want to make sure that we are doing all that we can.

002 I. Swenson

Mr. Chair, just one additional comment. The defendant is probably the most vulnerable at that stage to despair and just sort of deciding that there is no point in going forward. They have lost at the trial level, and they are used to, in most cases, having frequent and supportive contact from their legal team. When that team is no longer in the picture and there is an appellate lawyer there, it is necessary to make sure that they are not leaving the client in a void, so we have been talking about ways of assisting with that. One thing is to look at having an assistant to the lawyer, an investigator, or somebody particularly skilled in client contact, maintain regular contact with each of those clients.

012 Chair Ellis

Any other questions for Becky? Thank you.

015 R. Wolf

Mr. Chair, I have a few brief comments if I might. For the record, Rich Wolf, a death penalty contractor. Just on the last topic, I would say that the death row inmates at the Oregon State Penitentiary are probably the easiest clients to reach by telephone. They have a cordless telephone that they have on death row. You can call a direct number. From Salem it is a local call. They take the phone down to the inmate's cell and you can have a conversation of virtually any length with your client. It is very easy to maintain contact by telephone with the death row inmates. The other topic I wanted to talk about was the successor attorney issue and while I don't want to minimize the importance of communication between the trial counsel and the appellate counsel, I think the much more important component, and it has come up just this week -- Ingrid and I have talked about it -- is the passing of the case from direct appeal to post conviction. The reason it is important is because under the Anti-Terrorism and Effective Death Penalty Act of 1996, the clock for filing a federal habeas corpus petition begins when the appellate judgment issues. In the case of a death sentenced inmate, once the Oregon Supreme Court issues the appellate judgment and the petition for cert

is filed, it is when that petition for cert is denied that that one year clock begins to run. The Federal Defender's Office has made it very clear that they need as much of that year as possible in which to investigate and file the petition. The reason being that the AEDPA one-year deadline is also a statute of limitations, so unlike state post conviction where you can freely amend a petition, you cannot amend – you can't add claims to a federal habeas corpus petition after the one-year period, so the Federal Defender's Office is responsible for fully investigating and fully filing their petition within that one-year period.

- 042 Chair Ellis I thought they first had to have gone through state PCR?
- 044 R. Wolf Yes, but you don't stop that clock until you file the state PCR. You have two years to file a state petition for post conviction. If you wait more than a year to file that petition then you will never get into federal court.
- 048 Chair Ellis This is new to me. State PCR is a two-year window. Federal habeas is a one-year window and federal habeas gets filed and then sits while....
- 051 R. Wolf No. What you need to do is to toll the AEDPA time clock. You need to file a petition in state court for post conviction relief that will stop the clock.
- 054 Chair Ellis So the one-year gets tolled?
- 056 R. Wolf Right, but if you let the time run between when the appellate judgment issues and the cert is denied, if you let that time run until a year, you are never going to be able to get into federal court. The problem is, PDSC traditionally cannot, will not, appoint counsel until a *pro se* petition for state post conviction relief is filed. It is usually dependant upon the inmate to bring the first petition for post conviction relief.
- 063 Chair Ellis I thought I understood from Becky that our LSD lawyers do manage that process and assist the prisoner in filing the *pro se* state PCR case.
- 066 B. Duncan That was Eric Johansen who has had the cases at this stage so far, and his practice was to go out to the penitentiary and meet with the inmate and go through the claims and make sure that the inmate's initial PCR –
- 070 Chair Ellis This is what you are concerned about?
- 071 R. Wolf Right. My view is that while the cert petition is pending before the Supreme Court of the United States, there ought to be a state post conviction petition being drafted, because the odds of the cert petition being granted are not so good. The petition ought to be getting drafted so that the day after cert is denied, the state post conviction can be filed and you only lose a day toward your one-year federal habeas.
- 077 Chair Ellis What is the practice on that?
- 077 B. Duncan I think the practice was to do the post conviction petition after cert had been denied, but I think it could be changed to start the packet once cert is filed.
- 080 C. Lazenby What is the timeline between cert denial and...
- 081 B. Duncan I think it is less than a month.
- 081 P. Gartlan Usually less than a month.
- 083 I. Swenson The case Rich and I are dealing with didn't have LSD on the appeal.

- 084 R. Wolf It had another odd quirk in that it has been remanded for merger of sentence so the federal AEDPA clock is really running from the denial of cert but he can't really file state post conviction because he doesn't have a formal, final judgment in the state court. It is sort of an odd loophole that he has fallen into. Those are the things that I wanted to address.
- 090 Chair Ellis Any other comments or questions? Thanks Becky and Pete. I hope you recover your speaking ability. It is tough in your line of work to not have a voice. Ingrid, do you and Kathryn want to comment on the topic?
- 096 I. Swenson If I may, Mr. Chair, I have prepared a draft for Commission members. As it points out, fortunately the ABA Standards would be an excellent set of standards for the state. They contain basically two sets of provisions, about how the state agency which is in charge of this function should manage its function, and then the performance standards for individual lawyers in these cases. As we go through those, there are some areas in which I think Oregon is in complete compliance and performing appropriately. There are others where there are decisions to be made and directions to be taken in order to come into compliance with the standards. Now, the standards are intended to be mandatory and, as I pointed out, the courts are generally looking to these standards as the measure of what is expected of lawyers in death penalty cases. The courts have referred most often to the need for adequate mitigation investigation, but, occasionally, to other parts of the standards as well. For all those reasons, I think we would be wise to comply with these standards as best we can. The first thing we need is a plan and if we are able to work our way through the various provisions of the standards, I think what we will end up with in the end is probably a plan for the delivery of representation services in death penalty cases. The first issue has to do with identifying a responsible agency and, of course, the functions which are outlined for that agency are largely being performed at this point by the Contract and Business Services Division. I know Kathryn is of the opinion that the Public Defense Services Commission itself might be the responsible agency and we may want to consider whether that is the case, because the recommendation certainly is that you have trial or appellate full-time death penalty lawyers as part of the organization that is overseeing these standards and their implementation.
- 128 Chair Ellis They are really using as a model something like Colorado has, aren't they?
- 130 I. Swenson I think so.
- 131 Chair Ellis The FTE state employee defender office that does both trial and appellate?
- 132 I. Swenson It seems like it.
- 132 Chair Ellis My memory is that very few states have that.
- 133 I. Swenson I think that is correct Mr. Chair and in the commentary to the black letter portions of the standards, they do acknowledge that every state has a different delivery system. Some things will work in some states and not in others. We are on the other end of the spectrum, where we have so large of a percentage of our cases being handled by private attorneys.
- 139 Chair Ellis We are not way at the other end of the spectrum because we have a state contract administrator and they have county systems.
- 140 I. Swenson That is correct. And we do have our Legal Services Division with full-time state employees. But I think if we combine the two divisions and use the resources that are available through our Legal Services Division for some of the functions that are required, we can make it work. We avoid conflicts of interest by not having the Legal Services Division do case assignment and that sort of thing, so there are some pieces of it that simply couldn't occur within that office. Among the functions set out for the responsible agency, there are a couple that we are not yet performing. One of them is the direct assignment of counsel in each case. As the

Commission is probably aware, for the most part --Kathryn can talk more about this and Billy is the analyst currently assigned to this task -- when a death penalty case arises the court ordinarily contacts us and we look through our contractors to see who among them is available to take a case. If none of them are, then we look to a list of private bar attorneys who are certified and who have been approved for appointment in these cases, and we make a recommendation, at least, to the trial court. Kathryn is it ever the case that we say "You must accept this attorney?"

- 163 K. Aylward I think things have gotten to the point now where it is extremely difficult for us to find attorneys for these cases. The court understands and if they have contacted us and we can find one name to give them they are happy. Originally, we used to give the judge a name and the judge would say "Got anybody else?" and so we would give them two or three names. Now, everybody understands that if you can find someone, you are doing well. The exception is perhaps in those counties where the judge doesn't contact our office. But there are still some places where a judge will say "I know, I'll give this case to so and so" and the so and so might not be someone that we are terribly comfortable with. I think, to a large extent, we manage to insert ourselves in that process, but there are surprises from time to time.
- 175 I. Swenson Chapter 151 certainly permits us to adopt a policy on this issue, so our policy could be stricter than it is. What we obviously want to avoid is a situation where judges, for inappropriate reasons, choose not to have a particular attorney on a case. We try to avoid the situation where the judge says "I just don't like that lawyer". But when we were able to give them choices it was usually a matter of saying "Here are three well-qualified lawyers." But there are issues that the judge may be aware of that we are not, in terms of the defendant and the defendant's needs, that might cause the court to prefer to appoint one attorney over another. Ideally, and the standards talk about this, it is not a rigid appointment system that you put in place where the next person on the list has to take the case, because there needs to be a match between the attorney and the client to the extent that you are able to do that. It is kind of a mixed bag, because at that stage of the case the judge has more information about the case and the defendant then we do in terms of matching the defendant with an appropriate lawyer, but that can be part of the discussion we have with the court about what the court perceives to be the needs in a particular case.
- 195 K. Aylward Actually, I don't think we have ever done it, but we could take the position that if a court appointed an attorney we had not determined to be qualified, we simply wouldn't pay. We would say to the court "You can appoint anybody you want, but we are only going to pay the people on this list." Fortunately, so far, when we have had those surprises where the court has just appointed someone without contacting our office, it has been someone who was qualified and could accept the case as far as we were concerned.
- 204 Chair Ellis So let me understand this creation of a legal representation plan. Is it your thought that we would generate a document called the Oregon Death Penalty Defense Representation Plan and what we are talking now is how to characterize or place the responsibility within our structure?
- 212 I. Swenson Yes, exactly, Mr. Chair. It is not mandatory that we have such a plan. I think it is advisable and then everybody knows what the rules are and if we have such a plan, people can challenge it if there are portions of it that they don't agree with.
- 214 Chair Ellis What was the thought? You thought earlier that PDSC might be the agency, and I'm thinking why it isn't it OPDS that is the agency?
- 217 I. Swenson That is a tough call.
- 218 Chair Ellis I'm looking at it here and there may be one of us that has had some experience ...

- 219 K. Aylward No, no, no, it is just a schematic oddity. PDSC is the name of our agency. We are the Public Defense Services Commission. It created an office which is a little bit of LSD and a little of CBS, but the agency is PDSC.
- 223 Chair Ellis So when you talk about that it is not this side of the table.
- 223 K. Aylward But it is significant because what we are saying when we are saying PDSC is that it might be an LSD lawyer who looks at a brief and decides whether someone is qualified for death penalty cases on the panel. It might be a CBS person who looks at their billing records and decides to pay a bill, and it might be something paid out of the account like the Matt Rubenstein contact where that person is then providing some component.
- 230 Chair Ellis Is this something that Paul, in his general counsel role, could cross division lines and do appropriately?
- 231 I. Swenson He certainly is already doing that, which is good.
- 234 Chair Ellis I recognize he is a CBS person.
- 236 I. Swenson The function could be located in the general counsel part of the office. I think that is a possibility. The contracting piece and the certification of lawyers clearly has to be in the Contract and Business Services Division. They are the ones that monitor the availability and the eligibility of lawyers. We can work on an outline if you like, Mr. Chair, with the different possible ways of organizing and placing the plan under the supervision of some particular part of the office if you think that would be appropriate.
- 245 Chair Ellis One of the things the ABA Standards call for is the quality monitoring and as you phrase it here its where you respond to complaints, but we don't affirmatively monitor. Do you see a way to bridge that gap?
- 253 I. Swenson I think we absolutely need to do that and I think we have realized that ourselves in connection with approving the list of private bar attorneys. We need good information about the lawyers who are doing the job now and about the lawyers who are applying to do that kind of work. I think it is available. Judge Barron sent me a letter in which he said he concurred in the remarks he had heard about not simply letting people list references because that wasn't fair to judges. And even judges who agree to be references don't necessarily enthusiastically endorse the abilities of the lawyer. I think some kind of regular survey instrument would be appropriate and maybe we start it in the death penalty area and simply contact all of the judges who have had this attorney appear in their courtroom. In some cases, we could talk to co-counsel, particularly in closed cases, and to district attorneys. I think they provide important input. I think we can address that and I think we need to undertake to do to routine surveys, because even lawyers who have been excellent providers in the past, aren't necessarily going to continue to do that quality of work. People get burned out and for various reasons cease to perform as well as they once did.
- 279 Chair Ellis I think that is a general truth. Do you want to keep going here?
- 280 I. Swenson Well, let's see -- the composition of the defense teams. And the question I raised there was whether or not the expectation should be that in every case, at a minimum, there are two lawyers, a mitigator, an investigator and a mental health expert. We certainly have lawyers who take on more of these tasks themselves than other lawyers and some lawyers who delay use of mitigation investigation until months into the case, which doesn't seem appropriate. We leave a lot of discretion with the lead defense attorney. Once they are in place, we allow them to call the shots about what is needed. However, whenever a lead counsel doesn't have a mitigator, it is potentially a matter for concern. If we created the expectation that you as lead counsel need to have your team in place and your team must include the following or at

least an explanation about why you don't need to have each of those team members. With respect to co-counsel as I pointed out, under current law and practice what occurs is lead counsel asks for the assistance of co-counsel in discreet increments of time. I am not so sure that that is a bad idea. Instead of just assigning that attorney full-time to work with lead counsel, we require lead counsel to justify the use of co-counsel in the hope that this will assist the lead counsel in identifying the issues and clarifying what the role of each counsel is going to be instead of creating a relationship where the work of the two counsel may be overlapping. I hope it is a device that makes the practice more efficient, but I don't know if it discourages people from developing the kind of relationships they need to have a strong team. Maybe, since Rich is sitting right there, he can give us his thoughts.

- 320 R. Wolf I think it is good to do it in increments. I think it forces co-counsel to keep better records -- you know, "I'm almost out of hours, you need to authorize more hours for me." I am not so sure that the incremental appointment of co-counsel really helps to develop the different roles between lead and co-counsel. I think that is really the product of just talking with co-counsel. Some co-counsel have greater strengths and weaknesses than others. Some co-counsel may be better at relating to the client. Some may be better at handling legal issues and have very marginal client skills, client relation skills. It really depends on who you have and who the defendant is before you can determine how best to use your co-counsel. That has been my experience. I don't think it is a bad idea where you appoint them 200 hours at a time.
- 337 Chair Ellis Between you can you make sure I understand what is involved with the qualified mitigator. That is a word that was used a lot last month. I think I have an idea, but will you spell it out for me more?
- 340 I. Swenson Well, Rich can certainly do it. An experienced investigator, ordinarily, who has done general criminal investigations for a significant period of time for the most part, and then this person specializes in issues relating to the mitigation in the penalty phase. It usually has very little to do with the investigation of the event.
- 348 Chair Ellis It has a lot to do with the (inaudible).
- 348 I. Swenson Although I suspect that the development of a relationship with the victim's family would also ordinarily be conducted by a mitigator as well.
- 351 R. Wolf Well, my experience has been while there are a few former factual investigators who have become good mitigators, the mitigation specialists that I have found to be the best are the ones with LCSW, Licensed Criminal Social Worker, degrees. They are really social workers. They are really important in the sense that they are with the client a lot, handling a lot of matters with the client, getting the client to open up about things that they wouldn't normally want to talk about, who can then go investigate with that client's family and develop what are the mitigation elements in your case. It has virtually nothing to do with any of the facts of the case and it is really all about getting to understand that client and what has made that client who they are at this point in their life.
- 367 Chair Ellis Doesn't this really cry out for us finding, I don't what the number is, one or two, really qualified specialists and making them available to the various teams instead of doing it randomly. This does seem to be a pretty specialized, unique job.
- 373 I. Swenson Mr. Chair, I would certainly agree and I think most of the attorneys identify mitigators with whom they work most effectively and try to find time in their schedules to do it, but it does seem appropriate for a contract and Kathryn had already made the decision that that would be an appropriate direction to go to find mitigators. We might find additional people willing to do the work if they were offered a contract. They would then, at least, have an assured income and steady amount of work. It seems like a logical direction to go.

- 387 C. Lazenby Is there any way we could develop criteria or some sort of system where we could then grow the number of available, qualified, mitigation investigators? It sounds like there are two or three people that everybody agrees are qualified. I am just asking, do you think it is possible that we have the capability to develop a system where you potentially grow the number of qualified folks out there to do this work?
- 393 I. Swenson It seems like we absolutely need to do that. It is very difficult for lawyers to find people to do that work in a timely way.
- 397 Chair Ellis This is the kind of thing where I don't see why we feel constrained that we have to find them already in Oregon. There must be people around the country that we could recruit.
- 400 R. Wolf Many of them are located outside the state right now, but the problem is you really want people that are local to the case because it is important. They work intensively with the client.
- 404 Chair Ellis What I am suggesting is like we did with the Executive Director search, we go national, why don't we think in terms of finding the best person out there and attracting them to Oregon with a contract.
- 406 G. Hazarabedian Mr. Chair, if I might. One of the complicated factors is that not only is it hard to get people from out-of-state to come to Oregon to work for \$34 an hour, but there are very good mitigators in the State of Oregon who are taking work in Idaho, for example, and other places, because it is a chance to get fairly paid for their skills. If anything, we are losing people from Oregon to our neighboring states, because the neighboring states can pay so much more.
- 418 Chair Ellis If we do it on a contract basis...
- 418 G. Hazarabedian If we do it on a contract basis or hourly rate, but being a mitigator isn't jurisdiction specific like being a lawyer, for example. There is work in the federal system. There is a lot of work for talented mitigators and most of it pays more than what we can pay here. I think a contract or somehow increasing the hourly rate would be a big part of getting more talent here.
- 424 C. Lazenby Mr. Chair, one of the hats I put on my rather large head is I am also general counsel at Portland State which has one of the nation's best graduate schools of social work, and especially clinical social work, so it might be proper for me to help facilitate a conversation between Ingrid and some people from GSSW to have a conversation about potentially seeing if they can develop some aspect of their graduate program. It is really a nationally recognized social work school.
- 432 I. Swenson That would be wonderful. Duane McCabe and others have been advocating for something like that, a course of study to qualify as mitigators. It should be a fairly attractive profession in so many ways. It is certainly a helping profession. People work independently but are part of a committed team as well. There isn't a good reason why we shouldn't be able to increase the number of mitigators.
- 442 Chair Ellis I sense consensus. The topic at the top of page 6, distributed with the materials, was a letter from Olcott Thompson. You want to comment on this subject of the quality of PCR representation?
- 454 I. Swenson Yes, Mr. Chair. The Commission is well aware this has been an area of concern, generally. Of course we have our policy package that if approved would allow us to create a four FTE post conviction unit either within LSD or parallel to LSD, and certainly if that occurred, we would be interested in including death penalty qualified lawyers as at least a part of that project. The PCR practice is not, for whatever reason, a particularly attractive one especially among criminal defense lawyers. It is not something that they are beating down the doors to

do. It doesn't make them particularly popular with their colleagues, I suppose. They see themselves in a different role.

- 474 Chair Ellis Just because they always say that trial counsel is incompetent?
- 475 I. Swenson I think that is part of the picture. In death penalty cases we struggle mightily to find a lawyer who is available in a timely way. We are struggling now with one case and potentially a second one coming up very quickly where we need counsel to get involved as soon as possible. We contacted most of our contractors to determine exactly who, among them, is available to take this on. I was just talking with Kathryn about availability of PCR counsel in death penalty cases.
- 490 K. Aylward That would be unavailability.
- 490 I. Swenson It is very difficult. MCAD used to get a good portion of those, if not all of them, because of the fact that they were here in Salem. They were our contractor in the area where the cases were filed. They are taking fewer of them. And, at this point as I understand it, in every case, we are doing an individual search for available counsel. Is that correct Kathryn?
- 500 K. Aylward That is correct and it is generally not just a search it is actually trying to convince people – “Are you sure? What if we could delay it a little bit, and what if this trial gets rescheduled?” We are really working the system to get coverage.
- 506 Chair Ellis Is Dennis Balske doing this work now?
- 507 R. Wolf At 55 bucks an hour? He won't touch it for that amount.
- 509 I. Swenson So we can certainly look at contracts for PCR providers. Maybe we need to be recruiting specifically for post conviction death penalty contractors.
- 515 K. Aylward I think the problem is in the mechanics. If I can't find someone at \$55 then I want to be able to say “Will more money make the difference?” Well, because we can't just say that I am going to pay you \$75 but you are still at \$55. If it is an hourly rate you have to raise the guidelines rate for everybody. You can't pick and choose. The way we get around that is to say “How about if we have a contract with you?” and then we establish a rate under the contract. I think, and maybe I am moving on to the next topic, but in a way I want to know if that is okay. I feel like if I am lucky enough to find someone and talk them into it and say “\$80; How about \$85; How about a contract; How about a guaranteed monthly income” and they finally say “Yes.” I want to be able to say “Great, here is a contract.” But then I'm thinking have I then sidestepped the whole competitive request for proposals kind of approach. It would be nice to have some guidance along those lines because we don't have enough money to wave a wand and say “All of you people currently working at \$55, it is now going to be \$75” and if we get funding provided for that, then great! That will buy us some time. At the moment I am just stuck. I don't know of any other way to continue to provide the services.
- 543 J. Hennings Mr. Chair. Peter Ozanne a number of years ago asked me to make a proposal, which MPD did, and then we were thanked for the proposal and told that we were about triple of what we were imaging it would take. Your general counsel worked on that proposal based upon his experience in Indiana because, quite frankly, our experience in general on post conviction was very, very weak, almost nonexistent as to what was required. We put a proposal together about what was required including investigation, including working the case. Post conviction obviously gets into the competence of the trial attorney but it also should get into a number of other things. That was the reason that the appellate office was created. When Ashenbrenner started the office that was the reason for it and he basically cleaned out the penitentiary on post conviction type matters. I worked in that office at that time so I have some idea how to

do post conviction appropriately. Basically it comes down to money. You can't turn this into silk unless you got enough money in order to pay attorneys and their staff appropriately to do the job to do post conviction. Otherwise, we are always going to have a bandage and until the Commission can come up with that money, Kathryn is going to be in the situation that she can't give you a guarantee on all the post conviction cases that appropriate work is being done, because she doesn't have the money in order to buy it.

- 579 K. Aylward That proposal that MPD put together wasn't for death penalty.
- 580 J. Hennings No, it wasn't for death penalty.
- 581 K. Aylward It was just run of the mill post conviction relief and I trust that your figures accurately represented the amount of work that was necessary, and it came in about two and a half to three times as much as we are paying now.
- 585 I. Swenson Mr. Chair, this is an important discussion and I think it should be part of our August discussion about allocation of whatever funds the legislature appropriates for public defense. It has to be one of the most important things that we need to address, but until we know what that picture looks like it is a little hard for the Commission to be asked to consider an increase in rates. In the meantime, it would be useful to Kathryn, I think, to have the permission of the Commission to selectively contract as we are able, to take advantage of whatever opportunities we are able to create, with the understanding that every two years we are going to issue an RFP for all of this work, so that lawyers who are interested can always apply, but when there is a particular individual who is available and qualified, we would like to be able to take advantage of that without going through that process.
- 607 Chair Ellis Have we had any indication whether there is legislative support for our package.
- 610 I. Swenson For our post conviction package specifically? Well, no. It is mentioned along with all of our packages in meetings with legislators and we certainly explain the desperateness of the need there. Has it aroused a great deal of legislative sympathy? We have not been effective in doing that at this point. The juvenile pieces of our proposal have been well received and there is a lot of legislative support for improving the quality of juvenile representation at this point, but less for criminal representation and I sense not a great deal of interest in the post conviction cases.
- 627 Chair Ellis Would there be room to kind of push the death penalty PCR piece as sort of the entering wedge?
- 630 I. Swenson Well, I think...
- 634 Chair Ellis The proposal we have is for four FTE and they do PCR generally, including death penalty?
- 638 I. Swenson When we get to the next stage in the budget process I think Tim Sylwester's testimony at our last meeting will be very helpful -- just the concept he was describing, which was, you know, everybody has an interest in doing these things properly at the state level because the federal level is a very expensive one for the State of Oregon. They prefer to avoid that and to do that you have to do the post conviction well in the state courts. He articulated that well and I think the AG's office would stand by that.
- 656 O. Thompson Mr. Chair, one overlay is that the one-year statute of limitations in federal court is only effective provided the state has, and I don't remember what the magic words are, but they have to have a good post conviction habeas process for death penalty cases. If they don't, there is no statute of limitations in federal habeas.
- 667 I. Swenson It is probably pretty hard to fall below that threshold.

- 668 O. Thompson That may be, but there is a threshold there and I don't remember what the magic language is and I don't think anybody has fallen below in any state.
- 573 I. Swenson Maybe Matt knows?
- 574 M. Rubenstein We are counting on being held to that one-year statute. You want to do the post conviction very well ...
- 579 Chair Ellis Or so badly ..
- 580 M. Rubenstein That is the reality. You want to try the case at trial, that is where we want to do the best job and then we want to do the PCR very well. The worst situation is to do it half-way.
- 587 I. Swenson Frankly, when the legislature has hearings on whether to abolish representation in post conviction cases, it is the Attorney General's Office who generally persuades them not to do that because then it opens up all of those cases to possible...
- 693 R. Wolf evidentiary hearings in federal court.
- 695 J. Potter Kathryn is asking us to address her dilemma of post conviction in death penalty cases. Is this not a dilemma that we have also had in other kinds of cases, like Measure 11 cases, where you might not be able to find lawyers to do it, or in some areas, you end up having to do a contract that is higher, maybe even death penalty trial level, that is higher than the \$55 rate and you end up paying death penalty lawyers under contract. What is the difference in this particular circumstance?
- 708 K. Aylward Well, there has always been some kind of quirk when I have done it in the past that you could point to and say "Oh, well that person is uniquely qualified to do this." The example was Frank Stoller who was being paid hourly to work on a client's direct appeal. The client had a second case in which he filed a post conviction relief petition and when we contacted Mr. Stoeller and said "Well, can't you take this case too? It is the same client, do both of them." He said "I can't work full-time at \$55. I'll do it if you give me a contract." In that case we could say it was appropriate to award this contract because he was uniquely qualified to meet that demand. I didn't feel like there were other people out there saying "Hey, how come I didn't get the contract?" There was a second time when there were similar circumstances. I think I am at the point now where I don't want to have to come up with a special set of circumstances. I want to go find a great attorney who has no idea that maybe under a contract they would get more than \$55 an hour doing PCR. Matt was unaware that there was a way for us to contract for his services. I think we are all surprised. I suppose the Commission would say why don't you just sling out a quick RFP and then your bases are covered?
- 750 J. Potter But even if we did that, and it sounds like you would tell us we could do that, and that ...[end of tape]

TAPE 2; SIDE A

- 002 J. Potter we run out of money, whatever the budget number is, and we tell the legislature we couldn't get the services for less, and isn't that the standard...
- 003 K. Aylward Yes.
- 003 J. Potter We couldn't get anybody to do this work at whatever this number, so we had to pay this number.

- 005 K. Aylward My concern is if you do some kind of RFP and just say “Send me bids”, there is no reason to bid because they think “\$55! I am not interested.” If you put out a request for a proposal that says “I’ll pay you \$90 bucks an hour, submit a bid” and then we will pick the best among those, then the other poor guys that are working at \$55 an hour are going to riot. Unless we are prepared to actually say that we can no longer do this, I feel like we have to at least chip away at it a little less transparently just to keep things going.
- 012 S. McCrea I am looking at what is documented at pages 6 and 7, and in that second paragraph it says “Cases assigned to private bar attorneys, especially when the court does not first consult with OPDS, may go to an attorney who is already overburdened and will decline to take the case. It is difficult to find somebody who is available to take the case” and then it goes on through page 7. It appears that we had it documented that people aren’t willing to take the cases at \$55 an hour. I recognize there are people who are doing it for \$55 an hour. I don’t have an answer to that, but as one of the members of the Commission, I am agreeing with John that I think that we are at the point where we are not getting the quality of representation at \$55, and we have people who aren’t willing to do it or can’t do it at that and we need to change that.
- 024 M. Greenfield I think the cleanest way to do it is to have a RFP which establishes a list of attorneys who are pre-qualified at some standard, with the provision that you are able then from that list to enter into negotiations, so you wouldn’t necessarily have an RFP with an hourly rate in it. You would have an RFP that said if you are on a list of qualified providers for this service, you are eligible to negotiate with us for specific cases. I think that is a little bit cleaner. What you are asking for is the ability to continue to finesse the system.
- 032 K. Aylward No. I want to be free from having to finesse the system.
- 033 M. Greenfield The danger is that you contract with somebody at a rate that is higher than the understood rate and somebody raises an objection. It is a tough spot to be in and you’re wanting the blessing of the Commission to continue to do what you are doing or to do something else?
- 039 I. Swenson We can certainly always use the RPF process when the opportunity is there. I think there are situations in which, as with Mr. Stoller, we need to have the freedom to take advantage of a unique set of circumstances to bring on board a particularly qualified lawyer.
- 042 M. Greenfield Are you not free to do it under your “Olly olly oxen free” provision. So the risk is really some other provider saying “If I had known that you were going to pay this much money, I would have been interested in doing it and I never had the opportunity.”
- 048 Chair Ellis I always thought the expression was “Olly olly income free.” Where did the oxen come from?
- 049 M. Greenfield This is pre-conservative politics.
- 050 Chair Ellis Back to the legislative increase, it does seem to me that if we are not getting any kind of good response on what we really want, which is four FTE for PCR generally, I would be quite willing to have you open up with Robin or whomever a proposal to at least do an FTE on death penalty PCR. And if that is not selling because Ways & Means is allergic to more FTE positions, then in the contracting budget you contract for a death penalty PCR specialist. I am sitting here listening to really good lawyers say that we are at risk of plummeting in a way that has obviously horrible consequences. I don’t want to be there. We shouldn’t be there. Any other thoughts on this point? We are about to take a break for about 10 minutes.
- 070 Chair Ellis Alright, we were up to 6.1, the workload piece.
- 076 I. Swenson Mr. Chair, as I noted, and I believe this to be true but Rich or others can correct me if it is not, our understanding was that we never assign a new case to one of our contractors without their

feeling that they can take it on at that stage. We may put a little pressure on them to take them when they can, but I don't think we ever have asked somebody to do it when they have said that they could not. I think, for the most part, even though our contracts essentially indicate that two cases at a time is the limit and contractors can't exceed it without our permission, I think two that were actively being litigated would certainly be enough. As you know there are various stages of the process and as they get toward the latter stages sometimes they can take on a third and sometimes occasionally more than three cases.

- 090 R. Wolf On the workload topic, I just wanted to add what Becky said that the AG's office has always had more than one attorney handling capital cases. I don't know of a case where they haven't, and sometimes more than two.
- 096 I. Swenson We talked a little bit about the concern that the private bar attorneys may occasionally take on more than we think is appropriate. Again, there is clearly a need for additional compensation for the hourly attorneys. Judge Barron sent me some remarks in addition to the things that he brought to your attention last month, and emphasized again that he thinks increased compensation is critically important, particularly in death penalty cases, and a general sense that there is almost a crisis in terms of having enough attorneys to do the work. He understands that OPDS will make lawyers available but he would like lawyers from within the community rather than coming from a distance as they often have to do. He understands that it is tied to increased compensation. I have talked with him in general about some of the strategies that the Commission outlined in its 2005 retreat about outlying communities and ways that we can assist in attracting lawyers. We haven't specifically addressed the problems in his county. That is part of what we need to do in August.
- 118 Chair Ellis You had a policy issue under 8.1 on training, and I would have to say that I don't think that we are the right people to put on training, if that was your question.
- 121 I. Swenson It is. Now I think LSD can do some training in this area and they do. They have at least two CLE sessions per year. I think they invite lawyers from outside the office to participate, certainly the appellate panel lawyers, I know. Their CLE sessions don't often focus on death penalty cases. I think our state has moved forward in terms of the quality of training that is available through OCDLA and the Bar and the Federal Defender's Office. The Federal Defender, this year again, will be sponsoring a one-day death penalty seminar and they invite the state attorneys to participate in that. I understand that it is not a profitable enterprise for OCDLA and there is a need for additional training and resources. Obviously, we would like people to be able to participate in as much training as possible and OCDLA has limited capacity to meet that demand. Our hope is that Matt Rubenstein can look at this -- we have a lot of hopes for him -- that he can examine the issue a little more closely and think how we can supplement what training is there, how we take advantage of national trainings so that the information that is provided at those can be shared with the other lawyers. Maybe we have regular sessions among Oregon death penalty lawyers which amount to nothing more than sharing information from national conferences and things of that sort. We have some work to do but probably having us provide those trainings isn't the most appropriate way to go about it.
- 150 J. Potter I should also mention, Ingrid, that the OCDLA Board of Directors has a long-standing policy on death penalty programs, saying that we will continue to do them and we will do more without the economic benefit. They do not need to generate income for OCDLA. We know that going in. They are smaller and more intense. They cost more. But you have a limited pool of people that come to them. We are certainly happy that Matt is going to be involved and will coordinate and throw resources at additional training with Matt as a spearhead person too.
- 161 K. Aylward But it seems like that should be our responsibility. We should be saying to our contractors that we expect you to attend X number of courses and here is the funding to make that

possible. It just doesn't seem right to me that OCDLA should be doing it for free when it is something that we want our contractors to do then we ought to be funding it.

- 164 J. Potter The board is not saying for free, they are just saying that it is not a revenue generator. I agree with you Kathryn. It is a function of the state in training these lawyers and it is part of the expense of the death penalty case.
- 168 R. Wolf On that topic, I found out since the last meeting that with respect to the \$50,000 grant, only six other states applied for that money as well. I don't know how that affects our chances of getting it but we will know around August.
- 173 J. Potter And if it is successful, that is clearly seed money that would help to develop additional trainings or a different method of delivering training services, and once again we will work with Matt to help deliver that.
- 177 I. Swenson The appropriation aspect, has that...
- 178 R. Wolf That I don't know about. The person I communicated with was the NACDL – National Association of Criminal Defense Lawyers -- coordinator that was appointed under the original appropriation of funds. Although I wrote the contact person at the U.S. Department of Justice twice, I never got an answer from her about whether the money has been appropriated.
- 184 I. Swenson If that is approved it would be a good source of training funds. One thing we didn't talk about, and I just skipped over, was training for mitigators and investigators and whether we need to do something additionally there. I would appreciate, again, Rich's thoughts on that because of course the investigators' association and OCDLA provide trainings for investigators. Do they deal with death penalty issues?
- 192 R. Wolf The death penalty seminars that we put on tend to usually have one, usually not more than one, topic that is of particular interest to the mitigation specialist. I think it is a great idea if we can develop an actual program through PSU or somewhere for a basic training and attracting people into that, then of course I think it would be important - I think OCDLA could do a little better job of maybe adding a few more topics to the death penalty curriculum that would be of specific interest to the mitigation folks, but whether that would be at the death penalty seminar or in the investigation seminar, I am not sure.
- 205 Chair Ellis Any other issues that you think we ought to address?
- 208 I. Swenson Mr. Chair, on page 10, I think we have dealt with that issue about the relationship with the client and I'll include whatever the appellate division is considering there. I think that covers most of it.
- 216 Chair Ellis Is the next step on this piece the drafting of this plan for legal representation?
- 218 I. Swenson Yes. If you are in agreement that that is an appropriate approach to take I would propose to do that for your May meeting. We planned not to meet in April, but for May I would like to prepare such a document.
- 223 Chair Ellis That is how I envisioned it. Any questions or comments from the draft? Thank you. I really thought this was a good start. The next item is Kathryn with an amendment to the compensation plan.

Agenda Item No. 3 Amendment to the Compensation Plan

- 226 K. Aylward Behind the green tabbed divider. Our original compensation plan that the Commission adopted when we separated from Judicial and sort of reformed ourselves, listed a number of

positions we thought we would need. What I am adding to the classifications here are Human Resource Analyst 1 and 2. We actually have an employee who is performing the human resource function for the office and the appropriate classification for her would be Human Resource Analyst 2, so I would like to have that be an official position so that we can put her in it. The 1's are in there just because every time I have a 2 DAS says "How come you have a 2 and not a 1", so that is why we have a 1, planning for the future. If we get our eight FTEs, our sixteen FTEs, we will definitely need more human resources staff.

- 240 Chair Ellis There is no budget impact?
- 241 K. Aylward No. It is just adding an appropriate designation.
- 243 Chair Ellis Mike you are our resident expert of these sorts of things.
- 243 M. Greenfield Anything that would pacify DAS has got to be good.
- 244 Chair Ellis Was that a motion?
- 244 M. Greenfield Yes.

MOTION: Mike Greenfield moved to approve the compensation plan; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 4 OPDS's Monthly Report

- 248 Chair Ellis Ingrid, do you want to make your report? I know there are several subtopics here.
- 250 I. Swenson Thank you Mr. Chair. As far as the budget is concerned, our Chair and I appeared before the Public Safety Subcommittee of Ways & Means on January 22, to do what they call an overview. They have different approaches for different sized agencies and the Judicial Department and we were in a category where we gave an overview and then later, approximately the week of the 15th of April, we will make a more detailed presentation of our budget and a work session would then probably be set sometime late in the session when the final figures are on the table. Our Chair basically bragged about his Commission members and who they were and discussed the history of the Commission and its efforts to improve quality, its review of delivery systems, the site visit process, and then we talked about the big picture about our budget needs and those issues were basically that we need a supplemental appropriation to cover the 2005-07 budget deficit, and we can talk about that more specifically if you want, but we are still looking for the same amount, with an increase because of some additional costs. They had approved the \$7.8 million that we needed so now we need approximately another one. The other issues that we talked to the Subcommittee about were basically an adjustment which we would like to see made and which the Legislative Fiscal Office is recommending, so that we begin to use a different adjustment for inflation than we have been using. It would allow us to include, as part of our essential budget, a more realistic estimate of the increased costs, which are more personnel costs than supplies and services costs. If we were to do that then in future budgets we wouldn't have to face this issue every time. A 3.1 percent increase for inflation doesn't begin to cover the actual cost of human services. We are also looking for an adjustment in the Legal Services Division's budget similar to the Department of Justice's adjustment. We look at ourselves as doing such similar work that we ought to use the same caseload adjustment. That is approximately a two million dollar figure. The inflationary adjustment would be about a seven million dollar increase to our essential budget. We talked about our policy packages very briefly. This wasn't time for in depth discussion. I think we had a half an hour at the most for this initial presentation. I think it was well received. I did talk to a couple of the Subcommittee members afterwards and I had spoken to all of them except one beforehand. I think they are generally supportive of our need for increased funding. Of course, at that stage,

it is easy to be supportive without attaching any numbers to it. I think we might have discussed this at an earlier time, but basically the Governor's office recommended a sum of approximately \$10.8 million dollars beyond our essential budget level. With respect to Judicial Branch agency budgets they don't specify where that money should go. We have had informal conversations with the Governor's staff which certainly helped us identify the pieces of our policy package that were particularly appealing to them. The next step will be this public hearing and it will probably last a couple of days. We will get a two hour slot of time in the afternoon before the Subcommittee, so we will probably be there a couple of days and I will be contacting most of you individually to talk about that part of the process. I just wanted to briefly tell you about the dependency workgroup. I think I have described it before, but there is a group of four legislators, Senator Brown, Senator Kruse, Representative Krieger and Representative Schaufler, two Democrats, two Republicans, two House members, two Senate members, who put together a working group to address the lack of quality representation in juvenile dependency cases. Last session they convened what is called a sensitive review committee to look at a particular case which was controversial for many reasons. They examined the activities of the agency, they examined the court proceedings and the representation provided to both sides in that case. They added up the cost of representation for the state in the case as a whole and for the family. The state cost was, I believe, \$112,000 for the entire case. The total for the representation of all family members at all levels of the case was \$18,000. At least to some legislators that seemed like so stark a contrast that a pay increase just had to be part of the picture if they expected better representation. The case involved a child being removed, not placed with an eligible relative, rights being terminated and the Court of Appeals reversing that decision, so that this family was in chaos for several years. They looked to the representation in the dependency case at the trial level and thought, "You know, if this had been better maybe we would never have gotten here." Some of the actions taken by the agency were clearly questionable and those are being addressed in separate statutory proposals. In any case, this group of legislators has met many times and they have really bonded with each other on this issue and they are determined not to let go of it. They are promoting it among their colleagues and will be meeting the co-chairs of Ways & Means early next week to see if they can persuade them to support this package of bills. I have been informed that the amount that they intend to include in SB 411, which would increase funding to PDSC for juvenile dependency representation, is twenty-three million dollars. It would be a separate appropriation directed toward this particular area of practice. When Kathryn and I met with them they asked for some options in terms of funding and it appeared, well it is quite clear, that they decided they would like to reduce caseloads by 20 percent for juvenile dependency and increase compensation by 25 percent. They recognize the need to do both in order to address this issue. In addition, they are potentially seeking to have us create a juvenile resource center for attorneys statewide. This piece could be staffed by OPDS or we could contract for that, but the idea would be to create a resource center so attorneys handling these cases have all the benefits of some of the contract offices like the Juvenile Rights Project which provides support and information and resources to children's attorneys. We'll see where that goes. I think Senator Brown would probably say that this is one of her highest legislative priorities. She understands the need in other areas of public defense but feels that this is an appropriate place to make an initial strong effort to get legislators to recognize the need for increased compensation. Unless there are other questions about the budget I didn't have anything further to present.

396 J. Potter

I just had a question. I just happened to step in and hear Senator Brown talking to the OCDLA folks moments ago in response to a question about will there be parity for public defenders and prosecutors and part of the response was "I'm pretty sure that we will make steps toward parity, but we will not achieve parity." I've heard, and I'm sure you've heard as well, that legislators are telling not us to expect the whole pie, but are offering out hope that there is some more money coming into the system.

406 I. Swenson

Yes, I have heard the same. LSD has some news to report.

409 B. Duncan

We have three bills and they were before the House Judiciary Committee last week, Monday. Two of the bills were fairly straightforward housekeeping measures. One changes the statute to make it clear that after an appeal is completed in the Oregon appellate courts, but is going to the United States Supreme Court, that that person need not file the petition for cert until the case has come back down from the Supreme Court. The statute was a little unclear about that and that bill has gone from the House with the House's recommendation and we are waiting for it to go to the Senate side. We also have another housekeeping bill in the House which would eliminate the requirement, after determining that someone was eligible for court-appointed counsel at the trial level, to separately determine that the person was eligible for preparation of a transcript at state expense. We have eliminated that second requirement on the assumption that if the person is indigent enough to qualify for court-appointed counsel that the person should receive a transcript at state expense. So we did some cleaning up of the statutory language there. We are seeking a change to the procedure by which decisions of the Board of Parole are appealed. It is complicated. Right now in these judicial reviews of Parole Board actions we have to file what is called a motion for leave to proceed, basically identifying a substantial question of law, asking the Court of Appeals to determine that there is a substantial question of law, before the case proceeds to briefing. The interesting issue in this statutory scheme is that after a case is briefed the Attorney General representing the board can argue, through a motion for summary affirmance, that the case doesn't present a substantial question of law, so there seems to be some duplication in the system. We have prepared a bill, and are seeking to eliminate the requirement that we file a motion for leave to proceed in every case identifying a substantial question of law. That creates work for us. We want to go straight to the briefing and, if the Attorney General believes that a particular case doesn't present such a question, then the Attorney General in those cases can file a motion for summary affirmance. We think that that will save our office time and money. Our data, which is corroborated by the Attorney General's data and the court's data, indicates that approximately two-thirds of these cases are going through this motion practice and these cases are nevertheless going to briefing. We see it as a waste of time and resources. It causes delay in that it takes approximately four months after we file the motion for it to be resolved and then we are given leave to proceed to briefing. So, there are financial costs to the motion practice and the cost of delay. The Board of Parole and the court were neutral on the bill. We were the only party speaking in favor of the bill. The representative of the board did come forward and say that the bill would cost his agency more money. The hearing ended with a public hearing and it has not gone to work session. We do not know what the status of that bill will eventually be. However, the Parole Board also has a bill which was heard the next day before Senate Judiciary and it concerns the procedure for murder review hearings. It is quite possible that we will be working with the Board of Parole to resolve both their bill and our bill. Our office is also testifying on a Department of Justice bill which would make a substantive change to the criminal law about what elements of a crime require a culpable mental state.

487 I. Swenson

I need to let the Commission know that I have heard from several legislators about Becky's testimony and how persuasive she has been and they really appreciate it when she or the office can provide input on bills such as the Department of Justice bill. Kathryn, similarly, gets high marks; in fact she gets thank you notes from legislators she goes to visit. Maybe we could, Mr. Chair, ask Jim Hennings and Greg to comment on the loan forgiveness legislation. They have both been very actively involved in that and handed out some materials this morning on the latest status of Senate Bill 4022.

503 J. Hennings

Greg actually has participated at the national level at the ACCD and I have forgotten what that

505 G. Hazarabedian

American Council of Chief Defenders.

506 J. Hennings

.... and has been very well received and that was a major issue with them and has been a major issue with Greg. I want to report that my board also has become very interested in this

issue. I included with the material a letter that Susan Mandiberg from my board had written and which the entire board had signed that was read into evidence at the senate hearing. They have personally contacted every member of the Oregon delegation. Unfortunately, we still only have Senator Smith signed on as a formal co-sponsor of the legislation. This is farther than we have ever gotten before. I think this was the fourth time the proposal was presented. It got very, very strong support. There were some minor amendments. The biggest one that would have impact in Oregon is that it is limited to full-time defenders. It is combined so that it is both a defender and a prosecutor bill so that if we can get it through the House and the Senate, it probably will have enough votes that it won't be subject to a veto. The big issue then is going to be getting it funded. It should come up in the Senate within the next month and there is a companion that is ready to go on the House side and we understand that that will go very, very quickly. I urge this Commission to continue its support, push its support, especially with the Oregon delegation, to get this passed and to get it funded. \$25 million is the original funding. It pays school loans up to \$10,000 a year, up to a total of \$60,000. It would be required that the recipient work for a Public Defender's Office for at least three years or pay back the money if you left earlier than that. I can tell you that it would make a major difference in our ability to recruit people and our ability to retain people. Elsewhere, there are numbers in your package about the decrease in retention -- how quickly people are leaving our offices. It would also have a major impact on the other goal you are looking at, which is minority recruitment and minority retention. Included in the package is something we did not provide the Senate but Susan Mandiberg had, indicating where people who are in the first five years of practice in my office are in terms of their gross salary related to the amount of money they are paying on school debts. The highest is someone who spends forth-two percent of her gross salary to repay school debts. The average is about eight percent. There is not very much left for anyone to live on if you take that out and you take taxes out. That is part of the reason that we can't hang on to people.

- 576 Chair Ellis For the record, on behalf of the Commission, I did write both senators about five months ago and again about one month ago. It would help if you would keep us posted because I think you are closer to the process.
- 582 J. Hennings I would suggest that potentially the Commission might want to commend Senator Smith for his effort and push for him to continue that.
- 585 G. Hazarabedian I would also add, Mr. Chair, that there was an issue that came up. All along the bill had included FTE government public defenders and full-time non-profit defenders and somewhat late in the game a question arose as to whether full-time non-profit defenders, as we have in the Oregon public defender system should continue to be included in bill. I was requested to get a letter from Oregon, and your executive director furnished a very appropriate letter in real short order, which, along with letters from defense offices in the other parts of the country helped to stop that talk in its track.
- 599 J. Hennings The other thing that came up late was whether or not juvenile law counted ...
- 603 G. Hazarabedian Juvenile and mental commitments
- 603 J. Hennings Juvenile and mental commitments. And most public defender offices do those as well but they are quasi civil, not criminal. That was one of the amendments and probably a very helpful one to make it clear that that type of work that public defenders do is included.
- 610 Chair Ellis There was one amendment described in the email exchange and let me see if I can find it.
- 625 J. Hennings One of the things that will have to be followed up on if this gets passed and gets funded is that it is going to be up to the Justice Department to put the rules together. The good news is the rules have to be the same for prosecutors and defenders. The bad news is that it is the Justice Department putting those rules together.

- 635 G. Hazarabedian The feelings of the American Council of Chief Defenders has been that, rather than get bogged down in the minutiae of who exactly is covered and who is not covered and how the mechanics of the scheme ought to work, we should jump on the wagon that has the most horses pulling it and then come back later and sort things out.
- 640 Chair Ellis Any of the Oregon House Delegation that you think needs help?
- 634 J. Hennings Since none of them have signed on as co-sponsors on the House side, it would be nice if they would do so. As I said, my board has personally contacted, because of who they are and where they come from, personally contacted all of them without a great deal of success at this point. I don't know if it is just a lack of interest or what. It would seem to me that our delegation ought to at least be willing to sign on as sponsors.
- 653 Chair Ellis When it gets to the House side will you keep us posted.?
- 657 G. Hazarabedian Absolutely. Having heard what Jim just said, I haven't heard that any of the Oregon delegation would oppose the measure substantively.
- 660 I. Swenson Maybe we could submit a joint letter with the ODDA to support it.
- 662 J. Hennings That would be a great idea. It is very good news and has the potential for major impact on the operation of both of our offices and other offices in the state.
- 670 Chair Ellis Where I see it having terrific impact is, there are a lot of really good, young lawyers who don't come into defense, such as your office, don't go into it at all. This would be a big, big plus there. We have a couple of other topics here.
- 677 I. Swenson If we have time, Mr. Chair -- we have until noon --we could report on recruitment and maybe we should pause a minute. Olcott Thompson is here and you will recall that there was some discussion at the last meeting about representation by certain MCAD lawyers in death penalty PCR cases. I have provided a copy of a letter to our chair that Mr. Thompson prepared in response to that testimony. I wonder if you have additional comments that you wish to make. Perhaps Mr. Thompson could also update us on the status of the litigation involving MCAD.
- 690 O. Thompson Certainly. The easier one is probably the litigation. We were in mediation with lawsuits ...
- 704 Chair Ellis This is Judge Lipscomb?
- 704 O. Thompson Judge Lipscomb and Sam Hall. At least conceptually they are resolved except that the lawyer part and the paperwork haven't been completed.
- 709 I. Swenson Do I understand correctly that the terms of the settlement may never be made public?
- 712 O. Thompson That is correct. It is confidential.
- 712 I. Swenson Any other information that you can share with us at this point.
- 715 O. Thompson It is tentative and I would rather not because one of them is real touchy and may fall apart any minute.
- 718 Chair Ellis On a scale of 1 – 10 with 10 being very good and one being awful, is MCAD happy with this?
- 721 O. Thompson With you?
- 722 Chair Ellis With the settlement.

722 O. Thompson It depends on who you are talking to. We had a board meeting to discuss things that the board had to do. I would say we are going to end up at about five, six or seven.

727 Chair Ellis More happy than not, but not ecstatic?

728 O. Thompson Well, we would have been ecstatic if it had never been filed. In my view, particularly on the death penalty post conviction work, and I was thinking about it over the last couple of days, MCAD probably has about half a dozen lawyers who are death penalty qualified. In the process that Kathryn described to you, trying to get lawyers to do death penalty post conviction work, MCAD has already done that before we have to go to Kathryn and say "Please can you help us." The reality is those folks are already doing a case, probably, either direct or post conviction and they can't do another one. They don't want to do it at the rates we can pay them, which is more than \$55 an hour but it is long, hard work and realistically -- and this is more from my years of post conviction work, not death penalty cases -- the more serious the case the better the lawyers generally are. Those folks will cooperate. They are happy to help. "If I goofed up let me know. Here is my file. Anything I can do I will help you with." Files from OPDS Legal Services Division are generally full of ideas. They didn't used to be. Years ago they didn't want to help either. But now, "Here is my file" and they generally have what Becky described as ideas. "This was an idea; this was an idea; and no this isn't going to work." There is correspondence back and forth between the attorney and the client saying that "No, you can't do this here. You can do it in post conviction but you can't do it here" for all the various reasons. [end of tape]

TAPE 2; SIDE B

002 O. Thompson If post conviction is to be done right it takes a lot of work, it is rewarding, and I enjoy it. It takes a lot of lot of work and the clients, on the whole, are frustrated if it is taking me this long already. They are real upset and all the problems you have with a trial level client are increased with a post conviction client. They have gripes and it is usually about their previous lawyer beforehand because that is the easiest person to point to.

009 Chair Ellis Or the only person.

010 O. Thompson Frequently, yes. Unfortunately in Marion County, in my view, the judges have bought the Attorney General's position that the only things that can be raised in post conviction are errors of the trial counsel. I think the errors of the court can be raised in limited circumstances. But it is incredibly difficult and oftentimes you start out with an adversarial relationship with your client. Funding will help a lot because you are going to attract people who are willing to spend the time to do it. If you are scrambling to make money and survive at \$55 an hour and you can do a trial level case at \$55 an hour, why not just do that?

020 Chair Ellis We understand the problem.

021 O. Thompson I know you do.

021 Chair Ellis Thank you very much.

021 O. Thompson Thank you.

021 I. Swenson Quickly I would like to report on some recruitment efforts. OCDLA put together a very nice set of gatherings at the three law schools. They offered pizza and beverages and invited some of the providers to come and make a presentation to the law students. I attended a couple of those and I thought they were wonderful. It was a chance for people who were potentially interested in a career in criminal defense to hear a little bit about what that means and to hear from people like John and other practitioners about the support that is available for them and I

think that was good. Becky and I participated in the Northwest Public Service Career Fair. I planned to go to the session in Seattle but it turned out there were no people there who wanted to be interviewed, so I didn't participate in that one, but we did at Lewis and Clark. We interviewed six people. There were some wonderful applicants and among them some highly qualified minority applicants. We have openings so we could talk to them about that and ask them to keep us in mind once they have taken the bar. On the whole, I thought it was very successful. Becky, you also attended the ...

- 039 B. Duncan Right. The week before the career fair I went to the Opportunities among Oregon Minority Recruitment Fair that was held at Lewis and Clark. I had an opportunity to meet with minority law students to talk about public defense.
- 045 Chair Ellis While we are on the topic of the career paths of people who come into defense, Jim do you want to ...
- 046 J. Hennings I have an interesting announcement. The Governor recently appointed four circuit court judges in Multnomah County. It is fairly interesting that two of them were female, one was Asian-Korean and one was Black. The other distinction is that all four of them are alumni of MPD. The presiding judge has now officially recognized that it is a prerequisite to be a judge in Multnomah County that you have had to work in the PD office. Thirty-five percent of the bench in Multnomah County are alumni of MPD. No other office that I was able to contact has heard of more than one of their alumni being appointed a judgeship in the same day, let alone four.
- 058 Chair Ellis They are all tough sentencers.
- 059 J. Hennings The real problem is we are running out of judges we can try cases to.
- 060 Chair Ellis They don't recuse do they?
- 061 J. Hennings No.
- 061 C. Lazenby They are doing civil cases for the first six months or so, so the conflicts can fall off.
- 062 J. Hennings I know Tom Ryan has been assigned to family court. He was in charge of our juvenile division for a number of years. I think he will be an excellent addition out there. The four are very, very good lawyers. Very good people. They are going to represent us very, very well.
- 067 Chair Ellis I think we should congratulate you because you were involved in the original hiring of every one of those. I think it does speak very well for both the defense bar generally and our court system. That is terrific.
- 071 I. Swenson Mr. Chair, two other things if I could. Further on the recruitment issue, OCDLA is working on some of these issues and we certainly want to coordinate with them, but we need to create a statewide database for openings in PD offices and get the message out to other states and law schools about what is here and what is available. When Becky and I attended these recruitment fairs, we realized we needed a piece of literature. Other people there had beautifully designed materials which described who they were and what they did. OPDS needs to create some kind of a brochure. I mean it is obviously different because we are just going to describe the structure of public defense in Oregon and then refer people to OCDLA or some other place to find out information about particular openings. I think we need to develop something we can send to out-of-state law schools describing our situation in Oregon, and inviting them to consider practicing in this state. We need to follow up on that. Quickly if I may, I would like to describe a couple of changes to our Affirmative Action plan. We will need to report back to you more fully on what we are doing, but maybe not today. The last time you saw our plan it was a draft that was submitted to you as part of our original

budget presentation. This time around we needed to include a six-year plan which we hadn't done before. The earlier format required only that the agency report progress made in the last two years and then talk about what it planned to do in the next biennium. One thing that we hadn't really addressed in the previous plan was our effort to work with our contractors to help them make progress in the same area. Our plan related only to what we as an agency expected to do, hoped to do, and planned to do in terms of increasing diversity, but we didn't really talk about the contractors. We have now added that item. As you know, Angel Lopez chaired a diversity task force which put together some proposals which he presented to you in October. Angel indicates that he thinks at this point that it needs to be OPDS, not an independent task force, that goes forward on this part of it, which is fine. We had a Contractor Advisory Group meeting, I think it was in January, at which we discussed the need to move forward. As you will recall we were going to do a survey of all the providers so that we had a baseline in terms of where we are to begin with and then look at strategies to work on improving diversity within our contractor offices. We agreed to schedule a meeting of the Contractors Advisory Group to focus on that issue in particular. I haven't scheduled it. I hope to be able to do that shortly after our budget hearings, so probably late April will be the appropriate time to do that. After that, in May, I hope to be able to report some more progress.

- 126 B. Duncan We are happy to report that the backlog continues to go down. The backlog is the number of cases in our office that are over 210 days old in which the opening brief has yet to be filed. Right now it is at an all time low and we intend to continue to reduce it. We have hired two new attorneys. We are also setting up caseloads for attorneys who are coming into the office so that their caseloads are structured so that they are able to file a brief in the case before it reaches that age; they are not digging out from anything. It is easier for them to just see what is next and then not have to take any extensions on their cases. We have several attorneys in the office who are in that position and able to file their cases without taking the standard extension that our office gets. We are really pleased with the trend and we are working with individual attorneys in the office to relieve their backlogs. A lot of the backlog has been in parole cases and that lingers. We have re-staffed those cases and that should relieve the backlog in these cases too. We are also expanding the appellate panel, which has increased our ability to send cases out of the office when we take in more, in a particular month, than we have the capacity to do within the time that we want to do them.
- 147 Chair Ellis Is the AG crying ouch yet?
- 148 G. Hazarabedian Uncle.
- 148 B. Duncan The work that our office does and also the work that we send out hits the Attorney General. They are feeling the pinch of our backlog reduction efforts.
- 151 Chair Ellis Good. Pour it own. Any other business? John, I understand you are the host for our lunch opportunity.
- 154 J. Potter Yes. The chief justice is going to speak in two minutes next door. There is lunch available that Laura Anson has gone out to get that OCDLA is paying for. Is it outside? We were going to put it here.
- 161 Chair Ellis Perfect. I would entertain a motion to adjourn.

MOTION: Shaun McCrea moved to adjourn the meeting; John Potter second the motion; hearing no objection, the motion carried. **VOTE 5-0.**

Meeting adjourned.

Attachment 2

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

May 10, 2007

Room B-30 Public Services Building
155 N. First Ave.
Hillsboro, Oregon 97134

MEMBERS PRESENT: Barnes Ellis
John Potter

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Peter Gartlan
Paul Levy
Caroline Meyer
Laura Weeks

TAPE 1, SIDE A

[The meeting was called to order.]

Agenda Item No. 2 Presentation on Public Defense Delivery in Washington County.

009 - 062

Ingrid Swenson described the OPDS investigation into service delivery in Washington County. She and John Potter and Caroline Meyer met with most of the judges, with the district attorney and the sheriff, with all of the PDSC contractors in the county, with juvenile department representatives, DHS representatives, and a representative from the Attorney General's Office. She noted some changes to the draft report based on information received in response to the draft.

068 - 216

Cal Downey of the Washington County Juvenile Department testified that there are some attorneys not associated with any of the contract offices on whom they rely to handle some of the more difficult juvenile delinquency cases. He said that there are obstacles to paying attorneys who work in the juvenile drug court because most of the cases involve formal accountability agreements. There is no defense attorney on the drug court team. He testified that, although there is no attorney present for in-custody juvenile delinquency shelter hearings there are very few youth who are in custody in Washington County. Mr. Downey said that he was comfortable with the public defense providers in the county including the relatively large number of private practitioners. With respect to the adequacy of the physical space available for juvenile court functions, Mr. Downey said that the county is seeking additional space.

239 - 605

Susan Mandiberg is a Professor at Lewis and Clark Law School teaching criminal law and procedure. She is also member of Metropolitan Public Defender Board of Directors. She testified that the public defender's board is an independent board. She said that the Metropolitan Public Defender (MPD) provides essential services in Washington County including their attorney training program, and serving as an information resource and an example of how things should be done. In order to continue to be effective, MPD needs to be able to retain its attorneys. In view of the law school loan debts they carry, newer graduates can't afford to work for public defender offices. The public defender office also needs a mix of cases - less serious cases to train new lawyers on and more serious cases to challenge more experienced lawyers. She said that the two-county office model used by MPD seems to be working well, creating economies of scale but allowing the Washington County Director to act independently. MPD's new attorney training program can probably be opened to other contractors if MPD has the resources to allow it.

611 -
TAPE 1; SIDE B
228

Judge Thomas Kohl testified that he is the presiding judge in the county. He said that the new Early Case Resolution (ECR) program which the county has developed is working well. The defense attorneys were critical to its success. He also expressed appreciation for Keith Rogers' involvement with the drug court staffing team. Judge Kohl expressed his willingness to meet with contractors and others to discuss ways of arranging the court's schedule to avoid unnecessary time in court for defense attorneys. He said that the quality of representation he has seen in Oregon is much better than in Ohio where he practiced before coming to Oregon. The quality of representation in Washington County is very good. The addition of the Harris Consortium has been a boon to the county because it makes it easy to manage conflicts. With the number of cases they have, public defenders do an excellent job. One area where improvement is needed is in training of new lawyers. Some part-time lawyers do an excellent job. It depends on the individual. Judge Kohl explained how cases are assigned to the various contractors by the court clerk's office based on the number and types of cases for which they have contracted. The court generally assigns the lawyers in substitution situations and in murder cases. He is comfortable with the fact that the Measure 11 cases all go either to the public defender's office or to the Harris Consortium. [The other cases are distributed among all of the providers and only approximately one percent of the criminal cases are assigned to private bar attorneys.] Judge Kohl said that prior to the ECR program attorneys were generally not present at criminal arraignments. They are now present for ECR cases but not for arraignment in other cases.

237 - 269

Judge Marco Hernandez testified that he has been on the bench for 12 years and was the presiding judge before Judge Kohl assumed that position. He attended the Commission meeting because he had heard that Washington County public defense providers were compensated in a different way than the providers in other counties. All public defenders are underpaid but the lawyers in Washington County should not be treated differently from other defenders.

270- 281

Chair Ellis noted that the Commission is making an effort to make the process more transparent and equitable but there will be differences in contract rates.

282 - 500

Judge Hernandez said that the quality of representation in Washington County is as good as anybody's. He believes the lawyers work hard and probably try more cases than lawyers in other parts of the state. When lawyers work in special courts such as drug court or the mental health court they have to attend many hearings and should receive some adjustment to their compensation. Spanish-speaking clients receive very good representation although it would be good to have more Spanish-speaking lawyers. There is also a demand for interpreters in other languages.

507 -
TAPE 2, SIDE A 044

Susan Isaacs testified that she is a Beaverton attorney who has done prosecution and criminal defense. She has private clients and she accepts appointments in juvenile delinquency and dependency cases representing both parents and children. The juvenile court community in Washington County is very congenial. She is often asked by the court to handle cases that require special skills and experience. In January of 2007 one of the contractors who had been handling only criminal cases began to receive juvenile cases in order to help the contractor meet the contract quota. Unfortunately that meant that there were fewer cases going to private bar lawyers. This did not appear to be a good way to promote quality representation. Sole practitioners should be valued members of the public defense bar. Being part of a consortium is not a solution for these lawyers.

048 - 397

Judge Kirsten Thompson served as a *pro tem* in juvenile cases from 2001 to 2002 when she was appointed to the circuit court bench. She is on the family court team and was the juvenile court judge until September of 2006. She explained the juvenile court process. She worked with the court staff and defense bar to make it possible for lawyers to be present for initial hearings in juvenile dependency cases. Representation at these hearings has made a distinct difference in the resolution of cases. The combination of the public defender's office, the firms and the private bar is a good one. A large number of providers are needed in juvenile cases because of the number of parties in some cases. There is a need for highly skilled lawyers in juvenile court to resolve some of the system problems encountered by their clients. The court needs the flexibility to appoint lawyers with special skills in unusual circumstances.

402 - 417

Chair Ellis thanked Washington County District Attorney Robert Hermann for participating in the PDSC budget presentation.

418 -
TAPE 2; SIDE B 217

Robert Hermann testified that Washington County public defense providers should receive salaries that are competitive with the salaries of providers in neighboring counties. The ability to attract and retain quality defense counsel makes the system better. He testified that his office has enjoyed a very high retention rate among its attorneys and in order to fill vacancies in the office it is usually not necessary to recruit. Trial rates are probably higher in Washington County than in other counties. The County has generally had the resources to prosecute all cases at the level they should be prosecuted. He believes that for the most part the right cases are getting tried on both sides. The drug court is working well. It lasts longer than drug courts in most counties. People who were going to prison are now participating in drug court. There have been 14 graduates or more. Victims are receiving restitution. Its success is the result of everyone working together, including Keith Rogers and Rob Harris. The ECR court is also working very well. Failures to appear are down. Jail overcrowding has been reduced. Since many of the lower level cases will get resolved there it would be unfortunate if contractors lost compensation.

226 -
TAPE 3; SIDE A 095

Robert Harris testified that he is the administrator of the Oregon Defense Attorney Consortium. He described the system for distribution of public defense cases and his system, within the consortium, for assigning attorneys to particular cases. He described the history of the consortium, its membership, the training provided to new lawyers and methods for dealing with quality issues. He noted that a number of the attorneys and staff of the consortium are Spanish-speaking. The consortium has a board of three attorney members. They plan to add two independent members. He provided a document to the Commission which he said illustrates that consortium rates are approximately ten to fifteen percent lower than rates paid to Clackamas and Multnomah County consortia.

098 - 233

Judge Donald Letourneau said that there is a need for better training of new lawyers in Washington County. MPD should be responsible for training the other contractors. Now that jail overcrowding is not a significant issue, it would be a good time to consider having

counsel appear at criminal arraignments. When clients have both criminal and juvenile cases it would be good if the same lawyer could be appointed to represent the client on both cases.

235 - 341

Sarah Kopplin testified that she is a supervisor with the CASA program in Washington County where she has worked for six years. While there are a lot of committed, strong attorneys in the county she has three main concerns. Attorneys who represent children are not contacting their clients. Except for MPD and a handful of the private attorneys this is a major issue. The second concern is that more and more attorneys who represent children are not taking a position on their behalf. Her third concern is that there is, generally, a lack of meaningful representation. Attorneys need to be proactive on behalf of their clients.

394 -
TAPE 3; SIDE B 093

Grant Burton from the Washington County Indigent Defenders (Garland, Burton, McCaffery) office referred to a letter which was presented to the Commission regarding distribution of funds within the firm. He said that he believes there may have been pay disparity in the past but that his firm is currently paying competitive salaries. Mr. Burton described the training available in his office and the circumstances under which an attorney might fail to see a client before a court hearing.

122 - 316

Ron Ridehalgh testified that he had been a contractor since 2000. He described the discussions which had occurred regarding the possible formation of a new consortium and the intent to include all interested attorneys.

321 -
TAPE 4; SIDE A 042

Warren Bruhn testified about his experience as a public defense attorney with previous employers and with Brindle, McCaslin & Lee. He described some of the difficulties related to insufficient compensation for public defense lawyers.

043 - 185

Jim Hennings, the Executive Director of MPD, talked about the financial demands involved in staffing specialty courts and the declining caseload in Washington County. He said there are too many contactors for the caseload.

186 - 370

Keith Rogers, the Director of the Washington County Office of MPD talked about the case mix his office has been receiving lately and the difficulty he is having keeping the newest lawyers busy. Training in his office has included trial skills training but most training is by osmosis. He discussed his participation in drug court and the ECR court.

Agency Item No. 3

Progress Report from Morris, Olsen re Gilliam, Hood River, Sherman, Wasco and Wheeler Counties

374- 476

Jack Morris provided an update for the Commission on the work of his firm in Judicial District No. 7. Morris, Olsen has tried to live up to the expectation that it be the "go to" organization in the area.

Agenda Item No. 4

OPDS's Monthly Report

482 - 705

OPDS staff discussed the status of the PDSC budget request, the addition of new attorney positions, the prospects for eliminating the appellate backlog, and the status of four House bills relating to appellate representation.

706

The Chair adjourned the meeting.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, May 10, 2007 Meeting
9 a.m. to 1 p.m.

Room B-30 Public Services Building
155 N. First Ave.
Hillsboro, Oregon 97134

MEMBERS PRESENT: Barnes Ellis
John Potter

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Paul Levy
Peter Gartlan
Caroline Meyer
Laura Weeks

TAPE 1, SIDE A

[The meeting was called to order]

Agenda Item No. 2 Presentation on Public Defense Delivery in Washington County.

003 Chair Ellis If we can call the meeting to order. Thanks everyone for coming here to Hillsboro today. We are going to skip the minutes in deference to the non-quorum that we knew that we would have. Ingrid, do you want to start with the Washington County?

009 I. Swenson Thank you very much Mr. Chair. Yes, I would be happy to. Over the course of the last month, month and a half, John Potter and Caroline Meyer, who is here today, and I spent a few days in Hillsboro. We met with most of the judges. We met with the district attorney and the sheriff, all of our contractors, juvenile department representatives. We spoke with DHS representatives, a representative from the Attorney General's Office, all in an effort to get a picture of how things are going here in terms of the delivery of public defense services. It is always complicated to try and figure out how the system works and we did our best to put the pieces together and put it into a report. The draft report which I provided to you for today's meeting is a work in progress let me say. I have been able to get it out to most of the people we met with and have gotten comments back from a lot of them. You will hear some of those comments today. There are just a couple of things I wanted to alert you to before you hear directly from the folks here. With respect to the drug court I said it currently had about 20 participants. Actually, that is up to 38 at this point as noted in the report and that number is expected to continue to increase, but at this point there are already 38 clients participating in the drug court program here. In juvenile dependency cases, one of the issues I talked about was the infrequency of court reviews. I have been corrected about the length of time that usually elapses between the shelter hearing and the first court review, I said it was ordinarily a year. It appears that is not true. Nine months has been standard under both Judge Thompson

and her successor, Judge Fun, so I will correct that. An additional concern in the juvenile area that really isn't flagged in the report but that I have heard about from a few people about has to do with representation of parents. I focused in the report on the lack of contact with child clients in dependency cases. It appears that a number of people are also of the opinion that parent clients don't necessarily receive the kind of forceful advocacy that they need in order to obtain appropriate services to address their needs in a timely way, so I will be adding a discussion about that. In the delinquency area, I neglected to indicate that attorneys do not appear at first hearings in those cases. I know in the dependency area the court made a significant effort to make that happen and lawyers are now present for both parents and children in dependency cases at the initial shelter hearing. That has not been true of the delinquency hearings and, as the report indicates, in criminal cases, although attorneys now appear at the ECR hearings. For the clients who participate in that program there is representation, but those who are not eligible for that program are not represented at their arraignments. I have for you a letter which I will distribute when Mr. Burton arrives, that talks a little bit about the Garland firm in terms of the wage level of associates with that firm. He would like to address that, and he has sent me a letter talking about the rates of pay there and it would seem to be somewhat contrary to the information that we received from others. Mr. Chair, as you are aware, there are a number of people here this morning who were hoping to be heard as early as possible. I know Judge Kohl will be arriving, if he hasn't, and I see Judge Letourneau has joined us too. I would appreciate it if we could hear from them first.

062 Chair Ellis Alright. Judge Kohl is not here yet?

063 I. Swenson Right.

063 Judge Letourneau Chair Ellis, since you were so kind to come to Hillsboro, one of us thought we should come and I can be here all morning.

065 I. Swenson Mr. Chair, Cal Downey is here and he needs to leave soon, if possible.

068 Chair Ellis Well, we can start with Mr. Downey.

068 C. Downey I'm Cal Downey and I am a manager with the juvenile department. Thank you for having us participate. I have one concern, one request, and then one comment regarding what Ms. Swenson just mentioned and if you have any questions I would be happy to respond. We have been fortunate the last several years to work with some relatively small offices and a wide pool of private practitioners in the defense of delinquent youth. They have developed the special skills and knowledge that it takes to work with delinquent youth or even different skills and knowledge necessary to work with dependent children and their parents. My concern is that if we go to a large consortium we must see that attention is still paid to assigning attorneys that have the skills and knowledge base necessary to work in the juvenile justice system that you might not pick up in a normal practice of law. That is just one concern I have with a large consortium in the area. The request I have to make has to do with our juvenile drug court. In the juvenile drug court system, a lot of time is spent with staffing and consulting on cases and in our drug court, because we use a wide range of graduated sanctions, a lot of our clients will have formal accountability agreements. It becomes difficult to pay for an attorney because we don't file a petition. We enter into this contract in lieu of a petition. Mr. Verhulst and Mr. Harris, at times, have done some *pro bono* work for us. We are missing on our juvenile drug court team a defense counsel who can participate in the staffing and consultation. I would think that this would take probably two to three hours a week of time and if there is some way of contracting specifically for someone to be part of the juvenile drug court team, that would really enhance our program and I would like to see it happen. In terms of the comment Ms. Swenson just made about the first appearance on delinquency cases that is true if the first appearance involves a youth who has been placed in custody and has a preliminary hearing on the next day. However, that is a very small percentage of delinquent youth. For most delinquent youth, the first appearance is a, we call

it a pretrial conference or preliminary hearing where a member of our staff would meet with the youth and their family. At that point, if the youth expresses interest, in fact we encourage them to seek court appointed counsel and then we would go ahead and ask for that. I think in the majority of cases a youth does appear at their first appearance having consulted with an attorney. The exception is, and it is a logistics issue with preliminary hearings, because if a youth is placed in custody at 5:00 this morning then at 1:00 we have preliminary hearings. We are a county of over 500,000 people. We are the second largest county in Oregon. We have 12 detention beds, so we don't use a whole lot of pretrial detention. It is a relatively small number of youth who have their initial appearance without counsel. Typically, what would happen if a court determines to hold a youth there is, by statute, a judicial review within 10 days with counsel present. What frequently occurs if a youth is in custody, the attorney is appointed, they talk with their client usually via phone since the detention facility is in Multnomah County and if they request a hearing on the following day or in 48 hours we accommodate that.

- 118 Chair Ellis Thank you, that is a very well organized presentation and I know that you said you had one concern and I think understood what that was and you had one request, and I think I understood what that was, and then you said you had one question and I'm not sure ...
- 121 C. Downey No, I want to make myself available to you for any questions you might have.
- 121 Chair Ellis Oh, okay. Let me ask you a couple of things. You said at the outset that your concern is as the consortia becomes larger and there are more participants, I thought I understood you to say that there would be less specialization among those doing the juvenile work.
- 127 C. Downey I think that special attention needs to be given to who is assigned to particular kinds of cases and I don't know if in a pool of attorneys someone could even get the experience that might be necessary.
- 129 Chair Ellis Now, in a number of other areas in the state, juvenile specialty groups have developed, but I am sensing that may not be true here?
- 132 C. Downey I think that is true with the Public Defender's Office, Karpstein and Verhultz, some groups that have had long-term contracts with the juvenile court.
- 135 Chair Ellis Your concern, at least I thought I understood it, was a concern that we are not getting as many lawyers who are really specialists in delinquency.
- 137 C. Downey I am concerned that that could happen in the future.
- 138 Chair Ellis You're saying you don't think it has happened yet.
- 138 C. Downey I don't think it is a concern right now. I am concerned about that happening in the future.
- 140 Chair Ellis All of your comments were on the delinquency side.
- 141 C. Downey That is correct.
- 141 Chair Ellis Can you share with us how the dependency piece is handled here?
- 142 C. Downey I haven't been actively involved with dependency cases in about 10 years. For a 10 year period I was a coordinator between CSD and juvenile courts and I had lots of experience, but in about 1990 when the administration of the juvenile departments went from the judiciary to the county commission, the juvenile department is no longer actively participating in dependency cases. There is an overlap. There is certainly a large percentage of youth who

start out as dependent youth and children, become delinquent, and then we co-manage those cases typically through DHS.

- 151 Chair Ellis Are you saying the same lawyer is doing both delinquency and dependency?
- 151 C. Downey Yes and no. I think there are some attorneys, particularly who are private practitioners, who specialize more in dependency cases and there are certainly attorneys who do both.
- 154 Chair Ellis What is your advice on that? Are we better off having lawyers who do criminal also do juvenile delinquency or are we better off having lawyers that do juvenile dependency also do juvenile delinquency?
- 159 C. Downey I think it is very possible for attorneys to do both. I don't have any problem with that, but to some degree it probably depends on the desire of those attorneys and the level of involvement they want to have and I am willing to respect that.
- 163 Chair Ellis One question I had reading the report and it wasn't focused on the juvenile side but it is a question that kind of leaps out. Do you think we are too spread out with too many provider sources? Do you think we ought to be concentrating more?
- 168 C. Downey Right now I am pretty comfortable with the providers that we have and I think that we are rather unique because I think we have a lot of private practitioners. I don't know how that compares to other counties but the private practitioners that we have working in juvenile justice are folks who, I think, have some special interests in working with our clientele. I think many of them do focus on either delinquency or dependency cases and our courts become familiar with the attorneys that have that knowledge and skill and they are sensitive to appointing practitioners who have told them that they want to.
- 178 Chair Ellis The private practitioners are ones that divide their practice between appointed juvenile and other work?
- 181 C. Downey I believe they do that.
- 183 Chair Ellis On your request, can you spell that out a little bit more.
- 183 C. Downey Well, in the juvenile drug court we work as a team with the judge. We ask youth - frankly we do a whole lot more than they would normally do on probation. The pay out for them is that they might have an early expungement of their record; they might get an alternative disposition at their conclusion. But during the course of their supervision they are being seen three or four times a week. We operate treatment programs that they must participate in; we are involved in the family; and they are reporting to the judge initially on a weekly basis and then it goes to every other week and then once a month, but there is a lot of involvement so we spend a lot of time as a team. By a team I am talking about the judge, our staff, private providers and the deputy district attorney who will look at the cases, staff them, and try to work toward the success for that particular youth. We would like the defense bar being a part of that team. Some of these youth we may not even file petitions on.
- 201 Chair Ellis What kind of time commitment?
- 201 C. Downey I am thinking two to three hours a week right now. Our juvenile drug court meets every Wednesday from 3:00 to 5:00. There is some staffing that occurs typically before that. The attorney wouldn't be involved in all of those cases because some of them are MIP violation cases that we certainly wouldn't be looking at, but I am talking about felony cases. The two to three hours a week would include court appearances, staffing and consultation with staff.
- 211 Chair Ellis Any other questions?

- 211 J. Potter As Ingrid mentioned, I joined her for a couple of days that she came over here, but I wasn't here the day that she was working on the juvenile things. In her report she mentions that physical space limitations for clients and lawyers to talk to each other and the problems associated with that. Do you happen to know what is being considered to address that?
- 216 C. Downey We are trying to find space just to house our staff, so it is a great concern. Currently, the county is doing a countywide study of space. I know that in looking at reports that we have had one meeting with some consultants about the juvenile department and that is something we have talked quite a bit about, particularly in the area of dependency cases where DHS workers come over and attorneys meet with clients there and we have very limited space. I know that planning is going on. We are in the process of moving one of our teams to another building, really the old jail across the street from us that will free up some office space just so that we can accommodate our own staff. In doing that, we think we will be able to add, fairly soon at least, at least one more meeting room. The current meeting rooms we have I think will become more available when that happens. This is something that Judge Fun has expressed to us and we are working with him and the county to try and come up with that. I don't know the timeframe of that study.
- 234 Chair Ellis Thank you.
- 235 I. Swenson I see Bob Hermann, the District Attorney of Washington County, has arrived as well. I think Professor Mandiberg is probably the one who has the greatest time constraints.
- 238 Chair Ellis Susan, welcome.
- 239 S. Mandiberg Thank you. Susan Mandiberg, Professor at Lewis and Clark Law School teaching criminal law and procedure. I am a member of Metropolitan Public Defender Board of Directors and I would like to talk about ...
- 243 Chair Ellis As well as an alumnus.
- 243 S. Mandiberg Well, I am going to talk about that in just a minute. I would like to talk about why it is essential for the public defender to be a major part of the mix in providing services in Washington County and what it will take to keep the public defender a part of that mix. As the Chair mentioned, I am alumni of the Metropolitan Public Defender, but you may not know that my first job with the public defender was actually here in Washington County in the summer of 1974 as a law student. I graduated from law school a year later and joined the public defender's office and was in an office downtown in Multnomah County. I have kept up strong contact over the years with the office and now send quite a number of my students to work there as student interns and as staff attorneys. That's not unusual on our board of directors. The Chair of the board is Steve Houze. Steve was a staff attorney downtown at Multnomah County already for a couple of years when I joined the staff there. Another person on our board, Elise Marshall, has been a member of the board for 20 years. She is not an attorney; she is a native Portlander from the African-American community in Portland. She has worked for the city and was a police liaison for Mayor Katz for years and so over the course of her career, indeed over the course of her lifetime, and has had a strong interest in the public defender offices and how it interacts with her community of origin. Another board member, Kristine Olson, actually litigated against members of the public defender's office back in the 1970's when the federal defender was actually a division of Metropolitan Public Defender and Kris Olson was an Assistant United States attorney. She has a long-standing relationship with the criminal justice system and with Metropolitan Public Defender. The fifth current board member, Jonathan Ater, is of course a main partner in a major firm in Portland and has been a participant in the legal scene in the area for a long time. I mention all of these background details because I think that one of the things that the Metropolitan Public Defender brings to the mix in Washington County, that is unique, is that it has an independent

board of directors. None of us currently work taking court appointed cases. None of us currently work for the public defender. All of us nevertheless have a long-term knowledge of and association with the system and care about it deeply. What we bring to the public defender's office is really two things. First of all, it brings an independent supervision of what goes on in the office not only at the administrative level but also at the provision of services level. We are not yes people. We push back quite actively when we see things that concern us in the office, or even when we see things we think the office could be doing that it is not doing or could be doing even better than it is doing now. Our livelihood is not dependent on having the approval of the administrators in that office. I think a second thing that we bring as an independent board is a focus, not just on the health of that office, but on the health of the system in general. The bottom line for a private non-profit is not profit, by definition. It is not making money. The bottom line is public interest and public service, so for us as an independent board if we think that the office is not providing service in the public interest, that is when we get concerned. Obviously, the office has to have financial health, but it doesn't have to be making money, it doesn't have to be increasing the bottom line. Some of the things that the office has provided over the years and continues to provide in the service of the public interest is training for new attorneys. The training program at the public defender's office is exceptionally good. It continues over the course of a lawyer's career in that office until the lawyer is quite senior. This provides training not just for people in the office, but for people in the system in general. As everyone knows, many of the people who are in private practice providing criminal defense services got their training at the public defender's office and are better attorneys for that. That takes away from the number of hours that can be spent representing clients of course, but it is an essential part of what goes on there because the bottom line is not just representing clients; the bottom line is representing clients well. Another thing the office provides to the community is a knowledge resource. The office is constantly getting requests for help, requests for information from private defense attorneys, and from other people in the system, and it is extremely generous in providing that help and that information. I think another thing that the office provides is a kind of symbolic function, if you want to think of it that way, as setting the gold standard for how it should be done. I believe that if the public defender's office was not part of the mix, it would be hard for a lot of attorneys in the system, for judges in the system, and the clients of the system, to have a focal point for looking at how it should be done right, so there is that function as well. A final thing that I think the office provides and that the board is constantly striving to get the office to provide better, and in fact is a current topic of great conversation, is seeing how the office, how the public defender services in general, can better serve the community. We are constantly seeking ways for more community input into how we provide services, so we are a gathering point, and I think can be a more effective gathering point and we are working on this, for interaction with the client community. In addition, we are currently trying to improve the diversity of the criminal defense bar. Our goal is to have the criminal defense bar be as diverse as the clients it serves and that is a difficult goal to achieve, especially in a place like Oregon. So, what does the public defender need in order to continue to be as effective as it is, and in fact, to be even more effective than it has been? We need to have a constant influx of new, young, good lawyers. We need to be able to train them well and we need to be able to retain them for more than two or three years. The reason we need to be able to retain them in the office is so that they can be there as a resource, not only for others in the community, but also for training the new lawyers that are coming after them. If people don't stay more than three, four, five years, we don't have that reservoir of well experienced attorneys at the time.

368 Chair Ellis

In the report, the figure we were given for the Washington County office was an average retention of seven and a half, but that can be a misleading statistic. You can have three at 30 at 10 at two and end up somewhere near seven and a half.

374 S. Mandiberg

Well, the problem as I saw mentioned in your report, is the graying of the criminal defense bar, so you are absolutely correct. If there are people who have been there for an extremely long time like me, people are starting to think about not being there anymore, getting closer to retirement

- 378 Chair Ellis Not much gray.
- 378 S. Mandiberg If the middle level people are leaving after three to five years, there is definitely going to be a gap, so here is why people are leaving. People are graduating from law school right now and the average load debt leaving Lewis & Clark right now is about \$80,000. That is the average. We have people graduating \$100,000, \$120,000 in debt just from student loans for law school. You can't service that debt on a public defender's salary, so people come and spend a couple of years, then they start getting to the point in their lives where they want to have a family, they want to buy a house, they want to replace the clothes that they have been wearing for the last seven years and they look around and it looks more attractive to leave the office. Now what would keep those people in the office assuming that we don't have the resources to pay significantly higher salaries? If you have private practice and you do some court appointed work and make some money doing private work, you can balance that salary out. Presumably you have more flexibility. But if all you do is public defender work you are reliant on the state. What would keep somebody in the office? One of the things that would keep somebody in that office is the chance to move up in the ranks and eventually start doing some pretty interesting, complicated, high-end sophisticated cases. One of the things that the public defender needs is a mix of cases. We need low-end cases that we can give to our new, just out of law school lawyers while they are in the initial stages of their training so that the mistakes that they inevitably make won't have a hideous impact on people's lives. But we need sophisticated, complex, high-end cases as a goal for people to liven up, to continue their training and as a sort of the prize.
- 413 Chair Ellis What you are saying, I think, is that to the extent we can't do it with financial rewards we need to do it with psychic rewards.
- 415 S. Mandiberg Absolutely, because those mean a lot to somebody who is a dedicated criminal defense attorney. If in the mixture that we have in Washington County, we had a situation where the high-end, important cases, were being picked off by other participants in the mix, the public defender's office would be left with mostly the low-end, routine, not exciting cases. You are going to be perpetuating a system, or even exacerbating a problem, of people coming and staying for three to five years and leaving because not only is the money better outside the office but the cases are more interesting.
- 428 Chair Ellis Let me ask you a couple of questions specific to MPD. I believe MPD is almost unique in being a large office that practices in two counties. Jack Morris is here and he practices in several counties but it is a different setting. I would like to ask you; first of all, do you think that model is working. Secondly, are there issues with it that we ought to think about if we were to think of encouraging that elsewhere in the state?
- 441 S. Mandiberg I think the model is working well from what I know about it. Obviously, the people who are working in the office would have more specific information. I think the office works well because I think that the synergy that it produces is good. Multnomah County and Washington County are very different in almost every way. Lawyers do move back and forth between the two counties in their assignments, but even more than that they talk to each other and I think that the kinds of insights and knowledge that people get working in one setting can increase the understanding and creativity of lawyers working in the other setting. I think that there is a lot of cross-pollination that can go on. The way that the office is administered it doesn't present, at least I haven't seen in my time on the board that it presents, any administrative problems. It could be administered in a way that would be problematic, but I don't think it is now.
- 460 Chair Ellis Do you think there is a potential drawback in that the rest of the system here in Washington County may feel like we are dealing with a branch office? We are not dealing with an independent, stand alone office?

- 467 S. Mandiberg If people feel that way I haven't heard that. Keith is the head of this office and I think that he speaks for the office. Certainly at the board he speaks for the office. I don't get the notion that he lacks the final word in his interactions with other people in the system. I think it is not Jim Hennings' function to run the Washington County office. It would be sort of the same thing as asking whether clients in Washington, D.C. think they are getting second-class service from Stoel-Rives office there. I doubt that they do.
- 480 Chair Ellis Particularly since we closed it several years ago. How do you manage at the board level to keep the two offices integrated and feeling like you are getting the symbiosis that you just described?
- 488 S. Mandiberg Well, at every board meeting except for executive session types of meetings, we have not only Jim Hennings present but the directors of both of the offices present, so Keith is present at our board meetings. Any concerns or questions that we have about what is going on in Washington County we can certainly address to him. If we need to have other people from Washington County there, they will be there. If we need to go to Washington County to see firsthand what is going on that happens. We communicate with him directly. We don't communicate with Washington County through Jim Hennings.
- 502 Chair Ellis From an economic point of view -- you have been talking largely quality assurance point of view -- but from an economic point of view, do you think there are cost savings being experienced? In other words, you have a single overall management....
- 507 S. Mandiberg There is certainly cost savings on the level of executive management staff in terms of dealing with overall budgetary issues. I think there are economies of scale in purchasing power for supplies and equipment and so on. I think there are economies in terms of training and each office doesn't have to invent the wheel itself if a problem comes up. The sort of cross-pollination that I was talking about is an economy of scale. Of course each office has its own budget and I have never gotten the sense that one office drains the economic capabilities away from the other office. I have never gotten the sense that one office is a cash cow for the other's operation. I think each one gets what it needs and is seen as an independent operating system from the point-of-view of economics.
- 533 Chair Ellis Are any of your current board members from Washington County?
- 533 S. Mandiberg Kristine Olson is from Washington County. She lives in Washington County and she is appointed by the Washington County Commission. The board is thinking of expanding and adding maybe two more members. If we do that, at least one of those new members will be from Washington County.
- 542 Chair Ellis Kris lives in the county but she, to my knowledge, hasn't been sort of a presence in the legal community here.
- 545 S. Mandiberg I think that is right and I think that is one of the reasons why we are thinking of expanding and adding another board member who would be from Washington County. Kris currently is not practicing law. She is currently retired. She brings a lot to the board. Rather than replacing Kris with someone who is active in the community, I think the idea of the board is to expand to enhance what we have now.
- 556 Chair Ellis Any other questions?
- 556 J. Potter Can we talk a little bit more about the training and what the board talks about with training outside of the office itself. Maybe you have read Ingrid's report, but certainly one of the things that gets mentioned by other contractors is that they don't have in-house training themselves and they have a difficult time bringing new lawyers into the system and getting

them up to speed quickly. One of the concerns that we will probably want to address is how do we best provide new lawyers training, not necessarily Metro PD lawyers. I don't think the problem has been addressed there, but in other places.

- 568 S. Mandiberg Yes, we have talked about that as a board. One of the models, of course, is the model used by the Federal Defender for the District of Oregon. That is a really different model because the federal defender administers the court appointment panel. The federal defender is in charge of getting lawyers that want to be on the appointment panel and monitoring their work, sort of what you all did, and so they hold training sessions that are required, actually, for the people who are on their panel. Of course, no one is talking about moving to that kind of model, but the board has talked about the public defender's ability to offer similar kinds of training sessions that would be open to the practicing bar in general or to members of consortia who contract with the state, in general, as a function that we could certainly perform. I think the board would be very open to that. The bottom line for us is use of resources. Obviously, our first duty is to our clients and to our staff time working on client cases, so in order for us to be able to perform that function, we would have to feel very secure in the economics of it and in the ability for us to train our own staff first and foremost. If we felt secure in doing that, I think the board would be very open to exploring and filling that function for the system as a whole in both Washington and Multnomah Counties.
- 606 Chair Ellis Thank you.
- 606 J. Potter Thanks Susan.
- 607 Chair Ellis Judge Kohl, we had hoped to have you first but we went ahead and got started and hope it works for you.
- 611 J. Kohl Thank you for calling me now. I have a courtroom full of people I have to get back to among which are public defenders and court appointed attorneys who are waiting for me to get back there to go through pleas and sentencing. We had grand jury selection that we had to do this morning and that is why I was late. I apologize for being late. First of all, thank you for allowing me to be here. I am in my second year as presiding judge here in Washington County. It has been a wonderful experience so far. I am in my eleventh year as a judge. I have had a chance to review your report and your assessment of the service delivery here in Washington County. First of all, I would like to say that one of the new programs that we have here in Washington County, the ECR program, has been extremely successful and I noticed Mr. Hermann is here and will be saying some things to you later on today. It has just been outstanding. I think it is more successful than we ever dreamed it could be at this point. But for you folks getting involved with us and assigning lawyers to work with the defendants that are there in that courtroom, this would not have been possible. I really want to thank you for the effort that you made to make that program work here in Washington County and I think it is a very efficient delivery of services and one that I think could end up being a model for the State of Oregon, as far as early case resolution is concerned. Secondly, I want to thank you for allowing Keith Rogers to be our drug court attorney also. The drug court is an integral part of our system here in Washington County now. It has been in service over two years and Mr. Rogers has been just a great addition to the drug court staffing team. Thank you for allowing him to continue on in that role there. I have had an opportunity to go over your plan and a couple of things that I just wanted to bring to your attention. A couple of things that I just wanted to mention and there may be just a little bit of confusion on what happens on Mondays with the pretrials. I noticed that there was a statement there that each judge handled a certain number of pretrial conferences.
- 668 Chair Ellis What page are you on?
- 669 J. Kohl I don't know what page it is on but it just below the district attorney part and above the ECR program and it says trials are held on Tuesday through Fridays and Monday is a pretrial

conference day, which it is, and each judge handles a certain number of pretrials. Probably four or five years ago there were a lot of judges involved in pretrials but recently the system has become more treatment court oriented and so now we have on Mondays we have our domestic violence docket that is handled by Judge Price, we have a diversion's docket that is handled by Judge Upton, the drug court is handled by me, Judge Hernandez is doing the mental health court, Judge Gardner is handling civil motions, so there is just a huge amount of business that goes on on Mondays other than the pretrials. The ECR program has been very helpful as far as reducing the number of pretrials that we have on Monday. Last year we had an average number of pretrials of about 140 to 150 pretrials each Monday. Since we have seen the effect of ECR, it has reduced that number to 90. It has been a huge decrease in the number of pretrials because they are settling a lot of the cases.

701 Chair Ellis While we are on that, pages 14 and 16 both comment on the way case assignments are done. If this is accurate, all new cases are assigned in the session and they are arranged alphabetically and I am sitting here recognizing that we have maybe more providers in this community than almost any other community we deal with. And the way it is described, if it is accurate, then we have a lot of defense lawyers waiting and since the assignments are handled alphabetically they have to wait all the way through. I know there is a tremendous challenge for someone in your position to try and organize this and I am sure there are probably good reasons other than saving system costs on the defense side, but it did strike me that this was highlighted more in this report than I think we have seen in any other area of the state. I was going to ask you if you see any way that, and I'm sure the provider community would be happy to work with you as presiding judge on it, but some way to cut down that time where the lawyer is sitting in the court.

743 J. Kohl That is an interesting question. It is one of things that I inherited as presiding judge. It has been in place since Judge Nachtigal. We went from our traditional system of assigning cases out the day before to the Friday case assignment. It works for our county as far as our judges and our staff is concerned.... [end of tape]

TAPE 1: SIDE B

001 J. Kohl If they are in fact ready then they can do that, so we require all the defendants to be there. We want to make sure that they get notice of their trial date the following week. On the other hand, we have had a lot of changes in the last two years here in Washington County on things that we have been doing and trying to make our system more efficient and spend our taxpayer's money more wisely. I would be more than willing to meet with anybody who has a suggestion as to how we can do this better than the way that we are doing it now. We have anywhere from 40 to 80 cases.

008 Chair Ellis It is kind of a perfect storm and I am not in any way trying to be critical because I think I looked at the data on page 11 of the number of judges per case in Washington County. It is fifty percent of the number of judges per case in Multnomah County. That is a horrible comparison, so we have that issue over here, you don't have enough judges, and then we have this much larger number of providers than we have in many, many areas of the state, Matching those two up is what I think is causing the problem. There must be someone, I think, to work that through.

017 J. Kohl I would love to work with you on that. Anything that could make our system more efficient I think would be welcome. We certainly would welcome the opportunity to engage in a discussion with anybody to try to work this out.

021 Chair Ellis You are probably going to get a call.

- 021 J. Kohl Right now that is what we are stuck with and we are trying to do the best we can with the system that we have here.
- 023 Chair Ellis I don't want to get into individuals, obviously, but you have been a judge for a fair number of years now. What is your perception of the quality of defense services you are seeing?
- 027 J. Kohl I will give you a little bit of background about myself. I came from Ohio. I practiced there for seven years and when I moved out here to Oregon back in 1982 I was just shocked with the difference in lawyering out here as compared back to Ohio. It was much more professional here.
- 031 Chair Ellis I was afraid you were going to go the other way.
- 031 J. Kohl No, no, no. The quality of representation here was so much better than what I saw back in Ohio. I have always been impressed with the quality of representation. I did 14 years of civil litigation before I became a judge. I was a public defender back in Ohio and also did some prosecution, so I had a mix. I think the quality of representation is excellent out here. I think it has been that way. I think it continues to get better as our society gets more complex, as the cases get more complex. We get more DAs here in the county and more police to charge more offenses and can pursue them more aggressively. I think that this creates a burden on the system that we have with the number of judges and the courtrooms that we have, but I really believe that the quality of representation is very good here in Washington County. The addition of the consortium, Harris Law consortium -- I think they may have a different name but I refer to it as the Harris Law consortium -- has really been a boon to our county because one of the primary areas that it addresses is when we have issues involving conflict. If it with MPD or Ridehalgh and Associates or the Garland firm they have to take that out of that firm and transfer it to some other entity and with the Harris Law consortia, we don't need to do that. We just give it back to them because they have separate offices here in the county; they can handle it. That has really been a boon to our system. With the number of cases the public defense attorneys here have in Washington County, the caseloads that they have, I think they do an excellent job. There are some areas that I would like to see improved, one of which you folks were talking about earlier is training. A lot of times these young lawyers come in and their training is having a jury trial. As judges we don't like to be in that situation where they are going to trial and we have ...
- 056 Chair Ellis The clients don't like it either.
- 056 J. Kohl The clients may not know. But we know and it can be frustrating to do that.
- 059 Chair Ellis I appreciate your comments on quality overall. Are there variations in the quality that you are seeing? I don't want to get into particulars but there is a view that many have that a specialist who does nothing but defense work is more likely to have quality than someone who is a part-time defense lawyer. I don't know if you share that view but my question to you would be, do you see instances of part-timers that you think would benefit from being more concentrated?
- 067 J. Kohl With part-time defense attorneys, I think it depends on the lawyer and the case. There are some that do an excellent job that may have a domestic relations practice or some other civil practice along with their criminal practice. With experience they do an excellent job. The full-time people, I think, generally have maybe a higher understanding of the criminal law and the system itself and they may get into court a lot more than some other people do. I think ultimately it just comes down to the individual.
- 077 Chair Ellis If you see a lawyer whose performance is less than you think it should be, do you know where to go?

078 J. Kohl I know where I would like to go sometimes. I know with the Metropolitan Public Defender's office I would feel comfortable talking with Keith about that.

081 Chair Ellis With the larger groups you know where to go.

081 J. Kohl Um-hm.

081 Chair Ellis But where do you go if it is not a person who is one of the four or five larger groups here?

083 J. Kohl Sometimes I have talks with people in my office if there is something that I think is either incompetent or unprofessional. We can have those conversations in my office with them. I don't know where else you could go other than the individual.

088 Chair Ellis You could come to us.

088 J. Kohl I guess I could.

089 Chair Ellis How do you handle appointments as between the four or five larger groups and the individual providers here?

090 J. Kohl We have verifiers that generally do the appointing for us.

092 Chair Ellis They verify the indigency, but do they also ...

093 J. Kohl They also recommend.

093 Chair Ellis How is that done? What is the method or the criteria?

093 J. Kohl I think it depends on the contract and who is up next and where they are on the number of cases they have had. That would be my guess. I'm not exactly sure on that.

096 Chair Ellis Who manages that?

096 J. Kohl The verifiers?

097 Chair Ellis Right.

097 J. Kohl Ultimately, Richard Moellmer, our trial court administrator, would be the ultimate supervisor on that. Diane Randolph in the criminal department would be the direct supervisor of the verifiers.

101 Chair Ellis Is there, to your knowledge, any effort to match the seriousness, or difficulty, or type of case to the provider?

103 J. Kohl Yes.

104 Chair Ellis What other criteria?

105 J. Kohl Well, I think it comes in their contract. Some providers only do minor felonies. MPD they do everything but I think aggravated murder. MPD does Measure 11 also. It just depends on the contractor and what their contracts provide for. I don't know if it goes any further than that when a verifier looks at who is going to be appointed next.

111 Chair Ellis Is there a qualification process for the independent lawyers that are appointed?

111 J. Kohl I am sure there is with you folks.

113 Chair Ellis But not one administered here in the county?

113 J. Kohl Independent qualification with us? No.

115 Chair Ellis So a bar number is it.

116 J. Kohl Although I think that if I am appointing somebody on a major case, I will take a look at the bar number and I will take a look at other factors too and maybe have a discussion with a judge or two on something like that.

119 Chair Ellis Help me out. Which of the cases do you appoint and which are appointed by the verifiers?

120 J. Kohl I appoint a lot of cases where there is a situation where the people are getting off.

121 Chair Ellis Substitution cases?

123 J. Kohl Yes.

123 Chair Ellis But on initial appointment that is all done with the verifiers?

124 J. Kohl Yes.

124 J. Potter Is there an exception with death penalty cases?

124 J. Kohl Yes and murder cases. I do those.

125 Chair Ellis We have a program in Lane County that we started now about three years ago. What we found in Lane County was they had the old appointment list system, only nobody knew where the list was, nobody was administering any qualifications to be on the list, and there was considerable mix in the quality of the individuals. The program that we have developed there is to have an administrator who reports to us managing the appointment list. He has a board of directors who are advisory and he is under contract to us and manages the quality. John, why don't you take over on this because my throat is about to die.

138 J. Potter I'm not sure where you are going Mr. Chair other than to say that it is a unique program in Lane County in the sense that rather than having judges involved at all in the court appointment process, we have gotten away from that and it is now managed independently. It is not a consortium like you have here, and it is not a court appointed list. It is a list that is managed by an administrator that OPDS pays for.

145 J. Kohl A full-time job?

145 J. Potter It is a full-time job in which that person also does some cases. Is that not true, Ingrid?

145 G. Hazarabedian I think it is a half-time position.

147 J. Potter I'll correct it then; it is a half-time position that we are paying for.

148 J. Kohl That you folks pay for and it is a lawyer also?

149 J. Potter Yes. Having said that ...

150 Chair Ellis My question is, are you comfortable with the system you have where verifiers are making that many of the appointments?

- 151 J. Kohl I think on the majority of the cases, the majority of our cases could be misdemeanors, minor felonies, and I am comfortable with that. The Measure 11 cases are generally going to go to MPD and I am comfortable with that or they are going to go the Harris Law consortium, and I think those are the only two public firms that do them and I am totally comfortable with that. How Mr. Harris divides those up and who gets Measure 11 -- he is kind of like what the fellow or lady in Lane County is like.
- 162 Chair Ellis It is a fellow.
- 162 J. Kohl Mr. Harris actually divvies up who gets which Measure 11 case. Maybe we have a system like that already in place.
- 164 I. Swenson Could I just clarify a little bit Mr. Chair. I am looking at the contract -- and Caroline is here who is the analyst for that contract and she can correct me if this is not true -- but it looks like the Harris consortium (the Oregon Defense Attorney Consortium) and MPD are the only firms that receive Class A or B felonies and Measure 11 cases. The case would either go MPD or to the Harris Consortium and within those two groups they would then assign the case as appropriate to one of the attorneys there. For the lesser felonies and misdemeanors, it rotates between the other providers in an effort to keep them close to their contract numbers.
- 173 Chair Ellis The report didn't indicate what percentage of the total is going to whom.
- 174 I. Swenson I realize that and we probably need to add that. I have the criminal numbers here, but not the juvenile. At least in terms of quotas, MPD should be receiving a total of 381 cases per month; the Harris Consortium 235; next would be Washington County Indigent Defense Consortium receiving 212; the Ridehalgh's firm 182; the Brindle firm 9; and the Karpstein group 54.
- 183 Chair Ellis The private bar is?
- 183 I. Swenson In criminal, it looks like 12 cases in the month of December, 2006.
- 186 Chair Ellis The percent of the total is what?
- 186 I. Swenson Twelve out of 1,159.
- 187 Chair Ellis Not a lot.
- 187 J. Kohl So, basically the verifier appoints the law firm and the law firm then appoints the individuals to represent those people. It is not like the verifier is appointing Joe Smith or Sally Jones to do a particular case. The verifier appoints, per the contract, the law firm. That is how we do it here in Washington County.
- 192 Chair Ellis Any other questions?
- 193 J. Potter When we were here I think the ECR program had just gotten going within a week or two and we heard glowing reports early on, and I am pleased to hear that the reports you are giving are still glowing. One of the comments that Ingrid has put in her report is that persons not eligible for the ECR treatment proceed to arraignment and lawyers are not present for these arraignments. After arraignment, the next hearing in felony cases is a preliminary hearing held a week later. Putting on your old Ohio public defender hat, should this be something that we are concerned about?
- 200 J. Kohl I lost that hat years ago. Should it be something that you are concerned about?
- 202 J. Potter In that there is an arraignment in which there are no lawyers and then it is a week later before one gets involved.

- 204 J. Kohl You know, we have had arraignments here in Washington County done without lawyers for as long as I can remember. That is unusual because back in Ohio there was a lawyer right there at arraignment and they had to be there. I think in other counties here in the State of Oregon there are lawyers at arraignments too. That is just one of those things that has been going on in Washington County for a long time. So if you are saying “Am I concerned about that”, well I have been a judge for 11 years and we have been doing it that way. That doesn’t mean it is right, but we have been doing it that way for at least that long. Nothing really generally of substance happens at the arraignment. They are explained their rights. They all get their rights so they don’t waive them unless there is a lawyer there. Then they are assigned out to a pretrial after that. I think the lawyers under the contract are obligated to contact the clients within 48 hours?
- 219 I. Swenson Twenty-four if they are in custody.
- 220 J. Kohl I can tell you I have been to a couple of conferences around the country and you hear how people do things differently. It was back east someplace, Virginia or someplace, where the judges actually took a look at the application for court appointed attorney and they made that decision based upon the income and all the other criteria. I am so glad we don’t have that here.
- 227 Chair Ellis Thank you very much. We appreciate your input.
- 228 J. Kohl Thank you for your good work.
- 229 J. Potter Thank you.
- 229 Chair Ellis Next is Susan Isaacs.
- 230 I. Swenson Susan, I am wondering, do you have a minute more? Judge Hernandez just took a break from his trial so he could speak.
- 235 S. Isaacs That is fine.
- 236 J. Hernandez Thank you Susan.
- 237 Chair Ellis Well, welcome Judge.
- 237 J. Hernandez Thanks. I am Marco Hernandez. I am a circuit judge here in Washington County. Thank you for the opportunity to speak with you. I have been on the bench -- I guess I am in my 13th year right now. I saw Judge Kohl just leave. I was the presiding judge.
- 240 Chair Ellis You both must have come at about the same time.
- 241 J. Hernandez Yeah. I was the presiding judge prior to Judge Kohl. I have some familiarity with our docketing system. I have lots of familiarity with the way the court kind of runs on an overall basis and I think that was the reason that I was invited to speak with you this morning. The reason I am here is because I had heard, and I am operating under an assumption, but I had heard from indigent defense providers that the providers here in Washington County are compensated in a different way than the providers for other counties. It was a lesser amount and I scratched my head and I couldn’t figure out how that could possibly be, but perhaps it is, and I am operating under the assumption that that is true.
- 252 Chair Ellis That is not exactly true. I think there are differences in compensation historically, but not by the whole county.

- 254 J. Hernandez So there are portions of the county that are getting less than others.
- 256 Chair Ellis It is not a county issue.
- 257 J. Hernandez Okay. It was my understanding that some of the providers in Washington County are compensated less then other providers from other municipal ...
- 259 Chair Ellis That may be an accurate statement.
- 260 J. Hernandez Okay. I was trying to figure out why that is and it is my understanding that some of that is just historical. It is just the way things have developed. I know, for example, on the judicial side, Washington County has historically been understaffed as opposed to other counties. We have had judge shortages lots of times, in particular when I was presiding judge; we were short on staff and short on judges. Again, it was for historical reasons. We had always been behind and then I heard that also in indigent defense, at least in some aspects of it, they were also kind of behind as well. I said "What is the reason for that?" I was never given a good and adequate explanation other than there are historical reasons.
- 270 Chair Ellis I'll respond and I am not saying everything is perfect because it isn't. We certainly are making an effort to make the process more transparent and more equitable, but let me just use MPD as an example. MPD, in this community to my knowledge, does a range of things related to the health of the criminal justice system as a whole that an independent practitioner probably isn't going to do. Yes, there will be differences in contract rates. To some extent that is attributable to the different level of expectation that we have from some of the providers.
- 282 J. Hernandez Let me address a couple other observations that I have had. One is, I am convinced that the quality of the representation here in Washington County is as good as anybody's. I am also convinced that the providers here in Washington County work as hard as anybody, if not harder. When I looked at the statistics when I started, I know that I was pushing lawyers as well as the bench here to work very hard. I believe when I started as presiding judge, we had over 500 criminal cases that were over a year old. When I was done with my term, I think it was down to about 10. I know that I was working them hard. I know that they were going to be pushing cases. My guess is that we try more cases here in Washington County than in any other county. I can't say that for certain, but as you go around the state particularly in the metropolitan area, if you ask judges how many jury trials have you done and how many court trials have you done this year ...
- 299 Chair Ellis In criminal?
- 300 J. Hernandez Both. I suspect that in criminal and in civil cases we will have done more per judge. For myself, I know I have done more than 30 jury trials this year. I know that I have done at least 15 or so court trials this year. You go around the county and say "how many jury trials have you done" my guess is there are not going to be very many judges that are going to raise their hand and say "I have done 30." I don't think that is happening. I don't think that is happening anywhere else and the vast majority of those are criminal cases. There are some civil cases mixed in there, but the vast majority of them are criminal cases. That in part is because we have a very aggressive DA's office and we have a very aggressive defense bar who is saying "We are going to take the cases to trial." They are not afraid to try their cases. In my opinion people who do lots of trials work harder. This is the hardest thing that a defense lawyer has to do is try cases. They are working as hard if not harder than their counterparts in other places, simply by the fact that they are trying more cases. They are trying more cases because they are vigorously representing the clients.

- 316 Chair Ellis Just to pause on that one, that is impressive given the disparity and number of judges per case that this county seems to have relative to, at least when we were given the comparison to Multnomah.
- 320 J. Hernandez I am guessing at that. When I talk to my counterparts about how many jury trials they do I bet there are very few that have tried as many jury trials as we have. I think that I represent kind of what the norm is. This is what we are doing here in Washington County. We are trying lots of cases.
- 324 J. Potter Your Honor, do you happen to know and maybe this is a better question for Bob Hermann when he talks to us, what the trial rate is in criminal cases?
- 325 J. Hernandez You mean the percentage? You can ask him. I don't know the answer to that. I believe it is probably around 10 percent – no it wouldn't be that high. I don't know the answer to that. I can probably get that for you by the end of the day if you can't. I know I could figure it out but I don't know it off the top of my head.
- 332 I. Swenson I'll check back if Mr. Hermann doesn't know it.
- 333 J. Hernandez We can get that. I know I have cases filed and I have cases tried from January until now, so we just have to compare the two and see what it is. We are resolving lots of cases short of trial by the way. We have the Early Case Resolution process which started recently and they are getting rid of lots and lots of cases. I know as soon as I finished being a presiding judge I went over to the LEC court, which is the arraignment court, and we were resolving lots of cases before we could have a formal Early Case Resolution docket started. But with early case resolution, they are resolving lots and lots of cases and from the indigent defense perspective, they are losing the easy ones and trying the hard ones. Again, you have this sort of self-defeating process in which we are skimming off the easy cases at the very beginning, I think for a lesser fee, and they have to kind of wrestle and try the more difficult cases. Good for you all, it saves money. Bad for them because they are not getting paid.
- 350 Chair Ellis There are issues as to how the contract works on that.
- 351 J. Hernandez I agree with that. I agree with that. I recognize that there needs to be a kind of a look at that to say "Well, the calculation maybe needs to be refigured." I agree that that is something that needs to be taken a look at it. I don't know the answer because I haven't looked at that particular issue that closely. I know that the defense lawyers, particularly on the public defender side and I know from the Harris Law Consortium, at one time were involved in drug court. We have started a mental health court so we have a mental health court here in Washington County. The problem is that while I am grateful that they are willing to participate, the problem from their perspective is that it causes them to continue to appear again, and again, and again, through all of these hearings, many, many, many, many times and as I understand it they are only paid once. Again, I think you need to look at the entire contracting process and make some adjustments for those kind of features that are unique, perhaps, to Washington County or to other counties.
- 369 Chair Ellis How do you feel the defense side is doing on providing Spanish language speaking lawyers in this county?
- 371 J. Hernandez There are not very many Spanish speaking lawyers. There are some but not very many. That is a hard question for me to answer in that I believe that the services that are provided for the Spanish speaking clients are great. I think that Spanish speaking defendants are getting very good representation because they use interpreters. There are a handful of Spanish speaking lawyers but I would like to see more.

379 Chair Ellis I was actually impressed and we will talk to Bob Hermann when he is here, but the report indicated that the DAs office has I think 12 ...

381 J. Hernandez Spanish speaking lawyers?

382 Chair Ellis Which is impressive.

383 J. Hernandez Yeah.

383 Chair Ellis Maybe there are that many in the defense community. It didn't read like there were.

384 J. Hernandez I haven't stopped to consider how many there are. There may be that many.

386 Chair Ellis But you are satisfied

387 J. Hernandez Regardless of their Spanish speaking abilities, I am satisfied that the defendants are being adequately represented, are being well represented. That is not an issue as I see it.

390 J. Potter I think what we will find is that the DAs office has lawyers and staff that are Spanish speaking. It may not be all lawyers.

392 J. Hernandez I was just responding to lawyers. Off the top of my head there are probably a handful, probably more, Spanish speaking lawyers providing indigent defense services.

397 Chair Ellis I do have an impression that there are quite a number of Spanish speaking cases or defendants here.

399 J. Hernandez Clearly. There is a huge population that are Spanish speakers. Not only Spanish speakers but all languages now and I am sure that is true regardless of where you are traveling in the State of Oregon now, except for probably some very isolated communities.

404 Chair Ellis I think here and Marion County.

404 J. Hernandez As far as Spanish speakers?

405 Chair Ellis Correct.

405 J. Hernandez I think that is absolutely true, but we also have Micronesian languages that are challenging for us. We have people who are from Mexico who speak languages other than Spanish, other dialects. We have a list of interpreters in order to get our record complete. That happens. I won't say frequently, but certainly it happens with some level of frequency. I was talking to you about the specialty courts. We have three of them. We have a domestic violence/deferred sentencing court. We have the drug court. We have mental health court. Again, all those courts requires a special kind of added attention that lawyers have to give. With the domestic violence they have to get there quickly because decisions are made early on. With the other two you have the problem of recurring appearances with only one client. I had a really good outline but I left it back there because I was in a hurry. I don't know that I have any other specific comments. I make a plea for having the Commission really look to make sure that the lawyers in Washington County are fairly compensated for what they are doing. I think, and it is my sense, that we can do a better job and that we can make it a more equitable and fair for them. All of the indigent defense lawyers are underpaid. There is no question about that, but to the extent that we have certain portions that aren't being paid fairly, that really does need to be looked at. To the extent that we can make it a more fair payment process for them, I would encourage you to do that.

438 Chair Ellis We appreciate that.

440 J. Potter I am happy to hear you say that because, in my mind at least, that means someone is talking to you from the defense bar and lobbying you on this issue. We will hear, I am sure, from those who are saying that in comparison to X and Y Counties, there is a disparity here. I would hope that they are lobbying their legislators to get more money into the system, so if there are inequities we can help to balance that out.

447 J. Hernandez One of the things that happened while I was presiding judge is that during that unique period we lost all of our money.

450 Chair Ellis 2003.

451 J. Hernandez Right. The defense bar and the DA's office in Washington County really chipped in. We had this docket where I ran through 1,879 cases, I believe it was, over the course of a month in my courtroom, just to get rid of cases and clear our docket up from the backlog that occurred during that time period where the defense bar wasn't representing certain kinds of cases and the state was still charging them. It was a mess. During that time period it became obvious to me that on judges and the court system, that Washington County really had been inadequately compensated for years. We were behind in part because the formula that was designed occurred a long time ago and then Washington County grew. We became the fastest growing county in the state. We still are in raw numbers. In fact, as I understand it, we are destined to pass Multnomah County within the next 15 years or so. We have now passed 500,000, so we are a big and fast growing county. I went to Justice Carson and said "Yes, is not fair that when you look at our staffing we are 13 people down, and we have other counties that are up." We used a formula where we had outsiders come in and look at our system and maybe you are familiar with that. We were also down on judges. When we took cuts he made everybody takes cuts at the same ratio. At some point you have to fix this disparity and he refused at that time to say that we could take fewer cuts, but what he said is when the money starts coming in and the redistribution occurs, those other counties that are rich aren't getting anything. Its not like he was taking anything away from anybody, he didn't have the political will to do that, but when the money starts coming in there will be an equitable distribution at that point so that we can bring you up to an adequate level. Maybe that is what needs to happen as you look at the funds. It becomes very difficult to takes funds from one to provide to another, but when money does come in, I would hope that Washington County gets kind of a priority look so that we can get them to where they need to be.

495 Chair Ellis We may have a little bit more to work with at the end of this session.

496 J. Hernandez If you have any more questions I would be happy to answer them.

496 J. Potter Only to note, Your Honor, your DA did show up at the public defense hearing to get money for public defense as a whole, and made a very good plea.

500 J. Hernandez He is very persistent. Thank you very much.

503 Chair Ellis I guess we are going to do Susan first.

507 S. Isaacs I am an attorney in Beaverton. I want to thank you for the opportunity to speak today and I see a lot of familiar faces here. I know there are a lot of people with a lot to tell you. I have been an attorney in this state since 1979. I have practiced in Beaverton in my own practice since 1992. When I first opened my own practice with one client, I decided I needed some business and I had done prosecution and criminal defense work at other times in my practice, so I got on the indigent defense list and did enjoy the criminal practice doing criminal defense. I was also introduced to juvenile court and really that is what I am here to talk to you about today. They needed attorneys and I am not sure what year I started over there if it was '93 or '94. As time went by I got more and more cases and then in November, 2000, I got a

part-time job so I had to let some things go and I was happy to let divorce work go. Anybody who has done that would know why. I decided that I would also give up the criminal defense work because as you know it is always a question of prioritization and I really need to prioritize in my business because I do have other aspects to my practice.

- 533 Chair Ellis Your part-time job is non-law related?
- 534 S. Isaacs No. It is a state agency. I also help attorneys who have bar complaints. I do social security disability and am very fortunate working for myself that I can select areas of the law that I enjoy. One of the areas of the law that I have enjoyed, and continue to enjoy, is juvenile court. My husband and friends say “Why are you still doing that for \$40 an hour” and I tell them because I like it. They say “Why do you like it.” I thought about that because I wanted to come here to tell you why and it is many faceted. It is an underserved clientele. It has always seemed to be, and perhaps this is my perception, I don’t know, sort of like the second cousin that doesn’t quite have the clout of the rest of the indigent defense. It is quite an underserved clientele and I think it is one, of course, that has some of the most vulnerable of our citizens in it.
- 553 Chair Ellis You are doing dependency work?
- 554 S. Isaacs Dependency and then I also do some delinquency, depending on the need. A lot of times they will have four defendants and they need extra attorneys.
- 558 Chair Ellis Just so I get oriented, you are only representing children?
- 560 S. Isaacs No, no. Children and parents.
- 560 Chair Ellis So termination of parents?
- 561 S. Isaacs Terminations as well as just the regular dependency, so I do the dependency for the mother, father and children and I do the delinquency. That is not the largest portion because there are a lot of providers and it is more as needed, but I also do that and, of course, the TPRs. I not only do the trial level but I also do the appellate level. The second reason is that I enjoy this. It is very interesting law. I really do enjoy it. I enjoy the group of lawyers. We are a collegial group and you know you are constantly changing sides. Sometimes ...
- 575 Chair Ellis It makes for intellectual honesty.
- 576 S. Isaacs You are right. Sometimes you are in sync with the DAs. Sometimes you are in sync with another person. So you are constantly changing allegiances based upon the needs in the case. So we all pretty much work together and I have found that it is not quite the adversarial stance that you see in the routine criminal prosecutions. The court staff is really excellent and I have found them to be very helpful, very accessible, and then the DHS staff, the caseworkers, I also enjoy. It is a satisfying area for me to practice in even at \$40an hour. I need to replace a secretary that I have had for two years and I am limited somewhat in my ability to replace that person because of the finances, but it is a decision I have made in terms of the practice area. Social security disability is contingency work so sometimes you win and sometimes you get nothing. I have this mix. I believe that I enjoy a good reputation for quality and delivery of services in my chosen areas of practice. I have been informed in the past that I have been asked to take on more difficult clients who just need someone with experience and expertise and maturity. Well, we are all getting older. I have been in practice since 1979. In any event, I also have been asked over time to step in when they needed attorneys because some of the contract firms were saying “We are not going to do this much” and I am sure from what I understand is that they were paid a certain amount and they were asked to do more than that amount and they felt that they were not being fairly compensated. You guys would know better than I would. That is the rumor on the street, so I, of course, stepped in and helped and

it was mostly for TPRs, which is a really difficult time for a client to change lawyers. I did that and, you would have to ask the clients, but they did all seem to be satisfied. In January of 07, I understand that one of the contract firms needed some business to fulfill their contract and so they were put in a slot in juvenile court. That pushed out quite a few of the independent attorneys such as myself. I don't see that as a reason to give somebody a contract in juvenile court because they need business, but I understand that is a business decision and I am a business person and that is what you decided to do. I also know that there was an intersection of this with fewer cases in juvenile court, which I understand is related to fortunately having better control over methamphetamine which has been a scourge for families in this county, so that is a wonderful thing. Secondly, I understand that DHS had an independent review which said you are filing too many cases, go with the more serious. There was an intersection where business was down for many reasons when this firm came in, but nonetheless, it cut out a lot of people and we are not getting cases. The next thing I heard was that this particular firm was going to put together a consortium and that they were telling people -- they didn't approach me -- they were telling people if you are not in this consortium, you cannot practice in juvenile court. Well, that got my back up. I was angry. I was outraged. I immediately emailed Ingrid. I thought that that was not in keeping with the mandate down at the legislature this term for quality. That is something that I know that you look for is quality representation. That is not in any way compatible with the mission that the legislature has given. It is interesting that you were saying to somebody, call your legislator - - I was in my house -- isn't this terrible I don't even remember the name of the gentlemen who came by and wanted my vote, but he said "What do you want me to do if I am in the legislature." I said "Give DHS Child Welfare, more money." There were services that my clients could not access like the skill builders for parenting because of lack of funds. I think I got heard and the next thing I know that is a big issue down at the legislature. One attorney told me she was told she couldn't practice in juvenile court unless she was part of this consortium. She said she felt that her job had been threatened and really it was. Frankly, I don't know what you are going to do but I felt strongly enough to come here and let you know that I think that is not the way to manage the representation and the quality of representation in Washington County juvenile court by taking practitioners who have been very dedicated, who have a desire to be there, and just letting somebody else slip in because maybe they gave you the low bid or they need work or whatever. Frankly, at \$40 per hour I am not interested in kicking back three percent to anybody. I have overhead. I have a secretary. I have a broken fax machine and yes I have chosen this and I have a lot of business, and I turn away business and I am very fortunate. I am not bragging here, I am just fortunate that I have had a good law practice and have been very happy in it and able to pick and chose. If I ended up not doing this I would truly miss it. I wanted to come here and say that sole practitioners such as myself with this history, with this understanding, with this desire, I just think you would be doing a great harm to our clientele by saying that we don't want you anymore or you have to go pay three percent to somebody that I have no desire to work for. If you do decide a consortium is the way, then I will definitely consider it to see if I am fairly compensated and can work with the people ...

733 Chair Ellis

Are you assuming that the consortium would be what is called an hourly rate consortium as opposed to a unit contract consortium?

736 S. Isaacs

Well, actually I was under the impression that this one entity which was saying you are either in our consortium or not was going to go with just the same rates for appearing or what not, flat rates, and then I was talking to Rob Harris that if we need to come forward with our own idea of a consortium if that is what you want for practitioners such as myself to continue to provide services... [end of tape]

TAPE 2; SIDE A

002 S. Isaacs

...be able to have him back, so I spend time with her on a regular basis. I have cases that span 10 years, four years, five years. How do you make a decision? My goal in my practice is

effective and efficient delivery of services. Hourly clients, contingency, I don't determine whether or not it is \$40 an hour, I just do what is effective and efficient for that individual. How would you be able to make a decision regarding that? Maybe you have done it in another jurisdiction. I don't know, but I would find it very difficult because some cases just require so much more than other cases. That would have to be worked out. Do you have any questions for me?

- 015 Chair Ellis I think I understand the situation. Let me just comment. You seem like a very able person so I really appreciate your coming and everybody on the staff is here and heard your comments.
- 018 I. Swenson Mr. Chair, could I just say before Susan leaves and I know she has to go, I think the occasion of your visit here causes people to think there are major changes underway in the system when that is obviously not necessarily the case. You are here to listen and learn about what happens here and what you want to see develop here. I think there may be some unnecessary speculation about where things are going. When the Commission meets in August it will set its priorities for use of whatever funds the legislature has allocated and then direct Kathryn Aylward and her group of folks to act accordingly. There is no prescription at all at this point.
- 027 S. Isaacs She did tell me that in my email which was much more filled with information than what I just told you. I was very upset to feel that I was going to be pushed out for no reason. I was quite upset at the time. Rumors fly. You know how legal people are.
- 033 Chair Ellis You can see from the other side of it if we did all of the provisions of service with persons like yourself who are part-time practitioners on an hourly appointed basis ...
- 034 S. Isaacs I am not advocating for that.
- 035 Chair Ellis If we did that it would be extremely hard to manage the system with either efficiency or quality.
- 036 S. Isaacs I am not advocating for that and if you felt that was my message that is not what it was.
- 038 Chair Ellis No, but it is the extreme.
- 039 S. Isaacs Right. It was just more the way that things happened and the rumors flying and sort of this implication that your quality is beside the point. With me knowing that quality is the point, I was very upset and felt the need to come here and let you know.
- 043 Chair Ellis I can assure you that quality is very important.
- 044 S. Isaacs Thank you.
- 044 I. Swenson Judge Thompson is here. Could we take her next?
- 046 Chair Ellis Alright. Good morning Judge. Thank you for coming.
- 048 J. Thompson Thank you and thank you for allowing me to speak out of order. I have some attorneys who are in the middle of a dissolution trial and have some support issues.
- 049 Chair Ellis You owe the DA something.
- 051 J. Thompson I do. Coffee or something, I think that is about it. I'll try and be brief. I want to provide just a little bit of context. I know some of my input is mentioned in the report. I won't restate the things that you already know. I would just mention in terms of my own history in juvenile court that I was a *pro tem* doing primarily preliminary hearings, some dispositions and so forth in both dependency and delinquency cases from 2001 to 2002 when I was appointed to

the circuit court bench. Then I joined the family court team which was rotating through juvenile court in November of 2002. I continued in that rotation until June of '03 and then was full-time in juvenile court from July of '03 until I rotated back onto a domestic relations position in September of '06, so a little over three years full-time juvenile work. I think all of the judges in Washington County have from time to time done juvenile work and some have been full-time for periods of time. I think I may hold the distinction of being there full-time as the only juvenile judge for the longest period of time, but I wouldn't want to claim that as any particular honor. I think that is true though. During the time that I was there I was really fortunate to work with, I think, an excellent team of folks. I think that we were able to do some things while I was there that assisted with some consistency. I provided some input to Ingrid regarding the report and some of the things that are mentioned now that I don't think are completely accurate in terms of the timing of hearings and so forth. Its kind of a neither here nor there, but one is somewhat protective of one's own record and I know during the first year of a dependency case what we typically would do, we are very successful in getting most of our cases resolved within sixty days. We set the first judicial review in most cases nine months into the case. The Citizen's Review Board would review the dependency case at six months which is a statutory requirement, that there either be a full judicial review or a Citizen's Review Board review. We set cases that had more criminal issues for judicial review for obvious reasons; also to see if somebody had an ongoing probation or something that needed a little bit of court intervention. It was easier for us to do that. We were more likely to be able to do that than the CRB, but during the time that I was there, I think as my predecessors who had done this kind of work, we wanted to make very sure that we reviewed the case during the first year every three months and that we had a permanency hearing the earlier of 14 months from removal of a child from a home or 12 months from disposition -- jurisdiction -- whichever came first. Our statistics, which I am not going to bore you with, said that we did that. There was a bit of a factory aspect to that. We were pushing cases through real quickly. We were there, my staff and I, at a time when there were a large number of new filings. One of the things that as a juvenile court judge I was privileged to be able to do was attend a lot of conferences and receive a lot of training. It is an area, of course, where there is such an intersection between the state and the federal government in terms of money and how we are going to provide money and services to families and kids. I was privileged to be able to attend three different conferences in Washington, D.C. while I was presiding juvenile court judge. I went to the Juvenile Court Improvement Conference annually. I participated as much as I could in planning and in interagency planning. An outgrowth of that was, and I think primarily at the Juvenile Court Improvement Project and also national conferences, the idea that it is critical for all parties in juvenile cases, dependency cases particularly, to be represented as early as possible. That was really emphasized, that each and every hearing be meaningful, that everybody have representation. We were able to get the agreement of all the defense providers to create a system where there was provision of representation at preliminary hearings. I have to say that the defense bar was just incredibly helpful with that. They were concerned that they were going to get paid for that representation which is understandable. If you are hourly you are going to charge that. If you are on a contract basis it is part of the unit, but they cooperated together. One of the juvenile staff persons, Marsha Renander , who is our lead clerk, created an email notification system and beginning in July of 2005, we began having attorneys at preliminary hearings in all cases. It allowed team decision meetings to happen prior to the preliminary hearings; people got discovery earlier; understood the cases earlier and my impression was because that came pretty squarely in the middle of my three years there, that there was a distinct difference in terms of resolution of cases more quickly at the status conference; making decisions to get into treatment more quickly and it helped us to make decisions about disposition at an earlier phase. I mentioned this to Ingrid but it was reported in a report that there was a delay between jurisdiction and disposition which really was not my experience. We created a case plan at the time that we made a jurisdictional decision in almost every dependency case. There is almost always a delay between jurisdiction and disposition in delinquency cases because of the necessity for a case plan for the youth. I expected, and the DHS complied with, they came to court ready to dispose of the case. They came ready to make a

recommendation regarding a case plan and if they didn't, we provided forms for them to create a case plan and we did. That is a little bit of an inaccuracy in my estimation about how things were going during that period of time. It is a critical piece that there is a dispositional plan as early as possible in a case because of the timelines in dependency cases in terms of reunification efforts, reasonable efforts, whether or not a child is going to safely return to parental care or whether a child is going to go into some other plan, whether it be guardianship adoption, continuation of foster care, so I want to really mention that that was a huge thing for the defense part to step up and do. I am not aware that they got anything more out of it other than seeing their cases go better.

151 Chair Ellis

Who were the providers?

151 J. Thompson

The Public Defender's Office, Karpstein & Verhultz, Ridehalgh & Associates and McKeown & Brindle at that time or Brindle, McCaslin & Lee as they are now. Then also, all the private bar providers. The system that we created was a rotation where the contract providers were always expected to have a representative there, but in order to deal with the private bar providers who were routinely representing folks, they were also factored into the rotation. They would come a certain period of time and pick up a new case, mom, dad or kid, at a preliminary hearing. In order to avoid conflicts, some providers tend to focus on representing children, others focus on representing parents. The firms tend to specialize a little bit in those areas but I think all of the providers, with the exception of one or two that I can think of, would take any party in a dependency case. That was an enormous thing and I think it has improved quality. Because of the turnover in young attorneys in firms -- there is a tremendous amount of movement among the younger associates who tend to get slotted into dependency work -- some of them may think that the world was created this way and that it was always done this way because it has been done this way for 18 months or so, but it was a significant shift and it was really a positive shift. I think it has really helped families quite a bit. That was a system change that I saw the defense bar really embrace and go forward with. Before it was more likely we would see a status conference or pretrial conference with attorneys reporting that they hadn't really met with their clients yet; they weren't really prepared because their client was not being cooperative and coming into their office. It is hard to get cooperation out of somebody who is under the influence of methamphetamine or some other drug and having a lot of trouble moving around and so forth. If you meet them at that first hearing the likelihood is that by the time that you have the status conference a few weeks later, there is actually an attorney/client relationship that has some meaning to it and particularly because at those dependency shelter care hearings you may be deciding if there is a relative that a child can stay with comfortably and safely while mom or dad addresses treatment needs. You can make those decisions a lot more quickly and even though a child may be briefly in a non-relative foster home, the stay in non-relative foster care, I think, tended to be shortened because they were able to do the case planning that they needed to do more quickly. It was a good change. In terms of the provision of services, having that combination of the public defender's office, the firms that have that sort of institutional capability and the private bar who are able to take the cases where there are conflicts, is really a critical piece in juvenile court work. I have cases where I had a mom, five dads and four kids, 10 grandparents, and you think how can you have a case where you have four kids and five dads? Well, sometimes you have somebody who is a party by virtue of marriage and everybody has a right to be represented and very, very quickly the issues of conflicts in terms of the contract firms just make it impossible without having the individual, hourly providers, who are able to sit in and assist. We just wouldn't be able to see everybody have legal representation who wanted representation unless we had that mix of providers. I think that is a critical piece. There also is the sad fact that in these dependency cases we often have incarcerated parents who may have a legal relationship with a child, but a pretty attenuated personal relationship, and they may have some pretty big problems. They may be in federal prison, they may be in a state facility in another county, and the ability to call on a very experienced criminal defense counsel who is willing to step into a dependency case who knows how to get that person who is in federal prison on the phone, who can deal with those

issues and can deal with that kind of client, is critical to see a case flow forward. For example, if a parent in a situation like that is ready and willing to stipulate to termination of parental rights or consent to an adoption, they have counsel that is able to really talk with them and deal with them and also arrange and facilitate their appearance and it seemed to me the more experienced practitioners were much more able to navigate those complex systems because of their experience.

232 Chair Ellis

You think you are seeing enough providers to meet that need?

233 J. Thompson

So long as you include the full mix because what I would see with those kind of persons -- you know the incarcerated person in the federal penitentiary on a serious charge -- it took the kind of practitioner who I will call respectfully the "grizzled veteran" to know how to get that person on the phone at the right time and work through the system. The person who has been practicing for a year, year and half, may have a real difficult time understanding all of those systems and having any existing relationships with those facilities to get them on the phone. What would happen in those kinds of situations is the court would set a hearing, we have four or five necessary parties, we have an attorney who is supposed to represent that person with a difficult problem and they can't get their client to appear no way no how. They just can't do it. They would like to and they are trying, but it is not a very easy thing to do. When I listened to the latter part of Ms. Isaacs' presentation, when she talks about the court appointing people to certain kinds of cases, the reality is the court likes to have the flexibility. Every now and then you look at somebody's case history and their needs and you think, well I want somebody who is on the criminal appointment list for very serious crimes who is also on the dependency list, because they need to have that combination of skills in order to effectively assist this parent and to help the system to be able to adjudicate this case to conclusion. It is really a critical piece. There are cases that are relatively simple, but there are a lot of cases that have a lot of complexity and you really need experienced practitioners to address the needs of a child by addressing the needs of a parent. That is where that mix of representation is really important.

269 Chair Ellis

I take it you think in this county that there are a number of those who are not full-time or even significant time in the indigent defense system, but who have that skill set and what you are hoping is they are available for appointment on this kind of case.

275 J. Thompson

I would hate to see the court lose that flexibility to have those persons available whether it is part of a consortium that they are willing to do. But there may be situations again, from time to time, in juvenile court you get very unusual circumstances where you need to draw on people with very special skills. I had a couple of cases where a child had no available parents. Didn't know where the parents were at all. The system had exhausted their remedies in terms of trying to find these people because they are hiding. But with a child in the hospital who is gravely ill there needs to be a strong and experienced attorney to represent the child who has the legal sophistication to find a guardian ad litem to appoint for the child to make necessary emergency medical decisions. Now there are practitioners with one or two years of experience who might be able to do that, but it is not so likely. It is more likely that in those kinds of cases you are going to look for someone who is a little further into their career who may really have no need to consider juvenile appointment as a big part of their caseload, but if the juvenile court judge has a case like that come across their bench, they need to be able to act and act quickly. The Department of Human Services is not anxious to make life or death decisions for dependent children in those circumstances without having a guardian ad litem. They have a conflict of interest. There are cases that present some of the most difficult legal questions and often social and moral questions as well. That range of representation is just really a critical piece to make those things happen and happen well. Those are cases that are hard as a judge to have and it makes it a little bit easier if you know that you are able to appoint somebody to represent this vulnerable infant who has the years of experience to understand how to navigate the system well, that is just a critical piece and that mix is really an important thing. Again, there are cases that have a long life span where a child perhaps is

not adoptable and there is some good reasons to never terminate parental rights but the child remains vulnerable and sometimes they need advocacy. I had a number of cases that I reviewed on more than one occasion where the person who had been a part of that child's life the longest, it certainly wasn't me and it certainly wasn't their caseworker, because caseworkers come and go. It was the lawyer. I have had cases where it was clear that there was a professional relationship but there is also an important personal bond with that attorney, who had stuck with that kid for a decade or so and those are the cases that would bring a tear to a glass eye.

- 333 Chair Ellis Sounds like Susan Isaacs' case.
- 334 J. Thompson Exactly. Those kind of cases. She had a couple of those and so did a few other practitioners. It would be a terrible loss to our system if those people who have that commitment to represent a few children very well are lost to our system. Because of the interplay, and when I mention things like a vulnerable child in the hospital, what you really want at that point is somebody who also understands probate law. You really want at that point somebody who also understands domestic relations law. The reality of a young attorney who is in, for example, the public defender's office, which by its mandate doesn't deal with probate or domestic relationships, is that they have to look to somebody else outside of their system for that. If you have a very young attorney in a contract firm that is representing folks in criminal areas only, they continue to look outside, so it just a nice thing to know that on the list of potential folks that you can appoint that you can get somebody who has that kind of experience. I see that as a real strength. On a personal basis, I had a couple of those cases appointed to me when I was not practicing in this area, but I did those other kinds of practice where I had Judge Fun appoint me on some cases in the past. I wasn't exactly on the list and yet somehow I did it. That was a long time ago. Nonetheless, those kinds of things happen and in juvenile dependencies in particular, having that broad range of experience I think is really critical. I have probably gone beyond the time that you asked. Do you have any questions for me?
- 368 J. Potter I have no questions though I am struck by the notion that while we want keep these lawyers that have that experience and that dedication and care about these children, we also need judges that will do the same and you fall into that category.
- 372 J. Thompson Thank you. There is one comment in the report that was brought up. We have 14 judges in this county and we have over 500,000 in population. In the report it mentioned things that we try and do systematically and so forth in areas like juvenile court. The whole system ends up riding on the shoulders of the bench to some degree or another because they all have to have us sign their stuff and hear their hearings. Sometimes I think we need to expand our judicial resources a little bit. I know that is beyond the scope of what you are doing today, but I certainly would welcome that and I know it was an enormous help in my position in juvenile court that we were able to get a full-time referee and able to expand the available judicial resources. I see Judge Fun and Judge Rini working together on that. That is a huge thing and I am glad to see in the report that there is a sense that these judges are giving each case adequate time even though people end up kind of waiting -- those kinds of things happen -- that they are hearing the cases. Thank you very much.
- 398 Chair Ellis Thank you very much.
- 400 I. Swenson I think Bob Hermann stayed around.
- 402 Chair Ellis Bob come forward. Let me say on behalf of the Commission we really did appreciate you coming to Salem a couple of weeks ago. I think you represented a great thing that I think is happening. I think elements in the system are working together and not cannibalizing each other and not antagonizing each other and that is just so much healthier. There are times in

the past, we all remember when that was less the case, and I thought your appearance there was terrific. Thanks for doing it.

418 B. Hermann My pleasure. It was interesting to be warmly greeted by some legislators that don't normally warmly greet me in different venues. I was glad to be there. Along those lines, thanks for the opportunity to provide my perspective and the perspective of my office. There was a time not all that many years ago when, I don't know if it had something to do with my predecessor or just the times, but typically we weren't ever invited to provide any input and I think this is a real healthy process that at least we can give our perspective and can be evaluated with everybody else's. I do appreciate that.

437 Chair Ellis It runs wider and deeper than the one thing that we have been describing. Your counterpart in Multnomah County came down, also testified very helpfully, and we have had a good relationship, cooperative relationship, with the DA's association on common legislative interests federally, so I think it is building and I think it is really one of the positive things that has happened.

448 B. Hermann Good. That is really kind of germane to my pitch today. I heard your discussion with Judge Hernandez and I don't know all the wage structure and I know the money in the legislature's funding, at least the co-chair's budget, would go a long ways to dealing with some of the issues, but I am here making a pitch for competitive salaries as much as is possible and certainly for contractors -- competitive rates with their neighboring counties and other jurisdictions. I know there is a whole history of negotiations and so forth but I just want to make that pitch. It is easy sometimes to make feel good pitches just for the good of the order, but I think in terms of what we are doing here and the work of our contractors and public defender's office, it is really significant that we retain good quality people so that we can continue with what I think are some good things for the system. As you hear me, and I won't repeat stuff that I said to the legislature, but balance ...

478 Chair Ellis Both of us were there.

480 B. Hermann ...balance in the system and a funding balance in the system is critical. I am a believer that all the components of the justice system have a deeply vested interest that the system have credibility in the eyes of the public. I think that funding, and proper funding of the defense side, is really critical to that. Whether somebody outside thinks the system is too bureaucratic, or too oppressive, or there are too many legal technicalities, too much gamesmanship, whatever it is, that perception of the system hurts all of us in terms of making sure that justice is accomplished and the right thing is done. I believe the ability to attract and retain quality defense counsel makes the system better and the perception to the public better if perception is reality. It works better for everybody if people are really getting a fair shake and they are not influenced so much by the media account of one extreme or the other in terms of forming their opinion.

514 Chair Ellis Give me some information that I don't have. In your office how many FTEs do you have that are devoted to criminal delinquency? [end of tape]

TAPE 2; SIDE B

001 Chair Ellis in terms of attraction and retention of lawyers?

002 B. Hermann Wage wise, the county pays ...

003 Chair Ellis Your success in attracting and retaining lawyers.

004 B. Hermann It is fairly easy to attract, for whatever reasons, it is fairly easy to attract -- gosh most of the time I don't even publish an opening in the office and will get 40 resumes.

008 Chair Ellis Really.

008 B. Hermann Yeah. I just recently started posting just so we got more circulation. Because of the county setting and a lot of different things, I have a pretty good selection process when I interview lawyers.

012 Chair Ellis In terms of retention can you give an indication of both averages and ranges of retention?

013 B. Hermann I am not the oldest in the office but I am the longest tenure in the office.

015 Chair Ellis The longest serving.

016 B. Hermann Thirty-two years but we have probably in the 15 and over year range we have probably got seven or eight, nine, ten lawyers that have been there that long. We are getting close to have lawyers that will retire as prosecutors.

020 Chair Ellis So career prosecutors?

021 B. Hermann I have one that is going to retire who was a dentist and then came to prosecution. As far as retention, in recent years three of our prosecutors moved to the bench, so we didn't retain them but they are still in the system. We have had numbers that have advanced to different places that have stayed in prosecution, the Attorney General's Office, U.S. Attorney's Office, those kinds of things.

027 Chair Ellis Within your office do you specialize by type of crime?

030 B. Hermann To some degree. My philosophy is a little different than some DAs' offices. We do have a specialty unit in child abuse prosecution. That is four lawyers that just do the bulk of the child abuse prosecutions. We rotate two lawyers for the juvenile process. We have three lawyers in our child support team but by and large we don't have a specialty team. In other words, we don't have a person crimes unit, a property crimes unit, and that differs from county to county. My philosophy has been because I was there when we had a person crimes unit and one [of the attorneys] went on vacation and one left and the remaining one was swamped and nobody else knew how to charge a robbery case. I have let attorneys gravitate to like elder abuse and areas of interest. If they have an interest they tend to get the bulk of those cases. I try, for the office's benefit and the individual's benefit, to try and spread out the expertise.

046 Chair Ellis This is a subjective question but we are always trying to test whether, on the defense side, too many cases are being tried, not enough cases are being tried, whether the defense bar is doing their job the way we would all like it to be done as opposed to worrying about economics. What is your sense here? Is the level, you heard from at least Judge Hernandez ...

052 B. Hermann Yeah. Our rates are up considerably this year. We average roughly 500 cases tried a year court and jury trial. In talking to my counterparts in a lot of counties that is probably more than many. There is one thing that factors into it before I answer completely that I think is significant and this is certainly from my perspective as district attorney. Over the years with the exception of 2003, we have typically had the resources in this county from the prosecution side, I believe, to basically charge and negotiate our cases where, from again my perspective, the public safety isn't compromised, the community livability isn't compromised and defendant accountability isn't compromised. I know some counties haven't had that luxury where they have had basically to reduce cases. Part of that is philosophy and I am sure there would be a disagreement about, or at least a discussion about whether it is aggressive, overly aggressive, however you want to characterize it, but the reality is in this county that we haven't had to make any blue light specials or reduce cases because of resources.

Consequently, every case kind of goes its course. Quite frankly with murder cases, and this is just what I hear from people that come here, but with murder cases and Measure 11 cases we hold a fairly tight line in terms of that, which I think in turn results in some cases getting tried here that don't get tried elsewhere. That is important in the overall picture in answer to your question because the practitioners don't, I mean the cases they get are more difficult. With all that in mind, I think, typically, that the cases that get tried should get tried, day and in and day out, and those that don't, don't. I think some of the programs that have evolved, our drug court, our ECR court, hopefully our mental health court, will make some inroads into some of those areas that maybe didn't need to be tried before or so forth. With the exception of maybe some of the young lawyers, and it works on both sides of the fence certainly, some of the cases that maybe our younger people charge and take to trial sometimes I look at the result and ask why. Why did we try that? We work on that, but I think the flip side of that too is from some of the newer lawyers sometimes cases get tried or they go up to the last minute and maybe we could all say that that is not the best result. By and large, I can't find a lot of fault with what gets tried and what doesn't.

099 Chair Ellis

Any advice you want to give us how we could do our job better?

100 B. Hermann

I think the open process and the discussion are terrific. Some judges told me years ago that nobody ever talked to them about the indigent defense process. Certainly, they sit in kind of that neutral position. I think the system, like I say money doesn't solve everything, but attracting and retaining quality defense attorneys is really critical. As we have developed the programs here in the county, again, I don't think we have tried to do just a feel good program. Our drug court is a lot longer than most jurisdictions, 12 to 18 months, and I will just run a couple of statistics by you because I don't think these programs would work if everybody and that includes the defense, if they didn't feel it was a working program. As of the end of '06, the people in the drug court program, and this has increased considerably since then, basically were facing 560 months in prison. It is like in the old days it used to be an execution of the suspended sentence. They basically were going to prison because of the underlying facts of the case. They were going to go to prison but for the drug court. Not everybody has been successful. I have forgotten the numbers now of people who have already graduated. There have been 14 graduates. That number is conservative. That speaks about working together. It took an experienced -- like I say Keith Rogers and Mr. Harris had a member from his firm that participated -- that took a meeting of all the parties involved to get something that, quite frankly at the beginning I was saying "You have to be kidding me. I am going to let a 40-month ID theft prison sentence guy go into drug court? That was quite honestly my mentality when I started -- this will be first time offenders. As we worked together and fought our battles about how the process worked and so forth, we ended up with a program that has huge savings in that regard. There are over 30 children at a minimum who are offspring of people in drug court, so there is an impact there. From a victim's perspective, as of '06 we have collected from these drug court participants \$14,000, about 25 percent of what they owe. But, \$14,000 that went to victims that they never would have seen if those persons had gone to prison. That cooperative venture wouldn't happen without experienced lawyers who were committed to making the system work better. As it turned out, I think everybody got something that we weren't getting before by just prosecuting and sending them on their way. I think recognizing -- as Judge Hernandez pointed out with the ECR program -- recognizing that when the contracts are negotiated, don't penalize efficiency because they are losing the cases that were the easiest to handle in some regards. I know you have a lot of stuff but I think on average if you don't count the people that just didn't show up at the beginning, one of every three cases that we are charging now is getting resolved within roughly a two week time period. Those that actually go into ECR, roughly 70 percent of those cases are getting resolved. I believe from the defense perspective -- they can certainly speak for themselves -- but this wouldn't work that way if people didn't think this was a good thing. You can create a program but if the defense contractors and defense attorneys that were there didn't think that was a good thing for their client.... The failures to appear are down. The jail overcrowding has been reduced.

- 167 Chair Ellis One thing that I understand that you do, and in at least one other county it is not happening in their program, you give discovery to the defense attorney early in the ECR process.
- 167 B. Hermann We have been working through the glitches but we try to have it every morning by 11:30. The reality is with this program, and Keith Rogers and I talked before about the concept and in fact initially when Judge Nachtigal was in charge of it, it was one of those flip flops of position. I was arguing that they needed at least an opportunity for a two week set over and she was saying that was too long. Keith had to come to my defense which was a
- 175 Chair Ellis Part of his contract.
- 176 B. Hermann Again, if the program is going to work then everybody has to be very comfortable that they are able to do their respective roles. Providing discovery is not easy for us but it is a no brainer. You can't evaluate a case for your client if you don't have all the information.
- 183 Chair Ellis We agree with that and we want to commend you for doing it. It is what makes ECR possible.
- 183 B. Hermann It is really a no brainer and that provision to allow a couple of weeks, we are continuing to tinker with things to make sure that we address the issues that come up so that, from the defense perspective, they can do their job fully and completely. To that extent, we have dedicated resources in our office to do this. We had to get more people doing discovery. We had to physically bring some people down there. We had to get our victim advocate to pick up the phone and call victims instead of the usual letter, to call victims and see if they wanted to come out to Hillsboro and tell the judge about their case or if they were happy if the case could get resolved and restitution could be ordered within 36 or 48 hours of the occurrence. When I talk about credibility to the system, there are byproducts of this that we just hadn't anticipated that serve everybody well. The probation department is ecstatic that they are actually able to have contact with a defendant shortly after sentencing and fairly short in time after the incident occurred. They feel they are able to be much more effective in that process in dealing with them. The savings are pretty profound.
- 206 Chair Ellis Other questions John?
- 206 J. Potter You answered partially that 500 cases went to trial in a year. Do you happen to know what that is in terms of the trial rate?
- 209 B. Hermann I can find that out. I was trying to think, anticipating the question, and to figure out exactly how many we file and sorting it out. My estimate is five to eight percent at the most. It is primarily dominated by domestic violence cases, DUII's, and then some of the more serious cases.
- 218 Chair Ellis Thank you very much for your input.
- 218 J. Potter Thank you.
- 220 Chair Ellis Shaun would always kick me right about now. Are you okay?
- 221 J. Potter I'm okay.
- 222 I. Swenson Judge Letourneau. Does anybody here need to leave quickly? Would it be alright, Judge, to let them go first?

- 226 R. Harris Thank you Mr. Chair. I am a local attorney here and just for the record the consortium is the Oregon Defense Attorney Consortium or ODAC as I call it. I am not sure how it is referred to in the report.
- 231 Chair Ellis Is attorney plural or singular?
- 232 R. Harris I don't know.
- 233 Chair Ellis That is the only question that I have.
- 234 R. Harris I just call it ODAC, it makes it much easier. Just a couple of things, there was some discussion about a juvenile consortium and I think that is nebulous and it isn't the ODAC consortium, it is a separate thought at this point. I have talked to Ms. Isaacs. My advice to her when she mentioned me in her discussion was, well, if you want to get a couple of attorneys together, come talk to me, we will be happy to meet with the ODAC board and talk about how this may fit into the plans of the organization. That is sort of where that was.
- 244 Chair Ellis Are you doing juvenile matters?
- 244 R. Harris No we don't. We do just criminal, up to Measure 11. We don't do murder cases but we do anything from probation violations up to Measure 11 crimes. To address a couple of the questions I think that got raised here, I know you asked one and I think it was of Judge Kohl, how do attorneys get matched to the type of case? I can tell you how I do it within the consortium and sort of how this works. The verifier's office will send us cases. We pick them up. I have a staff person pick up cases every morning. We sit down during the morning. I have a list of the number of cases that each attorney is scheduled to get for the month. When they get the more serious cases -- I don't give them two Measure 11s on a Monday and Tuesday -- then I will look at the type of cases they have had over the period of time, how far along they are in their contract commitment during the year so that I can see if they are above or below. Everyone is below right now. And then I go ahead and assign the case out to the attorney making sure they haven't taken a recent three credit sex abuse case. I want to try and even it out so that attorneys have time. If there are multiple co-defendants we email all the attorneys to check on conflicts before we do the assignment as well. Just to give you a little idea on how this consortium came about. My law firm, Harris law firm, had a contract with the state for probably 10 years or so and we had about three caseloads or so total. I recognized after years of going to the management seminars that the Commission was very interested in increasing quality and doing oversight and so forth. After talking to several people I set up an organization, or I invited people in to meet and talk about how we could do this that would meet the goals that the Commission had set up and some of the bench marks. I wrote letters and talked to about eight or nine of the local attorneys who were experienced who I know who also do hourly rate cases. We talked about how we could set this up and I suggested to them, and they took my suggestions for the most part, that rather than taking hourly cases you can form your own type of caseload and maybe by taking a few more cases you can see some efficiencies there and you can get a check every month that would basically cover your overhead. They liked that idea. I had each of the nine attorneys come up with a schedule of type of cases they would be willing to take telling them it had to include some PVs all the way up to Measure 11s. We had one firm that just did PCR which was also an interest of the Commission to get somebody involved in that. Coffee Creek is in our county so we have some of those appointments. We negotiated with the state with the total caseload and so I keep a chart like I say. There may be an attorney who has one Measure 11, two A felonies, a B felony, five C felonies, five misdemeanors.
- 291 Chair Ellis I think there are 16 in your group now?

- 293 R. Harris It depends on how many of the attorneys in my law firm that you count. I have one full-time practitioner of criminal defense in my firm and I have three attorneys who don't have a full caseload but they do that plus they do retained criminal.
- 295 Chair Ellis That is what I was going to ask. I just didn't understand what you just said. You said you have one attorney who is full-time indigent defense?
- 298 R. Harris Yes.
- 298 Chair Ellis They you said you had three who are part-time indigent defense but the other component of their practice is retained cases in the criminal field?
- 302 R. Harris Right. Maybe it would help me explain sort of what my philosophy or my thought was in setting this up. Maybe this will help clarify. There are eight attorneys in my office. We have enough misdemeanors under my old contract, and it is not subsumed into the ODAC contract, where we can certainly have one or two full-time attorneys in there just doing indigent. What I have been able to offer – I would agree with Judge Hernandez that we are the lowest paid in the area. I will discuss that later. Right now, what I want to be able to offer new attorneys coming into a private practice, these are attorneys who may not want to do public defender work, they don't want to go to a non-profit and do exclusively that. They may want to start their own practice in a few years and they want to experience and try something out. I have been able to offer them some training, minimal training, because we don't really have enough resources to do a lot of training. We have eight attorneys in there so there is some mentoring going on.
- 319 Chair Ellis Help me understand, you keep referring to eight and our report refers to 18. I take it there is an office with a cluster of eight that you have and then there are 10 others outside of that?
- 322 R. Harris Exactly. When I talked about the experienced lawyers who came in and bid on and gave me a package, those were the other nine attorneys or so. With my firm I can hopefully attract some attorneys who are interested in going into a private practice, start them with a full caseload of indigent defense work, and pretty much that is all they do for at least six months. Once they get comfortable with that we have other work that comes in. We can give them some retained criminal. We can give them a family law case if that is what they are interested in. A real estate case if that is what they are interested in. I have advised each of the attorneys in my office, when you get to the point where the retained work is crowding out the indigent defense work, you can't do a good job, come to me and we have sat down and we have talked and we have basically negotiated smaller packages of indigent defense work. I can keep their salary up and it is a negotiated thing. As it goes, they can choose to stay in indigent defense. I have had attorneys leave to go to a public defender office or they can segue into a retained practice or more private practice. I have also told them that if you get to the point where you would like to leave my office and go start your own practice, any caseload that is available within the consortium they can have first crack at. If they choose to go out on their own they will have a base from which to establish their practice. I don't know if that makes sense. People seem to like that okay. We have only done this for 18 months so it is still a work in progress. We have a board of directors. There are three people on it right now who are providers. It is myself and two other attorneys who are not in the Harris Law firm. They are the outside attorneys and they can outvote me I guess. I was at the bar meeting last night and I made an announcement, I am looking for a couple of other outside directors and I have had two people who have already approached me. We are going to fill at least two other positions on that board and some independent voices on there as well. You asked about Spanish speaking lawyers and the outside lawyers I guess I will refer to as consortium lawyers versus Harris Law firm lawyers. There is one consortium attorney who speaks Spanish, Dave Audet. He has been a lawyer for 25 years or so. I have two attorneys in my office, Harris Law firm, who do speak Spanish as well. One of them does indigent defense. The other just came on board and she has done family law but I am going to try and give her some misdemeanor cases

because she wants to get into court. We'll give that a try. She speaks Spanish. We have a Spanish speaking paralegal and I just recently ordered some Spanish cards for these two attorneys so they can give them to their clients. There is a direct line on there to our Spanish speaking paralegal. We are trying to accommodate the Spanish speaking clientele that we have.

375 Chair Ellis

I take it you act as the manager for not only the cluster of eight with the Harris Law firm but for the other ten?

379 R. Harris

I think in the bylaws it says that I am the executive director. We do most things, frankly, by consensus and through the board. I do the day-to-day management and go to meetings and different things like that. I do want to thank Mr. Hermann and the bench for coming here as well. I have been here for about 20 years in this county, in the DA's office and private practice, and I think over the last year or two we have probably worked as a criminal justice group together as well as I have ever seen it happen. In fact, 10 years ago I would have been shocked if we were all sitting here together in this same room doing this. I think a good example was how the ECR program developed. They had a core group of individuals who were on it with David Bennett for some time, I think. It may have been months or maybe a year or so, and they developed a basic plan and then some other individuals, myself and some others were invited in. There was some give and take between Mr. Hermann and myself particularly, but it made the program much better. I think that that sort of cooperation really has been instilled in this county between the bench and the DAs office and the defense bar. I think it has made some of these programs easier for us to implement. I was a little skeptical about the ECR program. On paper it looked pretty good, but I think what really made it work was the personalities that ended up being involved in it. If people want to get this done they can do it. I think that is what it came down to. Everyone who was in this, I mean everyone involved, said "I hope this works." None of them said "This will never...." We may have been skeptical but we were hopeful. I think that made a big difference in making this program work. The program does create some problems for the contractors in the consortium and the contract firms. As Mr. Hermann said, the cases in which we used to write a letter to our client, they came into our office, we would meet them for 20 minutes, we would fill out the plea petition and we would go into court two weeks later with eight clients and plead them out. You wouldn't have that much time into those cases. Those are gone. We don't get those cases anymore. We are now going to get the domestic violence, we are going to get the DUI, and we are going to get the cases that are more likely to go to trial. I think when we come to the new contract negotiations and putting the numbers on the case values, I think it is real important that we keep that in mind. The cases we get may be of a different nature. There may be a bifurcated way the Commission decides to pay for this. Right now we are getting paid per case on ECR. My guess is we are going to go to more the FTE type things, which is going to decrease the cost to the indigent defense which is good. It is good for the taxpayer certainly, but I don't think that is going to be one hundred percent savings into the pocket. We are going to have to shift some of that money over to the people who are trying the cases. We have to recognize that before you could take 30 misdemeanors and maybe you are going to take 20 misdemeanors now, but your costs haven't gone down and your (inaudible) hasn't gone down. I want everyone to keep that in mind over the next several months as we go on here and we see how many cases do end up getting washed out.

443 Chair Ellis

How did you end up with the other ten? Did you go and initiate with the other 10? Did they come to you? Is there a criterion that you apply in terms of who you will accept or won't accept?

448 R. Harris

I went to them and I told them that I think the Commission wanted an opportunity to have this option in our county. I initially actually talked to a couple of the other contract firms even before I talked to the consortium lawyers who ended up coming on board eventually. Those discussions got to a certain point and then they didn't proceed. At that point -- I have been

here for 20 years so I know a lot of people and the quality of their work -- I wanted to take low maintenance lawyers who I knew, so I actually went out

- 464 Chair Ellis I understand what you mean by that -- low maintenance from a manager's point-of-view.
- 466 R. Harris Yes. Low maintenance from a manager's point-of-view. People who were experienced, who I knew did a good job, who had a decent, good private practice already who I knew were not going to be surviving solely on this. I know you have asked a couple of questions about quality for part-time versus full-time defenders. I will tell you that I think part-timers are certainly just as good, if not better in many cases.
- 475 Chair Ellis They are part-time indigent work but they apparently take a fair number of retained criminal as well? So they are not part-time criminal but they are part-time indigent criminal?
- 479 R. Harris Yes, but I think some of these lawyers would tell you that 30 percent of my work is family law or I have small business mom and pop that I represent. Now I say that certainly half or more, and I think that was criteria, at least half of your practice should be criminal work so that you stay up on it and you do all these things. That was one of the criteria that I looked at.
- 486 Chair Ellis Do you have either experience with the issue or a process if the issue comes up? If you become dissatisfied with the practice quality of one of your members, what do you do?
- 494 R. Harris It sort of depends, I guess, on how that complaint would come in. I can tell you what I have done in these situations. I have had clients call and complain -- and I think it has been two or three times, and each time I have talked to the client, identified whatever issues there were. I talked to the attorney. Quite often those issues weren't real ones but you have to tell the client that I recognize that this is real to you. I think in one case I switched attorneys and in the other cases I was able to get the attorney and the client to work their issues out so we didn't have to switch them. Other individuals involved in the system have called me and I have contacted the attorneys and I have discussed the issues with them. I felt we worked it out to everyone's satisfaction. I never got complaints about the same issues again.
- 516 Chair Ellis Do you think you have the ability if you really came to the conclusion one of your members was an inappropriate you could let that person go?
- 520 R. Harris Well I hope so. [end of tape]
- TAPE 3; SIDE A**
- 001 R. Harris ...can be terminated on 30 days notice.
- 002 Chair Ellis The decision maker on that is you?
- 003 R. Harris It would be the board I think, the board of three people. Now if one of those people was the person that was being complained about we would have an issue. This has only been going for 18 months so we are babies. We are relatively new in this but so far I think it is going well. I have been very pleased with the way this has been going and very pleased with the attorneys I have had. There are a couple of things that they have to do. If they get any contact from the bar they have to immediately notify me. If there are issues involving that, and we did have one firm who had an attorney that had been privately reprimanded, I think, and I had that supervisor send me a report on what happened, what they did to correct it and told them that if things happen like this again we are going to have to revisit this issue and do something more than just what happened here.
- 014 Chair Ellis One of the things the report talks about is availability of training for younger lawyers and let's see if I have got the picture right. The ten practitioners outside of your firm they all are

experienced at the time that you retained them or associated with them and they are all solo practitioners?

- 020 R. Harris There is one firm that has four attorneys but they just do the PCR and they will occasionally take another case if I ask them if they have someone available. There is one attorney who has an associate. There are two attorneys who share an office. I'm not sure whether they are in a partnership or not. That is sort of nice because they can switch between themselves if they have coverage issues. One of the criteria I ask is for people who are involved is to make sure that you have someone you are either partnered up with or have an agreement with so if you have a coverage issue, you can call that person and have them get down there. If you are a solo and are on vacation for two weeks, this can create a problem.
- 028 Chair Ellis Within your piece of it, your firm piece, the cluster of eight, I think you have indicated that you have a range of experience levels?
- 029 R. Harris Yes.
- 030 Chair Ellis What are you able to do by way of training and what is available by way of training?
- 032 R. Harris Real basic stuff frankly. I pay for the CLEs that they go to. I encourage them to go to the OCDLA stuff. They are members of OCDLA. I pay for that. I think we do more mentoring than training. I end up being in my office too much nowadays, so I tend to be right down the hallway from them and I spend a lot of time one on one with them when they first come on, talking about judges, evidentiary issues and trial procedures. We don't have any formal program where I like shadow them for a week or anything.
- 040 Chair Ellis Do they assist in trials before they try cases on their own?
- 041 R. Harris Like second chair? I have not had them do that.
- 041 Chair Ellis There was reference in the report that MPD does have a more formal training program and that they make it available to others if there is space. I am trying to get a sense of how that is working?
- 044 R. Harris I think at least once or twice Paul and I talked when he was doing the training for MPD. At the time I have a new attorney coming in versus when there is a space available has never synced up for us, so while we have tried to access that twice it has never synced up for us.
- 049 Chair Ellis Any suggestions for how we should try to structure service in the county to have a little more systematic training for the younger lawyers that you are dealing with.
- 051 R. Harris I think it is great that MPD is getting paid enough money to be able to provide that service for their attorneys. I think that perhaps a new RFP would be that whoever gets that money should be providing it for everybody and make it equally available for everybody. MPD is a great resource and they do good, quality work. They get paid the most but they do provide good, quality work and they do have those resources. The training is a good resource and I wish it were available to everyone.
- 057 Chair Ellis Were you here when Susan Mandiberg testified? One of her points was that MPD is a information sharing center and I think shorthand for that is brief bank or specialized issue. Is that working from your point of view?
- 061 R. Harris I think they are better at communicating that to you than they are to the rest of the bar. I don't think they would ever deny that resource to us, but it is one of those things that we probably have to be reminded of occasionally. We have to make sure that the managers of the firms and the contractors are aware of that and it has to be available. Just because it is out there,

like the training sessions, it may be available if things happen to work out right, but it has to work out right. I have never been denied anything that they have been able to provide us, but I think if they want to be a regional resource and be paid for that, they should be a regional resource for all the contractors in the area, including Clatsop, Columbia, Clackamas and Washington County.

- 073 I. Swenson Please excuse me for interrupting. I just want you to know that we have two witnesses, Judge Letourneau and Sarah Kopplin who have to leave at noon. Maybe we could fit in a few minutes for their comments. I know Rob has to more to say and I don't know if he can come back a bit later.
- 076 R. Harris No, I have a lunch meeting for the OCDLA annual conference that I am supposed to be putting together. Just give me twenty seconds. I prepared for you, and your staff has already seen this, a document which does show, I believe, that Washington County.... These are the consortium dollars that Harris and other consortia around the state receive and I got these figures from your staff. If you look at those, I did averages. Your staff and I had a subsequent phone conversation and they wanted to do a weighted average on this which did close the gap somewhat, but it is pretty clear to me if you plug in our numbers and either Portland Consortium, Rose City Consortium, Clackamas County Consortium caseloads, case-per-case, we are anywhere from ten to fifteen percent underpaid. The money is available this period and it may not be available two years from now. I find it difficult to grasp that we need to get certain public defenders up to DA's salaries when we can't even get public defenders equivalent salaries.
- 090 Chair Ellis Up to public defender salaries.
- 091 R. Harris I think we are looking at the wrong priority here. I think the priority should be to go ahead and make sure, at the very least, we should be paid the same as Clackamas or Multnomah Counties. Frankly, I practice in all these counties and this is a more litigious county. Even if you say it is the same, we should at least get the same. That is my final pitch. If you do have any questions about that I will be happy to answer them otherwise, I will let other people speak.
- 096 Chair Ellis Thanks.
- 096 J. Potter Thanks Rob.
- 097 Chair Ellis Judge Letourneau if you want to come forward. Good to see you again.
- 098 J. Letourneau Let me start by again thanking the Commission for its substantially good work up here and throughout since its establishment. It was a dream of many of the people in this room, and it is working out just the way we had hoped it would work out.
- 102 Chair Ellis Thanks.
- 102 J. Letourneau Secondly, when my daughter, who goes to college on the east coast, came home yesterday and said "Hey, dad, Connor," my six-year-old son, "has really matured." I said "I haven't noticed it" because it is incremental. Sitting in this room and having been associated with Washington County since 1979, it is amazing how much we have accomplished but it has been so incremental that a lot of times, I and some others don't think about it.
- 109 Chair Ellis The flip side of the frog in the warming pot.
- 109 J. Letourneau I am very proud to be associated with Washington County. It has been very enjoyable to be reminded of all of our group accomplishments and where we are headed. The main thing I am going to say is this and I will begin with it. I have made recommendations during the last

contracting process with Ingrid and others recently and I think MPD should be responsible for training the other contractors. They get paid money and they do a lot for their money but I think it is a reasonable expectation, and I don't know the details about the money, but it is a reasonable expectation that they should be responsible for training the other contractors. One of the main non-juvenile concerns in Ingrid's draft was the lack of training for young attorneys. I suspect I have a higher standard than the other judges who have spoken today. I think things are good but they could be a lot better. If I had a nickel for every time a new attorney couldn't do voir dire challenges correctly, I could buy a lot of lattes at Starbucks. One of the reasons I am doing dom rel in part now is because those attorneys all know how to do judgments. They are all experienced, and after four or five days of being professor you kind of get tired of the process.

- 124 Chair Ellis You came to judge not to teach.
- 125 J. Letourneau I enjoy the teaching part but at some point it gets old, about every fifth day, when it is the same thing over and over again. I think that seems to me to be a logical solution to the problem that has been identified. It is a great resource. It is there. You guys can figure out the money part of it. It should be mandatory that they provide the training and that the young attorneys attend the programs. Related but different, my personal opinion is that it would be good for the county on the adult side to go to a public defender/consortium model. That is not to preclude the contractors from being involved in the process, but you have the public defender and you have the consortium. The consortium could be bigger and incorporate all the current contractors if that is the way it evolved, but then you save money on the conflicts and it would be much easier to train.
- 137 Chair Ellis Okay. We have heard a lot of testimony urging us not to do away with the solo practitioner, independent appointed piece.
- 140 J. Letourneau On the adult side as you have noted, there were 12 out of 11 hundred, I'm talking about the adult side and not the juvenile side. On the adult side there are no private practitioners in court appointed cases on any regular basis except the consortium members. As a footnote, one of the really good things about the consortium is that the Dave Audet, Tom Collins, and Ray Basils of the world, who are very experienced, murder qualified attorneys are handling the whole spectrum of cases from PVs to Ballot Measure 11s. That really helps the system.
- 149 Chair Ellis You just offended about 40 people with that.
- 150 J. Letourneau Its okay. I'm a judge. That is my observation on that. The private bar is nonexistent in terms of individual court appointment basis. As a footnote, I am in charge of the criminal defense indigent certification process. There really is a process and it actually predates the Commission. It is an administrative rule. It is a self-executing form. The lawyers must fill it out. They self represent that they are qualified under the guidelines for whatever level of service it is. There are so few private appointments now that that whole process is pretty academic. One other observation that is different but ties into the training, now I swear this is true, the John Connors, Steve Jacobsens and the Keith Rogers of the world, the Don Letouneaus, we would be embarrassed to go into court if we weren't totally prepared. I swear that people in their 20s do not share that cultural expectation. They are not afraid of being embarrassed. It doesn't seem to dent them at all sometimes.
- 167 Chair Ellis I always thought fear of embarrassment was the big driver for lawyers.
- 169 J. Letourneau Well, it was in the '70s and '80s but my personal opinion is that it is not with people who are in their 20s and 30s now. I teach a class at Pacific and you would be shocked at the poor level of performance by college seniors.
- 171 Chair Ellis What you are saying is they are not afraid of being embarrassed. They just don't get it?

- 173 J. Letourneau They aren't embarrassed. That is the thing that I have experienced. I have experienced for the last ten or fifteen years. It seems to be a cultural.... Maybe it was President Reagan's era that switched it over. I don't know.
- 176 Chair Ellis Now you have offended even more people.
- 177 J. Letourneau I don't think in this room that is a big issue. That is mostly what I wanted to say. I reiterate what Mr. Hermann said. What the judges actually spend time on in court are domestic violence and drunk drivings and homicides. Then you have the occasional Ballot Measure 11 that goes to trial and the occasional drug case that goes to motion to suppress, but the vast -- and this is antidotal -- but I think the vast majority is domestic violence cases, drunk drivings and serious homicides or serious things. That is what we spend time on from day to day.
- 187 Chair Ellis You have a lot of experience in this county including with MPD in this county. Are you comfortable with the model that has emerged with MPD being both Multnomah and Washington with the senior management board above. Is that is working?
- 192 J. Letourneau Absolutely. The problem was that Clackamas County was (inaudible) severed. It should have been a tri-county.
- 194 Chair Ellis Many of us have memories of that but we are here on Washington County.
- 195 J. Letourneau It is working very well. Much better than when I was the Director by the way.
- 197 Chair Ellis You have to say that.
- 198 J. Letourneau I did want to note one other thing about the arraignment process and there not being an attorney on the adult side. Even though we are the new Silicon Valley, you have to give us some ability to pay homage to our humble roots; you never needed an attorney at arraignments because the jail was so full that everybody got out anyway. Now with all these really good accomplishments between redrafting the release order and the ECR and everything, we now have some weeks with no forced releases. This would be the appropriate time to reconsider the viability of an attorney at the arraignment in my opinion. But then on the other hand it is more work for the attorneys and they are already stretched thin. The judge is not going to be able to make a release decision at the arraignment and I practiced in Multnomah County and I know that is not really feasible. Since we now have a jail that can retain people if may be a little more logical, and obviously on the juvenile side Judge Thompson reports there has been a positive benefit. Maybe it is worth reconsidering. I want to mention this. I know when I last was a judge in juvenile court we had tried to institute a policy of the same attorney representing people in criminal court and the parents in the dependency cases. There are probably people here who could answer if that is really being done, but I think that the Commission needs to give a contracting thought to that so that you have the same attorney who is representing them in a meth case also representing in them in juvenile court adult dependencies. At least the same firm but even the same firm they always don't know what is happening on the drug case. How complicated is this. Ask the person. It would be better if it was the same person. Lastly, I don't think this is in your bailiwick, but certification of interpreters in non-Spanish speaking language would be a plus. We are doing really well with Spanish speaking but the Asian languages, and I had French this month, and it is just an international community of criminal defendants.
- 231 Chair Ellis I would think you of all people who be able to do the French yourself.
- 232 J. Letourneau Well, I have had four years of Latin which have served me well in the legal profession, but not in terms of translation. That is all I have to say.

- 235 Chair Ellis Thanks a lot.
- 235 S. Kopplin My name is Sarah Kopplin and I am a supervisor with CASA here in Washington County. Thank you for having me and I want to thank Ingrid too for spending some time with myself and a couple of my colleagues regarding our perspective on this issue. I appreciate her time. I will be brief because I know we are getting short on time. I have reviewed the report and I think that Ingrid has done a good job of incorporating our perspective in regards to representation in Washington County. I have been with CASA for about six years now, in Washington County the whole time. I feel like I am starting to be at a point where I can really see some trends and patterns in regards to representation that our kids get in this system. I am going to be switching gears and talking just about dependency cases of course. My perspective is that there is a lot of really committed, strong attorneys in this county who are doing a great job for kids and for families. That being said, I have basically three main concerns that I would like to share with you. I won't be overly redundant with what has already been noted in Ingrid's report. The first of which has to do with attorneys contacting their clients and I am speaking mostly to attorneys that represent children. This has been a large, very significant problem with the exception of, I would say MPD and a handful of the private contractors. I am really concerned about the lack of contact that most attorneys have with their children that they represent. What this does is this tends to – those attorneys who don't have that face-to-face contact, which is far too common I believe, they rely on what they read in the reports and represent their clients just based on what they are reading on paper. I think that does a great disservice to those kids that they represent. I certainly think that these, and I think you would agree, these are pretty much the most vulnerable kids in our community and could really use a higher level of representation as far as that goes. I think some firms try to at least get their assistants out there between hearings to see kids and do those home visits. I know that it is a very time consuming thing to have to do, but I think it is an area that needs a lot of improvement in our county. The second concern that I have is something that I am seeing more and more which is attorneys that represent children that aren't taking a position at all in court hearings and in trials. This does occur in termination of parental rights cases as well as trials. I am concerned about that and how that plays into some of the real critical decisions that are being made at these hearings and at these real critical junctures.
- 280 Chair Ellis It is always a challenge though isn't it? An attorney representing a child in a TPR setting where does that attorney take direction from? It is difficult to say you should take it from the child. It is difficult to say should the attorney ...
- 288 S. Kopplin Well my understanding is that the attorney is able to do one or two things. They are able to make a best interest argument if the child is too young to say what they wish to have happen. Or if the child is above a certain age they are required to represent what the child wants. Now, we come in only having a best interest mission. That is our job regardless of the child's age, but we are only appointed in about fifteen percent of the cases. When we are involved we are able to bring our best interest perspective. Then, I think, we have a much better rounded case for a judge to consider, but what about those cases where we are not involved?
- 298 Chair Ellis So on the ones where you are involved that is not the set of cases that you are talking about where the attorneys are ...
- 300 S. Kopplin Yes I am speaking about those. Those are the only ones I have knowledge of. I am speaking to the experiences I have had with attorneys that just do not take a position at all at a hearing for attorneys who represent children.
- 306 Chair Ellis Okay.
- 306 S. Kopplin The third thing is, and this is just more of a general pattern that I am seeing that concerns me, is just a lack of meaningful representation. Again, I don't think this applies to all of the

attorneys in our counties. I think we have some great folks that are doing some really excellent work out there. However, I think what could benefit these kids a whole lot more is a higher level of representation. So in other words, rather than just hearing from CASA or hearing from the DHS caseworker that everything is going well and telling the judge that in court, taking it a step further and looking into some issues that they could really be helping to push on behalf of that child. For instance, we have adoptions that take a huge amount of time to finalize and we have kids that are really languishing out there waiting for permanency. We can't always be the only ones out there trying to push the agency, push child welfare to figure out why this is taking a year to get a child adopted. I would like to see more efforts being made and that is just one example, are the attorneys really being the ones to get on the phone too and start figuring out what the hold ups are. What are the barriers and what are the road blocks that are happening so that we can get permanency quicker? I think that there could be some improvements in that area on behalf of the court appointed attorneys to do that. Another example of that too is when cases go to termination, I know you are talking a lot of about what is cost effective and how can we make this more of an effective process. For instance, when cases go to termination of parental rights, I see a lot of time go by where I know that is a parent is ready to relinquish their parental rights and attorney for that parent could really help push that along by acting on that quickly, being proactive, contacting all the parties, making that happen, but what ends up happening is we wait until the next hearing ...

- 342 Chair Ellis Then there is a rethinking ...
- 342 S. Kopplin Then circumstances change and we have lost the opportunity to resolve something that could have been resolved had the attorney been more proactive. Those are just some examples of how I think things could be improved.
- 345 Chair Ellis Your comments about the attorneys is do you think the issue is they don't have the skill set or they don't have the time or they don't have the interest?
- 350 S. Kopplin I think it can be all of those things. I don't think primarily that it is just an issue of inexperience though. There are a lot of new attorneys that come in that are very committed to trying to get out there to see their clients and to get at the heart of the issue, to talk to all the important people. And there are some attorneys who have a ton experience in this field that aren't taking that extra step to do that. There is a really big range and I see a pretty big inconsistency more than anything else. I certainly think training, which has been discussed, would be helpful, but I don't think it is strictly an inexperience versus experienced issue.
- 360 Chair Ellis Is it part of this culture shift that Judge Letourneau talked about? They don't mind being embarrassed. They are not embarrassed?
- 362 S. Kopplin I have seen that to some degree. I am not sure what is behind that. Certainly caseload numbers are a huge concern and I don't mean to diminish that because I know folks are under – their caseloads are unbelievable and to be able to provide that level of quality of representation to all those clients can't be an easy job and I recognize that. There are some firms that are at least able to get their assistants out there between hearings to visit kids in the foster homes, have those meaningful conversations, ask the right questions rather than just accepting the status quo. That is what I am concerned about. I think more efforts could be done in that area.
- 375 Chair Ellis Thank you very much.
- 377 S. Kopplin Thank you.
- 378 I. Swenson I don't know among the folks present who else wants to comment.

- 381 R. Houston I would like to speak but I am in certification training all week with the police department and I have to back at 12:30. I do not want to impose on other people's time. What I will do is I will write you a letter. I am a solo practitioner who exclusively does juvenile dependency work here in Washington County. I have been told now that I have to go to Tillamook to find work which I will be doing.
- 391 Chair Ellis We would appreciate that submission.
- 394 G. Burton I am Grant Burton from Washington County Indigent Defenders. I wrote you all a letter responding to the report which I enjoyed reading. I thought it was very accurate in many aspects. I did specifically have a concern about the statement in the report that Washington County Indigent Defender, which the civil arm of that firm is Garland, Burton, McCaffery, that there was a fund distribution problem within that firm. I looked at some specific numbers and I really don't think that is the case. I think we are paying at least comparable to what other contractors are paying. I think historically Washington County Indigent Defenders may not have had the highest salaries. We have expanded the number of attorneys we have working on the contract and so we are now probably at, or probably above, whatever other contractors are at. I am not sure where that information came from. I talked about the fact that we do have some attorneys that have partial contract loads who then receive part of the base salary either because they have another job, they have to take care of their kids some of the time, but I think funds are being distributed appropriately. We have also invested a lot of money in trying to improve our office infrastructure. In addition to salaries, I think young attorneys would like to have an adequate, decent working environment with a modern computer and the types of software they need to provide effective representation. We have had some transitions with myself and Mr. McCaffery coming on board and I think it is acknowledged in the report that that is going well. We do still have some improvements to make on how we train our new attorneys. Our most recent attorneys who have joined the firm right now are experienced felony attorneys, but even they need orientation about how things work in Washington County. I think it would be great if the public defender's office, if we communicated with them and they shared their knowledge and resources with us. We did recently start taking juvenile cases at PDSC's request because of our inability to get a sufficient number of criminal cases. A lot of us have quite a bit of juvenile law experience and I think that is going well. I think we are doing a good job in juvenile court, but I also think that we bring many of the skills, family law experience, which I think is really important in juvenile law because a lot of times a case isn't going to be closed until a legal custody order is in place. I also understand that our addition to juvenile law and just the lack of cases in general, could be causing some problems with the private bar. Before I was working at my current firm I was at \$40 an hour and took a lot of cases from juvenile court. I certainly would hope that those attorneys could continue to get cases and maybe a consortium in juvenile court is the way to go next time around where you have individual members still receiving cases.
- 463 Chair Ellis Help me understand. It is there a difference between Washington County Indigent Defenders, P.C. and Garland, Burton, McCaffery?
- 467 G. Burton It is two corporations so I think there is a legal distinction, but basically our indigent defense cases are handled by Washington County Indigent Defenders.
- 473 Chair Ellis Is that a nonprofit?
- 474 G. Burton It is a professional corporation and basically when Mr. McCaffery and I joined the firm that was a preexisting bifurcation that was there.
- 479 Chair Ellis So the same lawyers are members of both?
- 480 G. Burton Correct.

481 Chair Ellis But the contract we have is with WCID?

482 G. Burton Correct. It was confusing for us as well.

487 Chair Ellis There is a sentence in the report that I wanted to ask you about. It says "The Garland firm has been identified in the past, prior to the addition of two new partners, as experiencing the most difficulty with performance. Under current management the firm appears to be operating more effectively." Is that a fair statement?

499 G. Burton I think it is as far as having the most problems in the past. I think sometimes people have a fairly short memory about things. I think different firms at different periods of time have had problems where you have a lot of turnover. I have been in Washington County since 2002 and I believe in 2003 or 2004 I would say it was the strongest firm. Things went really bad and a lot of attorneys left and I think it probably was the most problematic firm. I think now it is heading back in the right direction.

513 Chair Ellis The ones that left were at what level?

514 G. Burton There were a number of shareholders that retired. One person decided to stay home with their family. A lot of the attorneys who had been there for quite some time left for different reasons. There was this unstable environment which is what we basically inherited when we came. [end of tape]

TAPE 3; SIDE B

001 G. Burton ...from Arizona and the other from Grants Pass is currently felony qualified in Oregon.

002 Chair Ellis What are your observations on the training issues because you do have a fairly large group here.

004 G. Burton I think that training means a lot of different things for an attorney just out of law school. Basically they have very little information to start off with. For our attorney coming in from Arizona he knows a lot of information about criminal law but he needs to adjust to Oregon. I think a lot of it falls under the term "knowledge management" so we need to show people where to go for certain types of knowledge. We need to make sure that they know basic operating procedures in Washington County about how to set a plea hearing; within the office how to create pleadings and file motions. I have worked in offices in the past where even creating a simple motion was exceedingly difficult because we didn't have the forms. The printer didn't work and so just making sure that all those things are there and understandable to the person.

015 Chair Ellis Do you have some kind of supervisory relationship with the very young lawyers?

016 G. Burton I do. I think it is referred to in the report that I went and watched the attorney's first trial to see how they were doing. I talk to them about what they were going to need to do at that trial. We have only had two new attorneys without a lot of prior experience come on since I have been there. In both cases they have second-chaired trials with experienced attorneys before they do their own. At the same time I think new attorneys will make mistakes and so we want to minimize those as much as possible.

022 Chair Ellis Old attorneys make them too.

023 G. Burton That is true. Another point as well that I think Mr. Harris touched on is that because of the funding issues a really, really strong comprehensive training program almost means you have to have at least one attorney who is not handling cases. That person does training and we

have kind of done that by expanding to ten attorneys. We can basically have enough attorneys to handle our caseload without having everybody maxed out as far as being in court all the time. I have certainly been in situations in the past where we don't have enough bodies to get to court.

- 029 Chair Ellis Let me ask you a broad question and don't assume anybody is moving in any particular direction, but it did strike me in the report that in many areas of the state the model that has emerged is a PD office plus a fairly large consortium and occasional appointments. This county has PD office, a consortium and then three or more contract providers of which you are one. Do you have any advice for us whether it is too fragmented?
- 041 G. Burton My understanding is that it seems like this county and other counties are moving in the direction of having a consortium which can help with conflict issues, perhaps training attorneys. So we are certainly open to that idea and have had discussions about that. I think as far as there being one consortium and a public defender's office the next time around, I think logistically managing and setting up a consortium that is big enough to handle all of the cases besides the public defender's office would be pretty difficult. It is my understanding in Multnomah County you have MDI, MPD, you have multiple consortia operating alongside those.
- 050 Chair Ellis Not as many as your statement implies.
- 051 G. Burton Maybe several. We are open to working with PDSC and the other contractors, the consortium, the public defender, to perhaps set up a consortium such as that. I am kind of new to the process. I would look to some of the more experienced indigent defense managers to determine what the best course of action is.
- 056 Chair Ellis Other questions?
- 057 J. Potter You responded to the Chair's question about the Garland firm having been identified in the past with performance difficulties possibly. Do you think, and I'm just thinking in terms of whether there is going to be a rewrite of this paragraph, do you think under the distribution of funds area that that might also be a preface to the sentence. From your letter here it looks like if you said you go back to 2002 and you think that the salaries are in line with other contractors from 2002 until now. Do you think that maybe it was prior to 2002 that folks made their comments based on their perceptions or not?
- 067 G. Burton I would happy to sit down and discuss whomever has that perception if they want to talk about why they have that perception and provide whatever data we need to - I think there may have been a time in the past where perhaps the firm was criticized for not paying enough. Then I think the salaries went pretty high. I can remember all the way back in 2003 when I was working in this county sitting around in court talking to attorneys in Washington County Indigent Defenders who were getting paid a lot more than I was. That was the case for a while.
- 075 J. Potter But you are confident today that you folks are in line with the other contractors? Does that include the Metropolitan Public Defender?
- 077 G. Burton I have some idea about what an entry level attorney makes there. I think that probably their senior level felony attorneys that are doing A and B and Measure 11 cases probably make more, but our attorneys if you look at -- we have very manageable caseloads. Almost all of our attorneys have some retained work, which they get a share of. They are actually making quite a bit of money in a lot of cases. I think the idea is that that will allow people who like indigent defense but also want to make some money and are interested in other areas of law, to stay with the firm and become the Ray Basels and Tom Collins that were referred to earlier.

- 086 Chair Ellis I don't know how much of the prior testimony you were here for today, but particularly in the juvenile area there was an expression of concern. The lawyers aren't having nearly enough client contact to be effective. There is a footnote in the report that again referring to your group says "Attorneys continue to come to court without having met their clients." Is that an unfair ...
- 092 G. Burton In juvenile law?
- 092 Chair Ellis The footnote isn't limited to juvenile and you have just started juvenile so it is probably not even describing juvenile. Is it true what the footnote indicates?
- 095 G. Burton I think it happens sometimes without question. We are appointed on a case; the attorney sets the court date and we ask our client to set an office conference or telephone conversation and certainly, from a management level, we encourage our attorneys to meet with the client. I think that every firm in this county sometimes does not meet the client prior to court. Part of that is because the person may be homeless, they may not be contacting us, but I think sometimes that person.... We have had many attorneys do a lot of trials in the last six months since I have been there and we have won many, many trials. That may not be appearing in the report but I think maybe it is a quality control issue. Not all clients are getting the level of representation they should but we would certainly be happy to look at whatever we can do to try and have more contact with the client. Certainly, anytime we have a client who is appointed to the firm who is in custody, that case is entered into Time Matters, there is a box that says "in custody." When that box is checked it automatically generates a to do record in Time Matters for an attorney. They have a list of "to dos" for all the people in jail, how long they have been there. After they visit the person they check it off to make sure that we are visiting people on time. So, it may be out-of-custody people.
- 119 Chair Ellis Okay. Thanks a lot.
- 119 J. Potter Thanks Grant.
- 122 R. Ridehalgh Thank you. My name is Ron Ridehalgh and I am the Ridehalgh of Ridehalgh & Associates. I have been a contractor now since 2000 and for a couple of years before I worked as an associate doing this work.
- 125 Chair Ellis Associate where?
- 126 R. Ridehalgh I was going to say Brindle, McCaslin & Lee but back then it was McKeown & Brindle. I started out there and then ran off to set up my own shop. My whole experience professionally had been in doing this type of work. When I set up my own shop the goal was to do this type of work. When we created our firm and as it grew and then we had the fortune, as well as what I sometimes I feel is the misfortune, to win a contract, we built upon that model that we were a defense firm. We have not have been Metropolitan Public Defenders but we were public defenders.
- 135 Chair Ellis Right.
- 136 R. Ridehalgh As far as where I come from, that has been always been my (inaudible). It wasn't until the less than pleasant experience of BRAC that I really realized growth in other areas was going to be necessary. That is not really why I raised my hand to let the Commission know a little bit. Really it is in response to some fears that have been brought up and I hope that I can delete some of that. The fear that I heard voiced from Ms. Isaacs as well as Judge Thompson was in regards to the rumors that are going about regarding the juvenile consortium that is being discussed at this time. A little more than being discussed. I happen to have some information since I am a bit of an instigator. Well over a year ago when I got the phone call

from my analyst letting me know that – well my contract was not exactly going to be what I thought.

150 Chair Ellis

Not your personal analyst.

151 R. Ridehalgh

No. No. I was initially just going to say Caroline but I suppose this is a little more formal. That stuff I try to keep confidential. Something that was very memorable for me was being told that well, some of the cases that I was expecting to receive, well they were going to be going to the new consortium that was being formed of which I was not a part. That is, well, fearful. It caused a bit of fear amongst myself and the other members of my firm. When I discussed it with the other providers in juvenile court, the larger providers, the contracting firms, we all were kind of worried because we had all known for a number of years that this was a model that was often favored. It was something that the Commission was looking for as far as public defenders. For over a year now I and the three other law firms that have a contract in juvenile court have been discussing theories of how something like this might be put together and what could be done. As of late, it has become firmer as far as what we plan on doing and how we expect to make a proposal for the next contracting period. We have put together articles for ourselves and we actually just filed them. We are forming it as a public benefit as far as its legal entity. If it wins a contract, it will be the contracting entity. We have been devising its board of directors and it still is in a very preliminary stage. We don't have an established board as yet, although we are contacting people. We are looking outside of our county and we are certainly looking outside of the members, the firm members that we expect to be involved. One of the overriding philosophies that I certainly have had in its creation and that had framed the discussions that I have had with the other contractors that have been involved in this is that we are not looking at this as a means of excluding the existing providers like the Susan Isaacs and the other solo practitioners. Our goal has in no way been along those lines.

193 Chair Ellis

Have you been in touch with her?

194 R. Ridehalgh

No. No. I didn't know about her fears. I had no idea until just a couple of hours ago what the rumor mill had been doing. I had so far just received one phone call from one sole practitioner and I told him what I am about to tell you. Our plan has been that once we got this model put together, we wanted to contact all the providers that we work with so that we could get everybody essentially on board because we don't want to rock the boat amongst ourselves. We want to be as egalitarian in our setup as possible but satisfying all of the needs that the consortium needs to satisfy. We have been putting together the theory on how we want to have our board of directors and an independent board of directors. We have been discussing, and so far I have discussed with one provider, one investigator, ways of internally having our own -- every six months has been the model we have been talking about of late -- training program where we bring in outsiders such as an investigator that I have talked with. We have also discussed bringing in one of the psychologists that we do a lot of work with so that these people can come in and give presentations and tell our lawyers what they want from us. For us it is still very much in the preliminary stage so we haven't been going out and recruiting elsewhere. I think the rumor mill – well we weren't really keeping it secret but we weren't advertising it either. It just so happens that this is going on at the same time that the juvenile court has restructured its division of new appointments for incoming cases because of two factors. One, there has been a reduction in the overall number of new juvenile court cases of late. Plus the allocation that was set up, gosh a year and a half ago or so under Judge Thompson, well I don't know about the other firms involved but I wasn't meeting my established quota in juvenile court as far as the number of cases that my firm was supposed to be receiving. Initially that wasn't such a problem because we were making it up over in the criminal, but we are not anymore. Of late, the juvenile court has reallocated that rotation so that those of us who do have contracts are no longer underperforming our contracts. I think the fears as far as the onerousness of what is coming ... as far as the four firms involved already with juvenile contract, excluding MPD because they are their own entity....

- 244 Chair Ellis Have you been put in touch with some of the juvenile consortia around the state that already exist to give you the benefit of their experience? There is a wonderful one in Klamath Falls and JRP in Multnomah is obviously a very significant one.
- 247 R. Ridehalgh As far as which consortium – our intention is not just juvenile court but we are expecting that the Public Defense Services will expect all of our contracts to be kind of assumed by this and all of our firms have criminal, so we haven't limited our discussions to just the juvenile but that has been a concern raised today. I have talked with Mr. Gregg at Clackamas and he gave me a ton of his internal paperwork and of course I have plagiarized many an item from JRP's manuals, but no I haven't actually sought out like the Klamath Falls Juvenile Consortium or those groups yet. We are still just starting out because our expectation is that this isn't going to be a really viable entity until the next contract period which isn't until the end of this year. We still have another rather important player to get to sign onto this. We are still trying to put it together as something that will work for us, will work for all of the practitioners in our county because we do work with the Howard Brants and the Susan Isaacs and all of them, and they are absolutely an integral part of how we practice in our county. That has been our modus operandi as far as that goes. Also something that I wanted to bring up, I have been involved in the discussions within our county regarding always having the same criminal defense attorney be the juvenile dependency attorney. My firm has always done juvenile dependency representing parents. That is something that has very much always been an issue for us. One of the things that I within my firm felt some years ago is that, well first I discovered it is a really different skill set. The juvenile dependency attorney from my perspective is in large part often performing a very different role than the criminal defense attorney across the street in adult court. Not always certainly, but there is much more of a social worker role and a personality that can accept talking with someone over and over again who is crying constantly because their baby has been taken away and they are being told that they are the reason. You have to work through and we don't see the same in criminal court. We accommodate that because our firm does both, but there have been many cases where I have made the election not to do that because, say picking one of our principle juvenile attorneys, June, she can do magic in juvenile. She, in conjunction with our staff person, Cindy, whose title is Juvenile Court Coordinator, they know everybody involved in the juvenile system and they know how to make things happen. I have just found better utility for our clients from my perspective. I have made the conscious decision that these cases would be better dealt with by different persons within our firm.
- 317 Chair Ellis Thank you.
- 321 W. Bruhn My name is Warren Bruhn. I am an attorney at Brindle, McCaslin & Lee and I have no ownership in that firm. No supervisory role. I am merely one of the foot soldiers.
- 325 Chair Ellis How long have you been with the firm?
- 327 W. Bruhn I have been with that firm for three years as of today. I started out doing some indigent defense in 1998 in Douglas County with the Myrtle Creek Municipal Court and moved on at the beginning of 1999 to work for Umpqua Public Defender where I worked for four years and three months until the budget collapsed in 2003 and I was laid off. I ended up in the Portland area and three years ago got another indigent defense job. I have been basically a public defender for roughly seven and half years out of my career. I have a couple of things that I would like to share. The first thing is that looking at indigent defense as a career I think is becoming less and less plausible.
- 345 Chair Ellis Even though that is what you are doing?
- 346 W. Bruhn Even though that is what I have done for most of my career, though it wasn't my intention to do that when I got out of law school either. Finally the situation is just terribly, terribly grim.

When I first started as a public defender I think I probably could have afforded a house. When I arrived in the Portland area I was seeing some buyable houses for maybe \$250,000 that now cost \$450,000. At the same time our pay simply has not increased appreciably. It becomes less and less plausible to imagine home ownership, having a new car every few years, the sort of things that somebody going to law school would expect. Therefore personally, I am having to contemplate leaving indigent defense. There is a lack of a career track with regular raises unless you work for one of the full-time public defender offices. I really enjoyed the Umpqua Valley Public Defender. There was a raise structure. I have friends who work for Metro Public Defender. They have a systematic raise structure where they get compensated more for their years of dedication and years of acquired experience, but in the contractor world we don't really have that. This county has five major contractors besides Metropolitan Public Defender and raises are pretty sporadic. I have seen a huge number of new attorneys come to the profession, start their legal careers in contractor offices in this county, many of them expecting to work for one or two or three years just to have some experience to put on a resume or to have some experience within which to launch their own law offices. Many of them have gravitated out. They have either gotten other jobs or they have started their own law firms. They have started to do more and more private work and eventually many people don't do any indigent defense at all. I really don't think that it is healthy for the delivery of services to poor defendants to have so many people who come to it for only a short time. I think it is very beneficial to defendants to have a pool of experienced people who have worked with the system for quite awhile and who are dedicated to delivering services for the poor defendants to continue to be in the profession and to continue to do that kind of work. My first point is just the compensation is so poor that I think it is really unhealthy. It offends me that we get paid less than DAs and attorney generals that I go up against in court and I know they are no better at the job than I am, but they have a much higher pay scale with systematic raises that reward their years of service. Without that, it is very de-motivating to a person to want to continue. Most of the people in the room, I only arrived a little after 11:00, but I see the heads of various organizations, the people who have a contract or the people who are in a supervisory role, they get paid more for having a contract or for being in a supervisory role. I don't see the employees here. I don't know whether it was because they didn't know or because they didn't have the time, but it is not a very good financial situation to look at. The other thing that I wanted to talk about is juvenile court. I spent five months at the initial stage of my time here working both criminal court and juvenile court. At that time McKeown & Brindle assigned their attorneys a percentage of criminal cases and a percentage of juvenile cases, so all of us initially were going to both courts. Ridehalgh & Associates have one attorney who is going to juvenile court all the time. Karpstein & Verhultz was also a contractor for juvenile court. They also give their attorneys a percentage of criminal cases and a percentage of juvenile court cases. In the first summer I managed to switch with one of my colleagues who had just been hired by Grant Burton. Mr. McCaffery was hired to just do juvenile court. Then I switched caseloads with him after a couple of months. I have been doing full-time juvenile court ever since. I have to disagree with Judge Letourneau about the idea of having the same attorney represent a parent in both the criminal case and the juvenile court case. One of the skills that I have had to use throughout my career has been coordinating things with other attorneys. I frequently have clients who are being prosecuted in another county or even in another state. Coordinating and communicating with that other attorney is just a fundamental part of the profession from my experience. One of the things that makes the situation difficult in Washington County is the way court appearances are set up. Even though the juvenile court is right across the street from the criminal court, the courts do get tied up waiting for attorneys who have to be in one court and then move over to the other court. I don't think it is particularly efficient. Juvenile court runs late quite a bit. The criminal court appearances that I recall are often scheduled with 10, 20 even 30 defendants at time who end up sitting and waiting for a couple of hours to process things. You end up having to ask to move up the queue somehow so that you can get over to the other court. I think it takes a different mindset to work the two different courts. I think that criminal court is very appealing to young lawyers because the elements of crime are discreet. Each element has to be proved beyond a reasonable doubt. Evidence rules have

been litigated quite a bit in the Court of Appeals so there is a lot of law to go from. Cases move more quickly. They don't have to get in as deep in the lives of their clients. Many of the young lawyers would prefer to do criminal law because it is a sharp, fast practice that they can enjoy more. It really takes a different mindset to work with juvenile court people. Parents, children, their whole lives have been turned upside down by a separation of children from parents. There is a huge amount of emotional baggage that goes with that. When attorneys have to constantly hand off the case to someone else to appear for them, parents, children, get very upset by that. I have had clients who have had as many as nine different attorneys over a three year case. [end of tape]

TAPE 4; SIDE A

- 001 W. Bruhn I think it has been an improvement.
- 002 Chair Ellis I am having a little trouble because I thought in the first part of your presentation you were arguing against having the same lawyer represent the same client in multiple proceedings. Now it sounds like you are arguing for it. Which way are you arguing for?
- 006 W. Bruhn I'm still arguing against having a drive to have the same attorney do the criminal case as a juvenile court case. The reason is, I like doing juvenile court full-time and I think there are some other practitioners in this county, particularly the ones working for \$40 an hour, that would be prefer to do juvenile court full-time. Metropolitan Public Defender has a set of attorneys to do juvenile court full-time. I think those of us who do it full-time and are just dedicated to juvenile court alone without going over to criminal court, on an average can provide better service in the juvenile court. I don't think it harms my client to have a different attorney take a second look at the situation and analyze it from the point-of-view of the criminal defense case.
- 017 Chair Ellis Okay.
- 018 W. Bruhn I have had clients ask me to do the criminal court case too. I usually just tell them that I will work with their criminal defense lawyer. As soon as you step across the street you have a whole different set of timelines, different priorities, it is a totally different rhythm. If you do a large volume of public defense of indigent defense type cases, you have got to fit in some kind of rhythm and system for doing it and the contrast if jarring.
- 025 Chair Ellis Okay. I got it.
- 026 W. Bruhn I think having certain lawyers do juvenile court full-time and other lawyers do criminal court full-time is an advantage. It also has been my experience that it doesn't do much good to have the same lawyer on the same case. You go across the street and get in front of a different judge, a different prosecutor with a different philosophy, a different attitude; they don't listen to you anyway. If we had a family court where things like domestic violence, child neglect, child mistreatment were in the same court with the juvenile court case and the dom rel case that is a model where we could have one judge look at issues together. I am not saying that the same judge should conduct the criminal trial. In this county we don't know who the judge will be who conducts the criminal trial.
- 036 Chair Ellis You have gone beyond our jurisdiction now too.
- 038 W. Bruhn I know you can't do anything about that. My recommendation would be that this county look at a family court and then you have a judge who could approach a family situation with the same philosophy and attitude.
- 041 Chair Ellis Okay.

- 042 W. Bruhn I don't know if you want to ask me anything or not?
- 042 Chair Ellis Thank you very much. Jim or Keith?
- 043 J. Hennings I am the director of the Metropolitan Public Defender. I have some comments, and Keith has some specifics about this county. I will say a couple of things. Some of these are really statewide. I want to talk about specialty courts. Specialty courts, in my estimate, will work only if you have very, very experienced attorneys. I heard several people say that those are the soft cases and we will get rid of those.
- 050 Chair Ellis They said that about ECR.
- 051 J. Hennings I am talking ECR. I'm talking drug court. I'm specifically talking about ECR court. We put one of our most experienced attorneys in that ECR court because you have to have somebody who has the experience and the background to analyze a case very, very quickly and deal with a client very quickly. You could not start a young attorney there. That is going to cost money. You shouldn't go into that thinking it is going to save indigent defense money to have an ECR court. You should go into it thinking that it is going to save the system bundles of money because it does save the system bundles of money.
- 060 Chair Ellis I am interested, what you say I take it is right, that with the new ECR program in Washington County you guys assign experienced, not inexperienced...
- 063 J. Hennings Yes, and that costs money. It also requires, because of the number of cases, it requires support staff. That costs money. So you shouldn't go into that with the idea that somehow we are going to pay a lot less money because a lot more cases are being handled. I personally would prefer that all the specialty courts be costed according to the cost of providing the services, that we get away from paying by the case because what you are really paying for is to have a certain quality level of experience at the court and doing all the backup, all the preparation for the court, so you really ought to be using cases only in order to establish a maximum amount of work that can go through there. Potentially, experienced attorneys can handle 20 or 30 or 40. It is going to depend upon the local situation, that many cases per day. They can't handle 120 a day. That is an east coast mill. The only reason that you really ought to in the specialty courts be looking at case numbers is in order to establish what the maximum is that is going to be able to be handled, but really what you are paying for are the services, not just in the court but in the preparation, the handling, all of the paperwork. That is going to cost you money. That is one area that is going to cost you money and it should cost you a great deal because whatever said you are right. These are the easier cases that could be handled very, very quickly by experienced attorneys and then they could move on to their more hard cases. If they picked up 200 cases a year and a third of them were those easy cases, there are only 160 hard cases. If you now expect them to handle 200 cases that are the same level as those 160 cases, they are going to be swamped. They are going to be swamped. They are going to be unable to handle those. You have got to look at a reduction of caseload without a reduction of salaries for the cases that are remaining. That is my thought about specialty court. Juvenile attorney development -- we expect that a juvenile attorney is going to be a fully trained criminal defense trial lawyer. It is important in my mind. ...
- 093 Chair Ellis Are we talking delinquency or both?
- 094 J. Hennings Both. Because you have got to have somebody who is not learning how to try cases at the same time they are learning the juvenile court experience. I started in the juvenile court in Cook County. It was an absolute mistake because I didn't know what I was doing and I didn't have the background to push as hard as I should have in some cases and to make settlement in other cases simply because I didn't have the experience. The best place to get that experience is in the criminal defense side trying cases, becoming very, very experienced, having that in your back pocket and then going out and learning the juvenile. I very strongly urge you not to

set up a system where you bring in attorneys specifically to do juvenile work and that is there entire experience because they are not going to have the trial experience to be the kind of attorney they have to be. They have to be willing to go to the mat sometimes and unless you have the trial experience, you are not going to be...

- 106 Chair Ellis Credible.
- 106 J. Hennings Credible on this. That is on the juvenile. On your local system, you have a system that is in transition. You heard that this is one of the fastest growing counties. It now hits that magic 500,000 level. You have got an older graying bar in the juvenile area. My own personal experience out here is that you have some very, very good experienced attorneys. The question is what you are going to have 10 years from now because most of those attorneys are not going to be here.
- 115 Chair Ellis Are you talking specifically MPD's office?
- 115 J. Hennings No. I am talking about the private bar that is out here that picks up those cases. One of the things that you are going to have to look at is how do you handle that transition. You ought to take advantage of that good, experienced setup but then you ought to also look at what is it going to become in the future. One possibility would be a managed juvenile appointment list where the Commission is paying for the manager so that you don't force everybody into a consortium and a fee structure that sounds like they don't want. That would be one possibility.
- 124 J. Potter Excuse me Jim. Are you suggesting a managed juvenile list similar to what is happening in Lane County? Is that the managed model that you are thinking about?
- 127 J. Hennings I think that is the best definition of what you tried to set up in Lane County.
- 127 J. Potter I'm visualizing. Thank you.
- 128 J Hennings You have heard what you get from public defenders earlier from Susan. Basically we have a local employment model. We hire people. We supervise people on an ongoing basis as employees. We can fire people. We can discipline people. Those are all the things that we can do immediately and a consortium works very, very well if you have got very, very experienced attorneys that you don't have to manage and you don't have to supervise. It doesn't do a great job about bringing new people in, advancing them, encouraging them. However, you also heard earlier this morning that we need the ability to keep people because we need some old gray hairs around. We need some people to help mentor, so we need the entire range. One of the problems, and the elephant that you really need to talk about in Washington County, is you have had a drastically falling caseload or at least a static caseload. Every contractor, I believe this is right Caroline, every contractor is under quota? Is that right?
- 141 Chair Ellis Somebody said that today.
- 143 J. Hennings For 2006, and I think the same thing is true going forward for 2007. The expected caseload simply was not matched to the number of cases put out in the contract. One of the things that you talked about several years ago is a model in which you have a full-time public defender and it has the base because we have to pay salaries and you have a consortium that within some range can either contract or expand in order to handle caseload fluctuations. Quite frankly the fluctuation over the last two years has been greater in Washington County than even that model could handle.
- 154 Chair Ellis It has all been one direction.

155 J. Hennings

It has all been one direction. It has all been down. That is an area that you are going to have to look at because if you want a full-time defender and you want the advantages, and I think there are some advantages there, you are going to have to be able to provide enough resources that we can have a viable existing office. If you want, which I think you ought to want, experienced attorneys who don't want to do full-time indigent defense work then you ought to have a consortium. Right now you have too many contractors, too many different systems and it makes it very, very difficult for you to adjust what is happening to the reality on the field. These are things that I think you need to take a look at. I think you have an opportunity now and maybe a need because it is unlike the past where you could assume a 10 percent growth every year and just add more people, anyone wants to do this, we'll establish some basic minimum standards, but we will keep taking people in. I think realistically you may be looking in this county, and quite frankly in Multnomah County and Lane County to some degree, at a situation in which there isn't enough just to let anybody who wants to do this and meets a certain level of quality do it. There is not enough work if you want an organized system. If you want the private bar appointed on a case by case basis, and you don't want the advantages of a player in the system then you can spread those caseloads however you want. I think you are now at a point where you are going to have to start deciding what the plan is, what you want to do; and then make arrangements and do it far enough in advance, and I would say maybe over multiple contracting periods of time, to go from where you are now to where you want to be without harming the people who, quite frankly, put in a great deal of service, especially through the BRAC.

186 Chair Ellis

Thanks. Keith, you're playing cleanup today.

186 K. Rogers

Great. Well it is rare that a defense attorney gets rebuttal and now that everybody has left the room I can say anything I want. For the record, I am Keith Rogers, director of the Washington County Office of Metropolitan Public Defender. I have a few very, very specific comments and then I mostly wanted to let you ask me questions. One of my jobs is managing the chess pieces on the board in my office, getting the right people in the right jobs at the right time. Increasingly, with this new ECR court, I have found a new dimension to the problem. That is that we are losing a huge chunk of misdemeanors from our case mixes. I have been working on this court for about five years so I have myself to blame, I suppose. The bottom line is, I am having trouble keeping my newest attorneys busy and they are not certified or ready to go into other areas of the law. If you want to have experienced Measure 11 attorneys, experienced juvenile attorneys and train them properly you need a fairly large group at the bottom to get that experience. Inevitably, some of them are going to go sideways on you. They are either going to go to different jobs or not want to go forward. I think that right now we have some problems there. This relates also to the training issue because you brought that up in a number of contexts. I think my office has always been a leader in training and is very, very willing to step forward and take a leadership role in training the other contractors or the consortium attorneys with the help of OCDLA or whatever way it could be set up. Quite frankly in my experience at least 90 percent of the training is by osmosis. It is being in the office and hearing the other lawyers speaking and having a large group of new attorneys who are constantly exchanging ideas and information. That is really how you learn to be a criminal defense attorney. That is one of the great strengths of a public defender's office because it allows you to do that. Formalized training is great and I think we should do more and all we can. You really do need that on the ground mentoring day to day training and that is really where you get to know what you are doing. This relates to my comment about the misdemeanors. I am not trying to lobby to take business away from anybody, but I do think that if you want a public defender's office that has a strong senior core, you have to have people who build up to that point. I also wanted to mention the drug court. I was part of the team that set the drug court up and I am the defense attorney in the drug court. You heard from Judge Kohl and Bob Hermann about this. It has been very successful. It has been very collegial. It has been an amazing experience and I go every week. These are my clients in drug court, the 38 people that you heard about. I do it because it keeps me in court and keeps me dealing with clients which is important to me. We get paid

as people noted once and I go every Monday. I work probably 30 percent of my week on drug court but we get paid for one class C felony and I may go to court on that case 50 times. There is an economy of scale because I go forever on Monday afternoon but I think that is something that you need to take a look at. I got a kick out of Judge Kohl thanking you for allowing us to do that. Quite frankly, I think it is Jim who allows me to do that or the attorneys in my office who do more work to allow me to do that. I think it is a real good program and you should take a look at how that is funded.

- 248 J. Potter Keith, have you done a really close analysis of that? It is in the report and that is the conventional wisdom that you are only getting paid once for this one case and you are making 30, 40, 50 appearances on the case. Are you doing other prep work prior to the appearance and how much work is involved with that? Then comparing that if you had had a case that wasn't in drug court but now was going to go to trial and how much time you were going to have to put in the trial and preparation. Have you done an analysis of that?
- 257 K. Rogers Not a formal analysis but I have pretty good sense of how it works because the cases that go into drug court are cases where you are not going to win at trial. It is hard.
- 260 J. Potter So you negotiated that case away. You wouldn't have had as much time as if you were preparing to go to trial.
- 261 Chair Ellis Are the cases just drug cases or cases where drugs were involved with other activities? It is cases that come out of drug addiction which include mostly not drug cases.
- 263 K. Rogers It is mostly Identity Theft, Theft I, even Burglaries. Lots of property crimes and the clients in this county who are identified are people with long, long records who are going to prison on repeat property offender prison sentences. Those people have been identified as the ones who are causing the most trouble. They are the ones who have been through 12 times. Cases come to drug court in two ways. We get some cases and then some of them come out of my office. Instead of pleading guilty and being sentenced they plead guilty and come to me and I monitor that case for a year or more. All the other cases in the county that we don't have, once they enter into drug court then we are appointed. We basically get a PV credit I think. We are substituted on the case and I'm not sure how the credits work. I take it over there for the rest of the life of the case. Both of those cases probably would have ended at that same initial hearing with the sentencing in most cases, but everything after that is extra. When the first witness talked about juvenile drug court, I think it is a great idea to have an attorney dedicated to that, but two to three hours is wishful thinking. That is how long that the court process might take but inevitability there is more time involved. This court has 38 clients but is funded for 50. We had 20 until last summer. It has been growing quickly and it will be up to 50 by the end of this year. Those were the two things that I wanted to mention but otherwise I am here to answer your questions.
- 289 Chair Ellis I am sure there is a way to reconcile all of this but I hear potentially conflicting statements. You are saying and Jim is saying that ECR has removed a lot of the caseload particularly the misdemeanors that your younger lawyers used to be able to train on. At the same time in the report there is at least one commentator saying that the attorneys in your office are "buried" by the number of cases they handle.
- 299 K. Rogers Is that referring to the criminal side of the juvenile side?
- 300 Chair Ellis It doesn't really break it out.
- 302 K. Rogers I think our juvenile attorneys are buried. In my tenure here we have grown from two attorneys to 3.6 and I am looking at making it 4.6 even though the caseloads have not gone up. Some of the senior attorneys are buried in the sense that they have a lot of work. They

have a manageable number of cases, but serious cases.... But right now the lower level attorneys are not buried. Our ECR court started March 7 so

- 311 Chair Ellis Too soon to tell.
- 311 K. Rogers We are at the very beginning of this process but I can already see clear trends here, that instead of having three or four attorneys at the bottom I am going to have one doing misdemeanors. Or I will have to start attorneys in other areas of the practice such as doing civil commitments and civil defense.
- 318 Chair Ellis As a percentage of the felony caseload, what percent of Washington County felonies is going to your office?
- 321 K. Rogers I am not sure exactly. I can tell you that we get one-third of the cases that go through the ECR court and that includes felonies and misdemeanors. We receive approximately a little more than half of the major cases, fifty-five, forty-five, something along those lines. We do a lot of the miscellaneous things like civil commitments and civil contempt matters and so forth. You add it all up and I am not sure what the number is.
- 330 Chair Ellis Do you feel, given the conflict issue, that you are at about the right percent level?
- 332 K. Rogers No. I think we can handle more cases before we bump up against the drop dead conflict percentage. I think that over the years the small contracts have grown and we have gotten smaller in terms of percentage. We have stayed about the same or grown, but because the county has grown so fast our percentage has gone down I believe.
- 339 Chair Ellis I should remember this personally but I don't. What has been the growth in the size of the MPD Washington County office in the last five years?
- 342 K. Rogers The last five years I think we have grown about three attorneys. It was six attorneys when I started in 1986 and now we are at 20, but we have just incrementally added a few attorneys over the last five years. I think for a while we sent one to Multnomah County because they needed it more then we did.
- 349 Chair Ellis I do want to commend you guys. The report reflects what I had certainly hoped we would hear which is you are doing a great job.
- 352 K. Rogers Thank you.
- 352 Chair Ellis That is coming through with the comments.
- 353 K. Rogers To build on that from what Bob Hermann has said and others have said, it has really been in my tenure here, I think there really is a sense of cooperation and working together. There is nothing that I am not invited to. There is no sense that we are not part of this system and are appreciated and can contribute and so forth. I think that has been a major change over the last 10 years.
- 361 Chair Ellis It is interesting because back in the 70s when the office started that was true. I have a clear memory of a lot of really good coordination going on, then I wasn't personally involved very much but there was a period of time when that was not so true. It is good to hear that that has come back.
- 366 K. Rogers I think most of the credit probably goes to people like Bob Hermann. That office changed hands and the sheriff's office changed hands and I think the personalities have had a lot to do with it.

- 371 Chair Ellis Thanks. Good to see you. I think that is it on the Washington County piece but I am not going to go away until Jack Morris has had a chance to speak.
- Agency Item No. 3 Progress Report from Morris, Olsen re Gilliam, Hood River, Sherman, Wasco and Wheeler Counties**
- 374 J. Morris Mr. Chair, I don't have anything that I feel compelled to say.
- 376 Chair Ellis Come on up here and say it.
- 376 J. Morris What I have to say I can probably say in about 60 seconds or less. Jack Morris from Judicial District 7. Things continue to go well. We are trying to put a little more emphasis, we always have had some emphasis on what I am about to tell you, but we are trying to put a little bit more emphasis on living up to expectations as kind of the "go to" organization in our area. Examples of that are we recently did a sentencing seminar in conjunction with OCDLA where we got about twice as many people as we expected. We are doing drug courts in both counties. We are starting a new dependency court in Wasco County. There is a new sex abuse prevention task force that has just been formed because of a federal grant and we are going to be involved in that. I continue to make myself available personally, Ways & Means.
- 392 Chair Ellis Thank you.
- 392 J. Morris I'm probably not going to be at the annual conference because it looks like I am going to be going to Washington, D.C. for part of the drug court. I took your recommendations to heart when we had our hearing last year. We now have a written succession plan so if anything were to happen to me we are taken care of. We have also installed some strict policies to avert the fiery crash scenario where all those shareholders die. We don't let shareholders travel more than two in a car. When they are going to lunch they have to order separate meals to guard against food poisoning and they are no longer allowed to run in the office with scissors. I think we have everything covered that came out of the report last year.
- 405 Chair Ellis Well good. My parents had a rule that they never flew in the same plane.
- 408 J. Morris Do you have any questions?
- 408 Chair Ellis I don't think so. There was one in my notes. This sentence appears in the report and it is topic three and it says the fact that the "organizational structure of PDSC's primary contractor in Judicial District No. 7 is a private, for-profit law firm (a) has not interfered with the performance of its role as PDSC's primary contractor in the district" and I share that. Then "(b) may have preserved and promoted its performance of that role in a manner well suited to local circumstances" and I don't have a problem with that, and "(c) may offer an organizational model for primary contractors in similar circumstances." What struck me about that is what are the circumstances that we should look for that make the model you guys have work? Is it the size of the district? Is it the district that is multiple counties under district?
- 431 J. Morris Well, Mr. Chair, these are your findings not mine. Let me give you a serious answer. I think it is the size of the area and I also think there was a footnote in the report that mentions the fact that we are not adverse to being perhaps more open than some private firms in terms of transparency.
- 438 Chair Ellis Your counterpart in Douglas County is somewhat the same way.
- 441 J. Morris Seriously, it can work in other areas but there have to be some sort of intangibles that are shared. If you had a private firm in southeastern Oregon someplace, I think it would be helpful to have some of the same background and experience that we have having sort of

originated at MPD and not being territorial, not taking that attitude, which we don't, saying that we are a private firm and leave us alone. It is none of your business. We recognize that 95 percent of our business is from the state. If you have a question or want to know something about what we are doing, I think you are entitled to call and ask us and we are obligated to give you an answer for the most part. I think that is what that is referring to, but again I didn't write that.

452 Chair Ellis I understand. Thanks a lot.

455 I. Swenson Mr. Chair, I have one comment that doesn't relate to Jack or his firm but to the Wasco, Sherman consortium. We have received a complaint about representation in a particular case and in an earlier Commission meeting an individual was expressing a desire to testify before the Commission about that case. I just wanted to tell you that the case has been resolved, or the complaint has been resolved, and there are some issues to be addressed on the part of the attorney who participated in that and we will be looking at that, but it has nothing to do with Jack's firm.

470 J. Morris If I could make one follow up comment to that since we are sort of morphing to a serious discussion about this, I think I have said this before and I am really committed to it, if there is anything that I can help to do, or my firm can do to help outside the confines of our firm, let us know what it is. I will be happy to take whatever role you see fit for myself and my firm to provide leadership in that district, so if there something we can do to help you please let us know what it is.

477 Chair Ellis Thanks.

479 I. Swenson A marathon session today.

481 Chair Ellis Shall we have a rather brief management report?

Agenda Item No. 4 OPDS's Monthly Report

482 I. Swenson We can do that or we can postpone it as you like. Let's make it brief. I won't do a budget update for the members present because you are very familiar with what happened during our budget hearings and I think everybody else here probably is too. If not, I will be happy to provide them with the information. The full Ways & Means Committee will probably hear our budget next Friday. They will not hear it tomorrow because the legislative fiscal analyst, Robin La Monte, was not available for that date. Pete, do you want to give a quick report on your bills and the new employees in an abbreviated fashion?

499 P. Gartlan Mr. Chair. Commissioner Potter. As Ingrid mentioned we will have six new attorneys starting this year.

503 Chair Ellis That is six before we got the budget approved?

504 P. Gartlan Yes.

506 Chair Ellis You are becoming a huge hiring source here because, as I understand it, if it goes through the way it is presently structured that is an additional eight?

508 P. Gartlan These are limited duration positions, however.

510 Chair Ellis The six are?

510 P. Gartlan Correct.

510 Chair Ellis But the eight would not be.

511 P. Gartlan Correct. Assuming everyone works out there would be a nice transition.

512 Chair Ellis I see. So you envision the six morphing into the group of eight.

515 P. Gartlan Yes, Mr. Chair, assuming that they satisfy our expectations. The second item is that we have eight cases in the Supreme Court being actively briefed right now, so that is a huge number of cases and we are in an exciting time period. I think, if I am remembering correctly, the Supreme Court typically takes about 20 criminal cases per year, so just for this current couple of months we are actively briefing eight cases. Third, we have been monitoring, we have initiated a couple of House bills. One is House 2667 which is intended to address parole appeals. We are trying to eliminate a parole process which we think is inefficient. That is eliminating a motion practice and that bill is currently through the House where it originated and now it is the Senate. It has not yet been assigned to a committee. The second bill is 2668 which is really a house keeping or house cleaning bill and again we are trying to eliminate some inefficiency. Essentially, what the bill does is if the court finds that someone qualifies for an attorney, there is no need to have a second verification that that person has indigent defense status for purposes of obtaining a transcript. The third is 2669 and the goal of that bill is to set clear guidelines for the initiation of the post conviction relief statute of limitations for cases that have been up to the U.S. Supreme Court. Right now as the statute is written, there is a gap and it is unclear as to when the post conviction statute of limitations should begin when cases have been to the Supreme Court. This bill would clarify that the post conviction statute of limitations would begin at the latter of either cert denied or entry of the ultimate state court judgment from the direct appeal process. Those latter two bills have also been through the House and they have been through the Senate Judiciary Committee and so they are on their way to the Senate floor.

566 Chair Ellis I thought I heard at the last session a promise by you, it may have been articulated by Kathryn that at the end of this biennium that is coming up the backlog will be zero. Did I hear that correctly?

576 P. Gartlan Mr. Chair, I will defer to Kathryn.

576 K. Aylward I would not characterize it as a promise. More a predication, a hope.

580 Chair Ellis Actually, I thought it was an expression of the future on this side and a commitment of funds on this side; but I did hear it as, if not a guarantee, then an expectation.

585 P. Gartlan That is the hope, yes.

586 Chair Ellis No, you guys are waffling now. You didn't waffle before Ways & Means.

589 P. Gartlan If things keep going the way they do then, yes, we should eliminate the backlog. I am very proud of what our office has done. We have increased productivity tremendously. You were at the hearing and you know that the Attorney General was in February at the same committee asking for more attorneys and the reason is because our office has produced more briefs that the Attorney General has to respond to. In fact it is in the 100s per year. In past years we have produced about 430 briefs that had to be responded to. Now we are well over 600.

603 Chair Ellis We are looking forward to fulfillment of that commitment.

605 P. Gartlan So are we.

606 K. Aylward So am I.

606 I. Swenson I know that Kathryn would have a lot of things to say about what we have heard today. What I would like to do is do that at our next meeting.

610 Chair Ellis That is what I would suggest.

610 K. Aylward I kept my mouth shut, but I have a House bill too. This is a suggestion that I brought to the ...

612 Chair Ellis Is this a cleaning bill or a keeping bill?

615 K. Aylward It is a substantive bill. It is House Bill 2343 that permits court appointed counsel to discharge the duty to file the appeal in a juvenile court judgment according to our policies and procedures. It used to say they had to file it themselves. Basically what this means is that effective January 1, 2008, for juvenile delinquencies and all dependencies they can use on-line form to discharge their duty. Additional office space – we have expanded our lease to add about 1800 square feet already for our six double-filling attorneys and now that we are going to have eight more...

630 Chair Ellis Eight total.

631 K. Aylward I imagine there would be some overlap, so I am trying to get additional space in the building. As you walk in it is the center section between the pieces we have now on the main floor. Hopefully we will have that by August 1.

637 Chair Ellis I have a question for you. What was behind the Committee saying change the name of LSD?

640 K. Aylward It is not what you think. For some time LFO felt that it was confusing for legislators that really instead of saying that we have some FTEs that do appeals and we have an account that funds some appeals and some trial level, that it really would be simpler if our budget was presented, and in fact allocated, in terms of appellate funds and trial funds. It is because they are called legal services it doesn't make it clear to someone outside of the office that what that means is appeals. She just wants that to be the appellate division and I guess that would be the change she would recommend.

657 Chair Ellis You know we have sort of harbored the thought that the day will come, and it may already in part be coming, that some FTEs will be doing things other than straight appeals. The reason it was named that way was to distinguish between FTE and contract as opposed to appeals and trial.

667 K. Aylward I think we could easily get around that. All I ever envisioned the Legal Services Division doing was maybe other kinds of appeals, so that they really would be an appellate division. The PCR FTEs would have to be in a separate division anyway because of the fact that maybe they are PCRing their own co-division inhabitants. You would have to have Contract & Business Services, Appellate Division and Post Conviction Relief Division anyway. We could rename them.

680 Chair Ellis I think I understood what you said. I do want to commend all three of you, for I thought, a really effective legislative presentation. Not just your own personal presentations but managing to bring as many diverse points of view and people on the Committee I think were surprised to hear from and happy to hear from. I will say I was just amazed at the level of attentiveness that we got. The level of understanding that the Committee seemed to express and I know this just doesn't come with that testimony. It comes with all of that one-on-one time that I know all of you have been spending. I was really happy about how that went and thank you all three for a great job on that. Anything else?

704 I. Swenson I don't think so Mr. Chair.

706 Chair Ellis

I would move to adjourn but we don't have a quorum.

End of meeting

Attachment 3

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JOINT COMMITTEE ON
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REP. NANCY NATHANSON, VICE-CHAIR

MEMORANDUM

To: Public Safety Subcommittee
From: Robin LaMonte, LFO
Date: May 1, 2007
Subject: SB 5535 Public Defense Services Commission – Work Session Recommendations

Public Defense Services Commission (PDSC) - Agency Totals

	2001-03 Actual	2003-05 Actual	2005-07 Legislatively Approved	2007-09 Governor's Recommended	2007-09 LFO Recommended
General Fund	151,553,739	165,497,979	183,535,396	212,098,215	212,954,517
Other Funds	531,989	297,745	991,474	605,708	605,708
Total Funds	\$ 152,085,728	\$ 165,795,724	\$ 184,526,870	\$ 212,703,923	\$ 213,560,225
Positions	54	58	56	64	64
FTE	52.90	56.90	55.25	63.25	63.25

Recommendation Summary

The recommended budget for the Public Defense Services Commission (PDSC) is the \$856,302 General Fund above the budget recommended by the Governor. There is a significant difference in the distribution of funding between the two budgets. The recommended budget deletes most of the funding for policy packages, but adds a mandated caseload adjustment in the essential budget level (EBL), as illustrated on the table below.

Comparison of PDSC Request Budget to Co Chair Budget						
	Agency Request Budget	Pos.	Co Chair Budget	Pos.	GF Difference	Pos. Diff.
2005-07 Base General Fund Budget	176,315,393	56	176,315,393	56	0	0
Emergency Board Actions	8,242,585		8,242,585		0	0
Standard adjustments	787,938		787,938		0	0
Base Mandated Caseload	15,935,722		15,935,722		0	0
Mandated Contractor Compensation Adjustment	0		7,064,094		7,064,094	0
Appellate Mandated Caseload Adjustment	0	0	1,917,852	8	1,917,852	8
Essential Budget Level	201,281,638	56	210,263,584	64	8,981,946	8
Policy Packages	30,538,978	8	0		(30,538,978)	(8)
Co Chair Provider Compensation Adjustment	0		2,690,933		2,690,933	0
Budget Totals	231,820,616	64	212,954,517	64	(18,866,099)	0

The base budget is adjusted to reflect Emergency Board and Legislative actions to fund the 2005-07 budget shortfall

The details of the adjustment will be discussed in the appropriate policy packages.

Performance Measures

PDSC has established targets for appellate case backlog that should be achievable with additional resources. PDSC should establish revised backlog targets once the effect of the budget allocation is known.

The measures also include attorney best practices, including complaint levels, and measures that address the accurate and timely delivery of services. These are proxy measures for ensuring the delivery of quality public defense services in the most cost-efficient manner possible. PDSC should develop measures that identify the effect of these best practices on the cost of providing trial and appellate services.

The Public Defense Services Commission is recommending one change to its key performance measures, which is to add the best practices performance measure for boards and commissions, as approved by the Joint Legislative Audit Committee.

LFO Recommendation: Approve the key performance measures with a recommendation that PDSC review its measures during the interim, and add realistic but aggressive targets. The review should focus on identifying areas where outcomes can be identified and tracked, as several of the measures relate to process rather than outcomes. This should include measures that track the effect of best practices on the cost of providing services. PDSC should also add a customer service measure, which is a standard requirement for all agencies, including Judicial Branch agencies.

Policy Option Packages

1. *Package 090/LFO Package 807: Analyst Adjustment/Amend Governor's Adjustment.* The Governor makes no recommendation on the programs and policies to be funded in Judicial Branch agency budgets. Instead the budget was reduced by \$19,722,401 General Fund, with no specific adjustment to the policy packages. The LFO recommendation eliminates the unspecified adjustment and adds back the total General Fund. The specific budgetary adjustments are then made to the policy packages.

LFO Recommendation:

- Delete Package 090 – Governor's unspecified reduction of \$19,722,401 General Fund
- Add Package 807 – Amend Governor's Adjustment to add \$19,722,401 General Fund.

2. *Package 100 – Juvenile Dependency Representation:* This package would have added \$526,546 General Fund and 4 positions (4.0 FTE) to improve the quality of representation and timeliness of juvenile dependency appeals.

LFO Recommendation: Delete package 100.

3. *Package 101 – Employee Commensurate Compensation.* This package would have adjusted appellate attorney compensation to provide parity with Department of Justice appellate attorneys, at a cost of \$350,659 General Fund.

LFO Recommendation: Delete package 101.

Budget Report Comment

With the addition of the mandated caseload adjustment for appellate services, it will be important to have data which is readily comparable to the data compiled by other agencies regarding mandated caseload. Therefore, LFO recommends that the Public Defense Services Commission include in future budget requests a clear delineation between expenses for trial-level representation and expenses for appellate-level representation. LFO also recommends that the Public Defense Services Commission adopt a name for its Legal Services Division that reflects the services provided by the division.

LFO Recommendation: Approve the budget report comment.

Agency Budget

LFO Recommendation: Approve the budget for the Public Defense Services Commission as detailed on the attached work session action report.

Final Subcommittee Action:

1. Approve the -1 amendment to SB 5535.
2. Move SB 5535 as amended to the Full Joint Committee on Ways and Means with a do pass recommendation.

4. *Package 102 – Post Conviction Relief.* This package would have provided for the establishment of a post-conviction relief unit at a cost of \$303,453 General Fund and 4 positions (4.00 FTE).

LFO Recommendation: Delete package 102.

5. *Package 103 Public Defense Provider Compensation.* This package would have increased the hourly rate to \$95 per hour for death penalty attorneys and \$70 per hour for all other case types, increased investigator hourly rates, and reduced the disparity between the prosecutors and public defense contractors, at a cost of \$29,358,320 General Fund. The adjustment in the essential budget level, as discussed below, plus the recommended funding level of \$2,690,933 in policy package 808, will enable PDSC to increase the hourly rate to \$60 and \$45 respectively and close the prosecutor/contractor salary gap by approximately 1/6th.

LFO Recommendation: Delete policy package 103.

6. *LFO Package 806 – EBL Package 040 Mandated Caseload Adjustment.* This package adds \$8,981,946 General Fund for two adjustments to mandated caseload:

- Adds an appellate mandated caseload adjustment that adds \$1,917,852 General Fund and 8 positions (8.00 FTE). The Department of Justice has an EBL adjustment for appellate caseload growth. This adjustment aligns PDSC with its counterparts in DOJ, and is based on the same methodology used by DOJ for its caseload growth projections.
- Adds a personal services adjustment that adds \$7,064,094 General Fund to the mandated caseload in the Public Defense Services Account. The mandated caseload is calculated using the caseload increase plus the standard 3.1% adjustment for services and supplies inflation, and an increase of 9.08% to the personal services portion of expenditures that reflects the average statewide adjustment for personal services.

LFO Recommendation: Approve LFO package 806 with \$8,981,946 General Fund for two adjustments to mandated caseload.

7. *LFO Package 808 – Co Chair Provider Compensation Adjustment.* This package provides \$2,690,933 General Fund which, in combination with the adjustment in the essential budget level, will enable PDSC to increase the hourly rate to \$60 and \$45 respectively and close the prosecutor/contractor salary gap by approximately 1/6th.

LFO Recommendation: Approve LFO package 808 with \$2,690,933 General Fund for provider compensation adjustment.

LEGISLATIVELY ADOPTED 2007-09 KEY PERFORMANCE MEASURES

NAME OF AGENCY: PUBLIC DEFENSE SERVICES COMMISSION

Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

2007-09 KPM#	Legislatively Adopted KPMs for 2007-09	Changes to 2005-07	Target 2008	Target 2009
1	APPELLATE CASE BACKLOG - Number of cases in the Legal Services Division backlog	No change	68	57
2	FEE STATEMENTS REDUCED - Percentage of fee statements reduced due to incorrect billing	No change	3%	3%
3	PROCESSING FEE STATEMENTS - Percentage of fee statements processed within 10 business days	No change	88%	89%
4	REVIEWING EXPENSE REQUESTS - Percentage of non-routine expense requests reviewed within 5 business days	No change	87%	88%
5	EXPENSE COMPLAINTS - Percentage of complaints regarding payment of expenses determined to be founded	No change	<10%	<10%
6	BEST PRACTICES - Percentage of contractors that have implemented best practices and resolved problems relating to the quality and cost-efficiency of their services, which are identified by PDSC's site visit process and the process's "360 degree" evaluations	No change	40%	50%
7	ATTORNEY PERFORMANCE COMPLAINTS - Percentage of complaints regarding attorney performance determined to be founded	No change	<10%	<10%
8	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	New Measure		
9	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission	New Measure	100%	100%

2005-07 KPM#	PROPOSED DELETIONS of 2005-07 Key Performance Measures (KPMs)	Target 2008	Target 2009
	No proposed deletions		

For links to high-level outcomes and Oregon Benchmarks reference the agency's Budget Form 107BF04a.

LEGISLATIVELY ADOPTED 2007-09 KEY PERFORMANCE MEASURES

NAME OF AGENCY: PUBLIC DEFENSE SERVICES COMMISSION

Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

LEGISLATIVE FISCAL OFFICE RECOMMENDATION: Approve the key performance measures with a recommendation that PDSC review its measures during the interim, and add realistic but aggressive targets. The review should focus on identifying areas where outcomes can be identified and tracked, as several of the measures relate to process rather than outcomes. This should include measures that track the effect of best practices on the cost of providing services. PDSC should also add a customer service measure, which is a standard requirement for all agencies, including Judicial Branch agencies.

SUB-COMMITTEE ACTION:

Attachment 4

Presenter: Kathryn Aylward

Public Defense Services Commission
Meeting Action Item
June 14, 2007

Issue

PDSC approval of Preliminary Agreement (PA).

Discussion

The Contract and Business Services Division has entered into a Preliminary Agreement for a contract with Andrew Simrin to provide death sentence postconviction relief representation. Actual contract documents will be signed pending approval from the PDSC.

Prior to entering into the agreement, CBS had been unable to find attorneys for a number of pending death sentence postconviction relief cases.

The PA is for a halftime contract for a term from July 1, 2007 through December 31, 2009 for a total compensation of \$193,500 (\$6,450 per month).

Recommendation

Approve the preliminary agreement discussed above.

Required Commission Action

Vote to approve the preliminary agreement discussed above.

Attachment 5

SUMMARY OF REVISIONS
PUBLIC DEFENSE PAYMENT POLICIES AND PROCEDURES
June 2007 PDSC Meeting - If approved, to be effective 7/1/07

Additions underlined. Deletions [bracketed].

Section 2.1.1 - Hourly Rate Schedule, Noncapital Cases *Proposed language clarifies the rate for juveniles charged with aggravated murder.*

Except in capital cases or as otherwise expressly authorized by the OPDS, the hourly rate for attorney fees for private bar lead counsel, co-counsel or associate counsel is limited to the rate in the Schedule of Guideline Amounts (Exhibit 3). The rate for “regular” cases applies to [both the remand and trial of] juveniles charged with aggravated murder [and remanded to adult court] because statute prohibits the death penalty in those cases. The rate applies to cases at the trial and appellate levels.

Section 2.1.2 - Hourly Rate Schedule, Capital Cases, Adult Defendants *Proposed language allows for payment at the higher hourly rate for PCR and PCR appeals only if the client was convicted of aggravated murder.*

Private bar attorney fees at trial and on appeal in capital cases involving adult defendants are limited to the rate shown in the Schedule of Guideline Amounts for lead counsel and for co-counsel or associate counsel. The rates also apply to postconviction relief cases and postconviction relief appeals where the underlying case contained a conviction for [charge of] aggravated murder.

Section 2.5.2 - Timely Submission of Payment Requests, Appellate Level Cases *Proposed language establishes a specific number of days after entry of judgment for final billing to be submitted.*

Counsel may bill for time and expenses after the original brief is filed. A final billing should be submitted within 60 days of the entry of the appellate judgment. [The time frame for requesting payment of attorney fees and expenses in appellate cases is set forth in ORS 138.500(4); i.e., after submission of the original brief by assigned counsel and after appellate judgment.]

2.6.1 - Interim Billings, Aggravated Murder and Murder Cases *Proposed language would allow interim billing for PCR and PCR appeals where the underlying case has a conviction for aggravated murder or murder.*

Assigned counsel may submit interim billings for aggravated murder and murder cases and postconviction relief cases where the underlying case contained a conviction for aggravated murder or murder, both at the trial and appellate level. Fee statements should not be submitted more often than monthly.

2.6.2 - Interim Billings, All Other Case Types *Proposed language specifies entry of guilty plea.*

As a general policy, the OPDS will not pay interim requests for attorney fees and expenses unless the OPDS has authorized interim billing. An interim request is any request submitted before appointed counsel has completed all services in a trial-level case; for appellate cases, an interim request is a request submitted prior to filing the original brief. An exception to this policy will be made when sentencing is delayed more than 60 days after a finding of guilt or entry of a guilty plea.

3.1.2 - Case Expense Guidelines, In General, Receipts *Proposed language includes a credit card statement as acceptable documentation for an expense. Also eliminates the requirement to submit an explanation on a separate piece of paper when original receipt or invoice is not submitted.*

In general, the provider must submit with the payment request an original receipt or an original invoice for an expense when the cost of an individual item or service is over \$25 unless otherwise stated in this policy. A copy of the provider's credit card statement or cancelled check (copy of front and back) may be submitted if an invoice or receipt can not be obtained. If the provider does not have a receipt, invoice or cancelled check, the provider must state in writing [on a separate paper]:

3.2.2 - Routine Expenses for Assigned Counsel

b) Interpreter Services *Proposed language clarifies a number of issues regarding attorney/client communication and billing procedures*

For out-of-court attorney/client communication, counsel should use interpreters who are certified by the Office of the State Court Administrator, under ORS 45.291. If no certified interpreter is available, counsel should use a qualified interpreter, as defined in ORS 45.275(8)(b). Attorney/client communication includes written communication to and from the client if a document must be translated.

If the hourly rate for interpretation is within the guideline amount, and the service is for attorney/client communication, the services of an interpreter need not be preauthorized.

The OPDS will pay the hourly rate shown in the schedule for interpreters. In addition, the OPDS will pay travel time at one-half the current hourly rate and mileage at the current reimbursement rate. For interpreters whose rates exceed the guideline amount, counsel must request preauthorization from the OPDS.

The OPDS will pay a one-hour minimum if the service provided is verbal communication either by telephone or in person and [appointment] requires less than one hour. An interpreter may not bill OPDS more than once for the same period of time. Actual time of service must be recorded even though an appointment was less than one hour and the interpreter is claiming the fee for one hour of service. Travel time may be claimed in addition to the one-hour minimum.

The OPDS will pay for actual time worked for services that combine translation and transcription of written communications between the attorney and the client.

Interpreters shall bill for time and expenses on the Interpreter Fee Statement form and the Interpreter's Travel Worksheet, (Exhibit 4) and shall bill no more often than every two weeks. Counsel, or a person designated by counsel, must certify the interpreter's time by signing the Interpreter Fee Statement form. If the interpretation service is provided by telephone and the interpreter is not at the same location as counsel when the service is provided, the interpreter should indicate such on the Interpreter Fee Statement form and fill in the name of counsel for whom the service was provided.

Other interpreter services not related to attorney/client communication, such as translation and transcription of recorded interviews or interpreter services to assist an investigator, must be preauthorized.

Counsel shall not use an interpreter to deliver a message to or request information from the client unless counsel or counsel's staff person participates in the communication.

k) Service of Process *Proposed language is consistent with statute.*

ORS 21.410(1)(a) provides that no fee shall be charged to the state by the county sheriff [any process server] for civil cases in which the party requesting service has counsel appointed at state expense. In criminal proceedings, counsel should use the least expensive method available. If the investigator for the case, who is paid from the PDS Account, provides for service, the investigator will be paid the hourly rate for time spent locating and serving or attempting to service a witness as long as the number of hours does not exceed the total hours preauthorized. If a different investigator is used for the sole purpose of providing service, the investigator will be paid the amount in the schedule for each location where service is made or attempted, rather than the flat rate per subpoena.

l) Lay Witness Fees and Mileage *Proposed language will include lay witness fees and mileage as a routine expense.*

Upon submission of documentation, OPDS will reimburse counsel the amount paid for the attendance of a lay witness as long as the per diem amount and mileage do not exceed those set by statute. Payment in excess of the statutory amounts is a non-routine expense and requires preauthorization.

Case Expense Guidelines (Non-Routine Expenses)

3.4.1.1 - Transcript Services, Rate *Proposed language defines what is an "original" and what is a "copy" as well as clarifies issues such as number of copies for which OPDS will pay.*

For the purposes of this policy, creating an "original" transcript is the process of converting a stenographic or audio recording of a proceeding to a written document and the publishing of one full document on paper. After the completion of this process, all other transcripts are considered "copies", even if filed with the court as an "original".

3.4.4 Investigation/Mitigation *Proposed language allows for mileage reimbursement, regardless of the destination, as long as it is the least expensive mode of travel. Proposed language also includes the cost of postage and shipping as a reimbursable out-of-pocket expense.*

The OPDS will reimburse the following out-of-pocket expenses for investigators:

- c) Case-related mileage at the guideline amount. Mileage will be reimbursed for private vehicle use for both in-state and out-of-state travel unless commercial transportation is more economical. See section 3.4.10.4. Parking costs when incurred during routine travel may be reimbursed in an amount not to exceed the guideline amount.
- j) Postage or shipping costs. Original receipt or invoice required if the cost to send an individual item is over \$5.00.

3.4.10.3 Travel Expenses, Airfare and Vehicle Rental *Proposed language changes the number of days an authorization for airfare and/or rental car is valid to be consistent with current practice.*

Arrangements for airfare and vehicle rental must be made through the OPDS. When a request for airfare or vehicle rental is preauthorized, the OPDS will notify the travel agency having the state contract that the expense for the provider has been approved. The OPDS will provide the travel agency with the pertinent information regarding the trip. The attorney or other provider must contact the travel agency to make those travel arrangements. Authorizations for these expenses expire after 60 [30] days. The cost of airfare is billed directly to the OPDS. Vehicle rental expenses must be paid by the person authorized for travel and submitted for reimbursement after completion of the trip.

3.4.10.4 Travel Expenses, Mileage and Parking *Proposed language increases the amount of expenditure for the receipt requirement for parking reimbursement to be consistent with the OPDS employee travel policy. Also expands the current policy regarding reimbursement for personal vehicle versus flying so that it includes travel within the state.*

Reimbursable mileage is paid at the guideline rate shown in the schedule. Parking costs may be reimbursed, without specific preauthorization, if the travel qualifies for mileage reimbursement or if other travel expenses have been preauthorized. Submission of an original receipt is required if the cost per day is more than \$10.00 [\$5.00].

If a private vehicle is used for a trip when flying is a viable option [involving out-of-state travel], the OPDS will pay the lesser of mileage or the lowest cost of a regular-fare, round-trip coach airline ticket at state contract price between the travel destination and airport nearest the traveler's home. When determining if flying is a viable option, the OPDS will consider the cost of airfare, the times of flights, the amount of time saved by flying and the cost of related expenses.

Exhibit 3, Schedule of Guideline Amounts, Mileage Reimbursement Rate *Proposed change to mileage reimbursement rate from \$0.405 per mile to \$0.485 per mile which is equivalent to the rate currently paid by other government agencies, both state and federal.*

Attachment 6

D R A F T
(May 25, 2007)

**OFFICE OF PUBLIC DEFENSE SERVICES REPORT
TO THE PUBLIC DEFENSE SERVICES COMMISSION**

Delivery of Public Defense Services In Death Penalty Cases

Introduction:

Since developing its first Strategic Plan in December 2003, the Public Defense Services Commission (PDSC) has focused on strategies to accomplish its mission to deliver quality, cost-efficient public defense services in Oregon. Recognizing that increasing the quality of legal services also increases their cost-efficiency by reducing risks of error and the delay and expense associated with remedying errors, the Commission has developed strategies designed to improve the quality of public defense services and the systems across the state for delivering those services.

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004, 2005 and 2006, the Commission completed investigations of the local public defense systems in Benton, Clatsop, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Wasco, Gilliam and Sherman Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems. In addition, the PDSC reviews service delivery in specialized areas of practice. In 2006 the Commission completed reviews of service delivery in juvenile dependency and delinquency cases.

This report includes the results of the Commission's review of the delivery of public defense services in death penalty cases.

Information received in Invited Testimony

During the Commission hearing on February 8, 2007 at Portland State University, a number of invited witnesses presented testimony about issues relating to legal representation in death penalty cases.

Professor William Long described the history of the death penalty in Oregon and some of the issues that affect the demand for death penalty representation. He testified that there were approximately six cases that arose before 1989 that have accounted for a significant portion of the cost of death penalty litigation in Oregon. Execution dates in these cases, if the defendants are ultimately sentenced to death, will overlap with later cases which are proceeding through

the system more rapidly since many of the legal issues were addressed in the earlier cases. Involuntary executions could begin to occur as early as 2012. Professor Long expects that the cost of representation at the post conviction trial court level will continue to increase. Since all of these cases are being litigated in Marion County, they create a stress on the system and can take years to get to trial. Because of the development of a very sophisticated practice in death penalty post conviction relief cases, it would be appropriate to consider the creation of a separate office or division to handle these cases.

Judge Michael McShane testified that Multnomah County recently added a fourth judge to hear death penalty cases. Because of the volume of cases some are being docketed for two years from the date of arraignment. There is also an insufficient number of attorneys in the county to handle the cases. Multnomah County, unlike some smaller counties, is sufficiently funded so that the state does not have to be selective about the cases in which it seeks the death penalty. As for the defense bar, there are essentially two kinds of attorneys handling the cases – a dedicated group of “phenomenal” attorneys and a group who ought to retire. Judges are uncertain as to how they can best deal with problems of under-representation without making themselves witnesses in post conviction cases. There needs to be a safe way for judges to provide information to OPDS. It is a mistake to rely on letters written by judges at the request of the attorney because it is hard for judges to say no. There should be a form for judges to complete with objective data. Some defendants cannot accept negotiated settlements that are clearly in their own interest because their attorneys have not been able to develop a trusting relationship with them. Attorney substitutions are often necessary for these clients. Among the cases that go to trial there are many in which the state does not realistically expect a death sentence. It would be helpful to have a resource attorney for death penalty lawyers. OPDS could save money in the long run since, for example, some attorneys don’t know how to preserve all of the issues for appeal. One attorney developed a checklist for the court so that all of the issues raised could be acted upon and objections preserved. A resource lawyer could assist with standardizing this kind of practice. Judge McShane suggested that consideration should be given to bifurcating death penalty cases so that only after the guilt phase was completed would the penalty phase case be scheduled¹. This would avoid the cost of

¹ In an email received on March 7th, 2007 from Judge Barron, he said that in his judgment bifurcation would actually increase costs because the case would have to be retried to the second jury. It would delay the case and possibly raise new issues such as the need for a change of venue from the location where the guilty verdict was rendered. Matt Rubenstein, the death penalty resource attorney, reviewed Judge McShane’s proposal and responded that in all likelihood it would increase costs and possibly make it easier for the state to secure death verdicts. He discussed the proposal with experts from the Colorado Public Defender System, the Southern Center for Human Rights in Atlanta, Georgia and the Vice-Chair of the National Association of Criminal Defense Lawyers Death Penalty Committee all of whom believed the proposal would result in increased costs. Mr. Rubenstein also noted that Judge McShane’s proposal assumes that the defense team could delay preparing for the sentencing phase until the end of the guilt phase, but the ABA Guidelines require that the mitigation investigation be undertaken as soon as possible in the case. In addition meaningful negotiation between the state

preparing for the penalty phase before it is known whether the state will actually be seeking the death penalty.

Judge Richard Barron testified that he had been handling death penalty cases since 1980. Some cases have been tried by contractors and some by hourly rate attorneys. The contract system is the better system. A significant increase in compensation is needed for these attorneys. If there were an increase it might be possible to get additional attorneys to come to the Fifteenth Judicial District (Coos and Curry Counties) where there is an inadequate supply of attorneys to handle the criminal caseload. Attorneys are coming from as far away as Lane County. In death penalty cases the court contacts OPDS but it may take several days for a lawyer to get there. There is a need for a local attorney to be able to meet with and advise clients in these cases immediately upon arrest. It would also help to have a video conferencing system set up. The team in a death penalty case should include at least two lawyers and sometimes three. The third lawyer might be a local lawyer who may have represented the defendant in the past. In addition, there should be a panel of attorneys to assist when there is a rift between the attorney and the client. A local attorney could also fulfill this role. Attorneys need to be aware of the law on substitution. The lawyers should be aware that the court will not remove an attorney merely because the attorney and client don't have a working relationship at the moment. The relationship has to be worked on. Lawyers who work on these cases need support. They are emotionally draining cases. Lawyers have to think about post conviction relief and need to keep good records of what they have told their clients and what choices the defendants have made. Everyone should work to see that the case is handled properly from the beginning so that there is no need for a retrial.

Tim Sylwester is a Senior Assistant Attorney General in the Appellate Division of the Department of Justice and the Capital Litigation Coordinator. He has been working on death penalty cases for twenty years. He testified that there are currently approximately ten capital cases on direct review, twenty in post-conviction and three at the federal habeas stage. Capital cases are moving expeditiously through the direct appeal stage. Some of the post conviction cases, however, have been pending for ten years. There is a lack of resources on both sides. By the time a case gets to post conviction there is a voluminous record and the Department of Justice attorneys who have been handling them have very large caseloads. In addition, the petitioner has no incentive to accelerate the case. The Department of Justice has recently restructured its trial and appellate divisions so that all capital cases will be assigned to the appellate division and remain there. The Department will now be seeking to move the post conviction cases to trial. On the defense side, a way needs to be found to adequately fund the post-conviction work. Sometimes so much time has passed by the time of the post conviction trial that witnesses no longer recall what occurred and investigative files may have been lost or destroyed. Some

and the defense requires that the defense have available as much mitigation information as possible.

defense counsel are very professional about the manner in which they preserve their files and information related to the case. It would be helpful if PDSC contracts required defense counsel in these cases to keep certain records and notes and make sure their investigators do the same. In a March 7, 2007 email message Judge Barron also suggested that PDSC's contracts require attorneys to maintain summaries of developments in death penalty cases and to include on the team someone who is skilled in organizing files. He thought it might be helpful to have a central repository for all death penalty case files, or at least funding to offset the cost to the attorneys of maintaining them. If possible, these records should be scanned and filed electronically.

Duane McCabe testified that he is a full time PDSC contractor who does primarily trial level work but who occasionally handles post conviction cases as well. He is based in Bend but often handles cases in other parts of the state. Creating a good defense team is very important. Lawyers who handle these cases may suffer from a form of post traumatic stress disorder because of the emotional strain involved in working on these cases.

Richard Wolf testified that he is a PDSC contractor and the co-chair of the Oregon Criminal Defense Lawyers Association (OCDLA) Capital Defender Section. Death penalty cases are difficult cases, often with difficult clients. \$55 per hour is not sufficient compensation for the lawyers handling these cases. Mr. Wolf testified that he had submitted a grant application on behalf of OCDLA to the Department of Justice, Bureau of Justice Assistance, seeking up to \$50,000 for training of death penalty lawyers. Grant funds might also be available to use for a capital defense resource center. A resource center or attorney would be responsible for preparing generic motions relevant to all death penalty cases, for creating an expert database and for assisting other lawyers with their cases. With respect to appellate level representation in death penalty cases, Mr. Wolf indicated that he thinks it would benefit clients for them to have more contact with their appellate lawyers. Although it is different from the bifurcated trial Judge McShane described, Mr. Wolf noted that Washington State and the federal system both require that prosecutors wait a certain amount of time before deciding whether or not to pursue a death sentence in a particular case. A panel of prosecutors reviews the case and makes a recommendation and the defense is permitted to present preliminary mitigating evidence in an effort to persuade the state not to seek the death penalty. He also noted that there is a shortage of qualified mitigation specialists in Oregon. A contract option might attract more qualified people to the field.

Dennis Balske testified that he was formerly with the Federal Defender office and currently handles post conviction cases. When he was at the Federal Defender's office they would have said that the post conviction system in Oregon is broken because the quality of representation is so poor. They saw many cases with meritorious issues which were procedurally defaulted because the post conviction lawyers failed to properly raise them under the federal

constitution. The problem in Oregon is that there is such a small pool of lawyers experienced in death penalty cases who know how to aggressively litigate post-conviction. There are some lawyers who just don't have what it takes. How do you get rid of them? How do you attract better ones? You have to look at funding. In addition, most of the problem cases seemed to come out of Marion County. The Marion County judges have large caseloads and their implicit rule was that they didn't want lawyers using live testimony in these cases. The practice among the lawyers was to submit written exhibits and add very little. The really poor lawyers just called their clients and said "Tell the judge about your issues." The cases were often handled by the Marion County Association of Defenders rather than other death penalty contractors.² Proper representation in these cases is essential, especially after the enactment of the Anti-Terrorism and Effective Death Penalty Act. The PCR attorney has to review the record and reinvestigate the entire case in order to show the likelihood of a different result if things had been done properly in the trial or appellate court. The PCR attorney has to do more work than the trial or appellate attorney.

Richard Wolf noted that it would be helpful to bring in some civil trial attorneys since PCR cases are civil rather than criminal.

Mr. Wolf was asked to comment on the death penalty peer panel and whether it could serve the function suggested by Judge Barron of helping to heal rifts between defendants and their counsel. He said that the peer panel is called upon to assess nonroutine expense requests and to provide input on applicants seeking approval to handle death penalty cases but is generally not involved in providing direct assistance in cases where there is a strain in the relationship between the client and his defense team. It is his experience that, once the relationship is broken it is difficult to repair and the real solution is to prevent the rift from occurring.

Chair Ellis asked whether death penalty lawyers should be working in partnerships. Duane McCabe said that partnerships create conflicts. Individual contracts seem to be the most effective model.

Mr. McCabe said that it is difficult for him, working outside the metropolitan area, to find co-counsel and he often has to rely on other contractors. Mr. Wolf said that there is pressure on lead counsel to bring in and train new attorneys but the qualification standards require a certain level of expertise and, when someone's life is at stake it may not be appropriate to rely on inexperienced lawyers. It is much easier to work with someone you have worked with before. Duane McCabe said that one way to bring in new attorneys is to use them as second co-counsel.

² Attached as Exhibit A is a letter from Olcott Thompson, the Chair of the MCAD Board of Directors, responding to Mr. Balske's comments.

Chief Justice De Muniz thanked the capital attorneys for their dedication and commitment to the protection of individual rights. He said that, based on his own experience, there is a unique relationship that must exist between the lawyer and client in order for the lawyer to successfully defend these cases.

At its meeting on March 8, 2008, the Commission heard further testimony on death penalty representation.

Rebecca Duncan testified that for attorneys in the Legal Services Division death penalty cases are different from the other appellate cases that they handle. No notice of appeal is necessary since death penalty cases are subject to automatic and direct review in the Oregon Supreme Court. The cases are more difficult and more complex often with thousands of pages of transcript to review. In these cases attorneys raise a greater number of assignments of error than in other cases. The issues are often complex and unique so there is a need to have death penalty-experienced attorneys handling the cases. There are two attorneys in the office who handle death penalty cases. The Oregon Rules of Appellate Procedure require that the appellant's brief be filed within 180 days after the transcript is received. The respondent's brief is due 180 days later and then a reply brief is generally prepared and must be filed within 90 days. After oral argument and the issuance of an opinion, a petition for reconsideration will be explored and a petition for certiorari to the United State Supreme Court will be filed. If the petition for certiorari is denied the appellate attorney will then assist the defendant to prepare an initial petition for post conviction relief.

Among the issues raised in the opening brief there are often some which have not been preserved. Chair Ellis asked whether the Legal Services Division is doing everything it can to inform the trial lawyers of the failure to preserve all of the issues. Ms. Duncan said that there is no system in place to make sure that trial lawyers are informed of all of the errors identified on appeal. Once the death penalty resource attorney is in place, Ms. Duncan thought it might be appropriate, either during the briefing or after the opinion issues, to have the members of the death penalty community and the resource center come together to discuss each case.

At the post conviction relief stage one of the Legal Services Division death penalty attorneys identifies for each client any issues that could be raised in post conviction. Ms. Duncan noted that it would be helpful for the appellate attorney to have a face to face meeting with the PCR attorney when the case is transferred, and Paul Levy stated that under the ABA standards it is one of the duties of counsel to facilitate the transfer of the case to successor counsel. Greg Hazarabedian said that there have been reports over the years that the trial lawyers and PCR attorneys have been dissatisfied with the amount of time that the appellate attorneys have been able to devote to these discussions.

Currently the Legal Services Division has three open death penalty cases, all assigned to one attorney. The office will be changing its staffing practice in these cases. In order to prevent a backlog and meet the time demands and also to prevent attorney fatigue the division will be rotating new attorneys into the cases. Experienced attorneys who rotate out of death penalty cases will be available as resources to the newer attorneys. The division hopes to have six attorneys or more available to handle death penalty cases, with a primary attorney and a backup attorney on each case. Ms. Duncan reported that the Legal Services Division has been reviewing best practices and other ways of improving representation. She believes that improvement can be made in how cases are transitioned from the trial attorney to the appellate attorney and from the appellate attorney to the PCR attorney. The guidelines require two attorneys on each case. California does not provide two attorneys but a second attorney can be brought in to assist. Illinois provides for a primary attorney and a backup attorney. This is the model that the Legal Services Division would like to follow. A primary attorney will be responsible for the case but a backup attorney, who is also invested in the case, will work on select portions and brief discreet issues. This will provide additional support for the client and will ensure that experienced attorneys can continue to participate and that new attorneys can be trained. With respect to client contact, in the past the frequency of such contact has varied from one attorney to the next. Contact with the client need not be as frequent as it is for trial counsel but contact promotes good client relations and more personal investment by the attorney. It facilitates communication and helps the attorney to monitor the client's mental condition and to act on any emerging issues such as the need to preserve evidence in the event of a retrial.

Richard Wolf noted that it is critically important to initiate the state PCR petition as early as possible in order to stop the clock on the Federal Anti-Terrorism and Effective Death Penalty Act of 1996.

Chair Ellis said that whether the death penalty is good policy or not the public and the legislature ought to be given good information about the high cost of death penalty representation. PDSC should break out the costs that are being incurred by the defense. Kathryn Alyward said that PDSC does track aggravated murders costs. One problem in identifying the actual costs is that there are so few cases where the total is yet known because almost all of them are still active. With respect to cases that began in 1988 or 1989 we lack records from the early years. For death penalty appeals the estimate used in fiscal impact statements is \$80,000 per case, which is comparable to the amount of attorney time reported by the Attorney General³.

³ Attached as Exhibits ____ are documents that identify the cost of aggravated murder and death penalty representation.

Commission Conclusions

The Commission then reviewed the provisions of the American Bar Association Guidelines and heard the following comments and made the following decisions about the implementation of the guidelines in Oregon.

The Office of Public Defense Services will be designated as the “responsible agency” under the guidelines, with each division performing the functions appropriate to that division.

OPDS, rather than the courts, should assign individual attorneys to cases. When counsel is to be appointed in a death penalty case, the court should confer with OPDS about whatever is known about the circumstances of the case and the needs of the defendant and OPDS should assign appropriate lead counsel.

OPDS needs to create a more objective and reliable means of monitoring the quality of representation provided by counsel in death penalty cases. It will develop a survey to be sent to judges and others about the quality of representation provided by each attorney.

In all death penalty trial level cases lead counsel will be responsible for assembling a defense team to include co-counsel as needed, an investigator, and a mitigator. Each team will also have a member or expert advisor who is knowledgeable about mental health issues.

There is an urgent need for additional mitigators. OPDS will issue an RFP for a mitigation contract and OPDS will work with PSU and other potential training providers to explore the creation of a training program for potential mitigators.

There is also a shortage of attorneys to handle death penalty post conviction relief cases. It is difficult to find attorneys willing to work at the current hourly rate of \$55 per hour. If a request for proposals were issued at the \$55 rate it would be unlikely that providers would submit proposals. If the rate were increased for purposes of the RFP it would be unfair to those providers who are currently being paid at \$55 and they would object unless they received similar rates. Two Commission members recommended that the hourly rate be increased if we have arrived at a point where quality representation is not available at \$55. The Commission will discuss this issue further at the August retreat after the 2007-2009 budget has been approved. In the meantime, OPDS will work with the courts to see that the best qualified public defense attorneys available are assigned to any new death penalty PCR cases.⁴

⁴ It should be noted that Timothy Sylwester warned the Commission that the Department of Justice is going to try to accelerate death penalty PCR cases. “I think that we need to figure out some way to adequately fund the post conviction petitioner’s work and get these cases moving, so there may be a need to get adequate funding on your end.”

Ingrid Swenson discussed caseload management and said that contractors are never directed to take additional cases if they do not believe they can handle them. Some private bar attorneys, however, may occasionally take more cases than PDSC believes is appropriate.

With respect to the training available to death penalty lawyers, the Oregon Criminal Defense Lawyers Association offers an annual CLE on death penalty representation. The Federal Defender also sponsors an annual one-day death penalty seminar. The Legal Services Division provides CLE training for its own attorneys but these rarely focus on death penalty representation and have not generally been made available to lawyers outside the office. The death penalty resource attorney, Matt Rubenstein, will be working to identify additional training resources. Kathryn Aylward noted that PDSC should be providing funds for training of death penalty lawyers.

The Commission approved the personal services contract with Matt Rubenstein to serve as the first Death Penalty Resource Attorney in Oregon.

Standard of Representation

In death penalty cases, as well as all other public defense cases, The Public Defense Services Commission is required by statute to:

Establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice. ORS 151.216(1)(a) (Emphasis added.)

In 2003 the American Bar Association adopted a revised edition of its “Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases.” The stated objective of the guidelines is to “set forth a national standard of practice for the defense of capital cases in order to ensure high quality legal representation....”⁵

A growing number of cases, including United States Supreme Court cases, look to the ABA standards as a statement of the standard of adequate representation in death penalty cases. In Strickland v. Washington, 466 US 668 (1984), a death penalty case, the Court held that in order to obtain federal habeas relief based on a claim of ineffective assistance of counsel, a petitioner must show that counsel’s performance was deficient and that the deficiency prejudiced the defense. Performance is deficient if it falls below an objective standard of reasonableness. The Court said that “Prevailing norms of practice as reflected in the American Bar Association standards and the like...are guides to determining what is reasonable.” Id. at 688-689. In both Williams v. Taylor, 529 US 362 (2000) and

⁵ Guideline 1.1A.

Wiggins v. Smith, 539 US 510 (2003), the Court again highlighted the need for counsel in capital cases to make adequate investigations and pointed to the ABA standards as guides and “well defined norms” for determining what is reasonably required for adequate representation. In 2004, the Court again looked to the ABA standards as a measure of reasonable attorney performance when it invalidated a death sentence where counsel failed to obtain and review available mitigating evidence. Rompilla v. Beard, 545 US 374 (2004).

What the Guidelines Require

The February, 2003 revised edition of the ABA Guidelines for death penalty cases is generally divided into two sections – a set of principles and policies that are intended to guide jurisdictions in creating a system for the delivery of defense services (Guidelines 1.1 to 10.1), and a set of performance standards defining the duties of counsel handling individual cases (Guidelines 10.2 to 10.15.2).

A. System Requirements

The guidelines require each jurisdiction to create a system that includes the following components.

Legal Representation Plan (2.1)

Each jurisdiction needs a legal representation plan⁶ setting forth how the jurisdiction will conform to the guidelines. The plan must insure freedom from political influence and be judicially enforceable against the jurisdiction.

Responsible Agency (3.1)

The plan should designate one or more agencies to be responsible for ensuring high quality legal representation and performing all the duties of such agency. The agency should be independent of the judiciary and it, not the judiciary, should select lawyers for specific cases.

The responsible agency should: recruit and certify, publish rosters, publish certification standards, assign attorneys to cases, monitor performance, periodically review the attorney roster and withdraw certification if necessary, conduct or approve specialized training, and handle complaints.

The agency should not use a strict rotation system to assign counsel but should attempt to match a client with an appropriate attorney.

⁶ A draft plan appears at pages 20 to 24 of this report.

Defense Team and Support Services (4.1)

The plan should provide for no fewer than two attorneys, an investigator, and a mitigator. One member of the team should be qualified to screen for mental health issues.

Specialized training and qualification standards should be developed for investigators and mitigators.

With regard to other members of the defense team, the Commission heard testimony from a number of witnesses, including a representative of the state, that it is important to provide adequate resources at the early stages of the case in order to avoid having the case remanded, sometimes many years later, because of ineffective assistance of counsel at the trial level⁷. Appropriate use of investigators, mitigators and experts is critical.

As noted in the testimony before the Commission, currently there is a shortage of qualified mitigators. Duane McCabe said that Oregon attorneys are having difficulty getting mitigators because they get paid more to work on federal cases and other states. In Washington State they receive \$60 per hour. To address this problem PDSC has submitted a policy package to the legislature that would increase the hourly rate for all investigators in death penalty cases from \$34 per hour to \$45 per hour. Whether or not rates are increased, OPDS intends to issue an RFP for mitigation investigation in the fall of 2007. It is hoped that the benefits of a contract relationship with PDSC will attract additional well qualified investigators to perform mitigation investigation on a full time basis.

Other than the requirement that independent investigators to be licensed by the state⁸, OPDS has no qualification standards for investigators. There are

⁷ Timothy Sylwester testified that "The last thing we want to do after spending a million dollars prosecuting somebody and getting the death penalty, is to have it get reversed in post conviction on the ground that defense counsel did something wrong. I think from our standpoint, from the DA's standpoint, we want the case perfectly tried at the outset; we don't ever want to have to try it again. It makes sense from the efficiency standpoint, at the outset, that that lawyer who is handling the defense be given adequate resources -- a backup lawyer and a mitigation lawyer.... Later Mr. Sylwester characterized the need for adequate funding of the mitigation investigation as "imperative." In addition, Judge Barron recommended that "[W]e should all work to make these cases as right as they can be the first time so we are not going through [two or three] retrials."

⁸ ORS 703.430 ff. In order to qualify for a license, an investigator must, among other things, have "at least 1,500 hours of experience in investigatory work, have completed a related course of study approved by the department [Department of Public Safety Standards and Training (DPSST)] or have a combination of work experience and education approved by the department."

trainings available to investigators, including specialized trainings for investigation of death penalty cases, but OPDS has not participated in their development. Greg Hazarabedian said that the National Association of Sentencing Advocates, which is affiliated with the Nation Legal Aid and Defender Association, also offers training for mitigation investigators. OPDS should work with the death penalty resource attorney, the peer review panel, OCDLA and others to determine whether the DPSST standards are adequate or whether particular standards for investigation in death penalty cases should be developed.

Qualifications of Defense Counsel (5.1)

The responsible agency should develop and publish qualification standards for counsel. The types of skills required should focus on the ability to provide high quality representation rather than just quantitative measures of experience.

PDSC's Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense were amended in 2006 to conform to the standards recommended by the ABA Guidelines in death penalty cases.

Workload (6.1)

The responsible agency should implement effective mechanisms to ensure that the workload of attorneys representing defendants in death penalty cases is maintained at a level that enables counsel to provide each client with high quality legal representation in accordance with the guidelines.

Capital murder contractors generally carry no more than three pending cases, each of which is usually at a different stage in the process so that they are not doing intensive trial preparation in multiple cases at the same time. Generally, OPDS is able to stagger the appointments so that at least one of the attorney's pending cases near completion before the contractor is asked to accept a third case. OPDS relies upon the contractor to gauge when a new case can be accepted and to refuse appointment to a new case if the current workload will not permit the contractor to devote sufficient time to the case. Occasionally, a contractor who is the most logical choice for a particular appointment will agree to take the new case if the court is willing to make certain accommodations, such as flexibility in the scheduling of the trial.

Cases assigned to private bar attorneys, especially when the court does not first consult with OPDS, may go to an attorney who is already overburdened, although most private bar attorneys will decline to take an additional case if they are not able to give it the attention it requires. If the Commission approves the

ORS 703.415(1)(g). In addition, "an investigator must complete at least 32 hours of continuing education every two years." ORS 703.447(1)(a).

proposed PDSC Legal Representation Plan for Death Penalty Cases, OPDS will be assigning counsel in each case. This should resolve the problem of cases being assigned to attorneys who are significantly overburdened. The number of qualified attorneys available remains a problem, however.

It is sometimes difficult to find a contractor or private bar attorney who is immediately available to accept a new appointment, especially in the case of multiple co-defendants. Contract attorneys may be at maximum workload and private bar attorneys may have other, non-death penalty cases that affect their availability. In addition, lead attorneys report significant difficulty in identifying qualified co-counsel in some cases.

The Commission heard testimony from an experienced trial judge who identified a shortage of qualified attorneys in Coos and Curry Counties. He urged the Commission to increase compensation substantially in an effort to attract more attorneys to the area.

A Multnomah County judge said that there are too many cases for the best qualified attorneys to handle and the cases then go to less qualified attorneys. He identified contract attorneys in the room as among the best, as “phenomenal” attorneys, committed to their work. He also noted that cases that should settle may not if the client does not have sufficient confidence in his attorney. Attorneys need the time and resources to develop a relationship of trust and confidence with the client.

PDSC’s budget proposal includes a policy package that would increase the hourly rate for private bar death penalty representation from the current \$55 per hour to \$95 per hour. If approved, this increased rate of compensation would help OPDS attract more highly-qualified attorneys to death penalty representation.

Currently, it is mainly through the contract process that OPDS has been able to attract and retain the services of well-qualified lawyers.

OPDS will seek to contract with more providers. Except in unusual circumstances PDSC will issue RFP’s before entering into contracts.

Witnesses also suggested that efforts should be made to avoid substitution of counsel by providing additional support for the attorney client relationship and better training of attorneys regarding what constitutes a conflict of interest. OPDS will confer with its Death Penalty Peer Panel on the need for additional support and will suggest that OCDLA consider including a segment on the law relating to substitutions in one of its upcoming CLE programs.

Monitoring and Removal (7.1)

The responsible agency should protect the interests of the attorney's current and potential clients, have a complaint procedure, review rosters, suspend or remove attorneys or offices, provide for notice and opportunity to respond in writing for lawyers suspended or removed. Protect zealous advocates from improper suspension or removal.

Most of these responsibilities are discussed above. OPDS will design a survey for obtaining information on a regular basis about the performance of its death penalty lawyers. PDSC has a complaint policy that has been in place since October of 2004. PDSC's complaint policy, its contracts and its Qualification Standards all permit the suspension or removal of attorneys who fail to provide quality representation. OPDS will develop a system specific to death penalty cases, however, for evaluating the work of death penalty lawyers on a regular basis and for suspending or removing lawyers, whether under contract or approved for appointment on an hourly basis, from further representation in these cases, after giving the attorney the opportunity to respond in writing.

Training (8.1)

The state's plan should provide funds for training. Attorneys seeking to qualify should be required to complete a comprehensive training program approved by the responsible agency (outline of curriculum set forth). Additional training should be required at least once every two years. Training is also required for non-attorneys.

PDSC requires attorneys to complete training in the required areas but does not currently provide funds for training. With lawyers under contract it is assumed that some portion of contract funds will be used to access appropriate trainings. Training for non-attorneys is available from a number of organizations, including the Oregon Association of Licensed Investigators and the Oregon Criminal Defense Lawyers Association. No funds are provided to non-attorneys for training.

OPDS believes that the new death penalty resource attorney will be able to identify additional training resources, may be able to access OCDLA grant funds to offer additional training events and will be available to provide expert assistance and advice on particular legal issues. OPDS will work with its resource attorney, its peer panel, OCDLA and others to ensure that adequate training opportunities are available and accessible to attorneys and other members of the defense team.

Funding and Compensation (9.1)

The plan must assure full funding. Rates should be commensurate with high quality representation. There should be no flat fees, caps on compensation or lump-sum contracts. The salary scale should be commensurate with the prosecutor's office. Counsel should be fully compensated for actual time and the service performed (commensurate with prevailing rates for retained counsel). Non-attorneys should be compensated like their prosecution counterparts. Experts should be compensated on an hourly basis commensurate with rates paid by retained counsel.

Oregon does not have flat fees in death penalty cases, does not cap compensation, and does not use "lump-sum contracts." Private bar attorneys and contract attorneys are fully compensated for actual time. Hourly rate attorneys would not be receiving compensation comparable to the district attorneys. Contract attorneys receive compensation that in many counties may be comparable to the compensation paid to the prosecutors who handle these cases. PDSC submitted a policy package with its 2007-2009 budget request which would have established parity with Department of Justice attorneys for Legal Services Division attorneys. Funding for this policy package was not approved by the Full Ways and Means Committee.

Since the great majority of death penalty cases are public defense cases it is difficult to determine what the prevailing rate for retained counsel would be.

Another policy package included in PDSC's budget proposal would increase the hourly rate for death penalty lawyers and investigators. The budget, as approved by the Ways and Means Committee included sufficient funding to raise the hourly rate for attorneys in death penalty cases to \$60 per hour. In addition, an adjustment to PDSC's essential budget level has been approved by the Ways and Means Committee which would result in the application of the personal services inflation rate, rather than the Department of Administrative Services adjustment for services and supplies, for contractor costs. Such an adjustment would allow PDSC to increase contractor rates.

Some experts are willing to work for public defense attorneys at discounted rates. Others charge OPDS the same amount for their services as they charge clients with retained counsel but, in large part, public defense clients have available to them the same experts that would be used by retained counsel.

Establishment of Performance Standards (10.1)

The agency should establish standards including those set out in the guidelines for the performance of counsel.

B. Performance Standards for Counsel

Applicability of Performance Standards (10.2)

Counsel should provide high quality legal representation in accordance with the guidelines.

Obligations of Counsel Respecting Workload (10.3)

Lawyers should limit caseloads to provide high quality legal representation in accordance with the guidelines

The Defense Team (10.4)

The Responsible Agency should designate lead counsel who bears overall responsibility but may delegate in accordance with the guidelines. Lead counsel should consult with the agency regarding identity of associate counsel, then select associate counsel and the defense team. Lead counsel should demand appropriate resources.

Relationship with the Client (10.5)

Clients should be seen within 24 hours of appointment. Attorneys should discuss with the client all matters that might reasonably be expected to have a material impact on the case. All counsel, including appellate and post conviction counsel, need to monitor the client's personal condition for potential legal consequences.

The Commission heard testimony from an experienced trial judge about the need for attorneys to see clients in death penalty cases as soon as possible, before arraignment. Currently it may be several days, and on occasion it has been significantly longer, before the designated death penalty lawyer is appointed and can see the client. OPDS has attempted to work with the courts and the attorneys to accelerate this process. Judge Barron's suggestion that local counsel be used for this purpose is a good one and has been considered in earlier discussions with the Death Penalty Peer Panel. The OCDLA Board of Directors has undertaken to establish a pilot project that would involve having local counsel in at least one county agree to be on call to make the initial contact with any in-custody homicide suspect as soon as counsel is informed of the arrest.

Obligations regarding Foreign Nationals (10.6)

Counsel for foreign nationals should, with the client's consent, contact the relevant consular office to inform it of the client's detention and arrest.

Investigation (10.7)

Counsel is to fully investigate guilt and penalty issues even if the client objects. Counsel at all stages must interview prior counsel and members of the defense team and examine files of prior counsel to satisfy themselves independently that the official record of the proceedings is complete and to supplement it as appropriate.

The commentary to the guidelines includes useful checklists of documents to be obtained and examined, potential witnesses to be interviewed, physical evidence to be examined, personal and medical histories to be reviewed, collateral convictions and adjudications to be investigated.

Duty to Assert Legal Claims (10.8)

This guideline requires counsel at every stage of the case to consider, investigate, evaluate and properly assert and preserve appropriate claims.

Duty to Seek an Agreed-Upon Disposition (10.9.1)

Counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agree-upon disposition and should pursue such a settlement with the state even if the state initially declined the proposed disposition.

Entry of Plea of Guilty (10.9.2)

Counsel should make certain that the client understands the rights being waived, the conditions and limits of the agreement, the maximum punishment and other consequences of the plea and should prepare the client for participation in the plea hearing.

Trial Preparation Overall (10.10.1)

Based on information received from investigation of the case, counsel should formulate a defense theory that will be effective for both the guilt and penalty phases.

Voir Dire and Jury Selection (10.10.2)

Counsel should consider possible challenges to procedures used for selecting the jury, should be familiar with the procedures and techniques for selecting a death-qualified jury, and should consider seeking expert assistance in jury selection.

The Defense Case Concerning Penalty (10.11)

This guideline sets forth a list of witnesses and evidence which should be considered in the penalty phase, an admonition to counsel to confer closely with the client regarding this phase, to review and, if appropriate, challenge the state's aggravating evidence, and to request jury instructions and verdict forms that would give effect to the defense's case.

The Official Presentence Report (10.12)

Counsel should challenge the inclusion of improper, incorrect or misleading information in the report and take steps to include information favorable to the client.

The Duty to Facilitate Work of Successor Counsel (10.13)

Counsel at all stages should safeguard the interests of the client and cooperate with successor counsel. The duty includes maintaining records in the case, providing files and information to successor counsel, sharing potential further areas of legal and factual research and cooperating with successor counsel's professionally appropriate legal strategies.

In view of the testimony provided to the Commission regarding the state of trial counsel's case files in some death penalty cases, especially years after the events to which the records relate, OPDS will explore with its Death Penalty Peer Panel ways in which files can be better organized, preserved and accessed by successor counsel.

Duties of Trial Counsel After Conviction (10.14)

Trial counsel should take such actions as may be required to maximize the client's ability to obtain post-conviction relief and shall continue acting on the client's behalf until representation has been terminated or successor counsel has entered the case.

Duties of Post-Conviction Counsel (10.15)

This provision requires post conviction counsel (including counsel on appeal) to seek a stay of execution, to seek certiorari in the Supreme Court,

etc. Such counsel are also required to maintain close contact with the client regarding case developments, to continually monitor the client's mental, physical and emotional condition for effects on the client's legal position, to keep under review the desirability of modifying prior counsel's theory of the case and to continue an "aggressive investigation of all aspects of the case."

Commentary to the guideline (but not the blackletter portion) recognizes that practice varies between jurisdictions regarding the limits of the appellate process and the relationship between direct appeal and post-conviction. The commentary requires appellate attorneys to explore issues that are only partially or minimally reflected by the record, or that are outside the record, as a predicate for informed decision making about legal strategy. It is described as critically important for counsel on direct appeal to proceed, like all post-conviction counsel, in a manner that maximizes the client's ultimate chances of success. "Winnowing" issues in a capital appeal can have fatal consequences. Appellate counsel must be familiar with the deadlines for filing petitions for state and federal post-conviction relief and how they are affected by the direct appeal. If the conviction and sentence are affirmed, appellate counsel should ordinarily file on the client's behalf a petition for cert. The appellate attorney must immediately inform successor counsel if the petition for cert was not filed or was denied. If no successor counsel is appointed, appellate counsel should advise the responsible agency of need for appointment.

Duties of Clemency Counsel (10.15.2)

Clemency counsel should be familiar with the clemency procedure, should conduct an investigation, should seek clemency in a timely and persuasive manner, should ensure that the process is just, and, if it is not, seek appropriate redress.

C. Overall Assessment -- Compliance with Standards

Oregon's current delivery system for representation in death penalty cases complies in most important respects with the standards established by the American Bar Association. In addition, OPDS believes that the quality of representation provided at the trial and appellate levels is high in most cases. Representation in post-conviction relief cases, for all case types, needs to be improved. OPDS recommends that the Commission approve the PDSC Legal Representation Plan for Death Penalty Cases.

The Public Defense Services Commission's Legal Representation Plan for
Death Penalty Cases

1. Responsible Agency

The Public Defense Services Commission is responsible for ensuring that defendants in death penalty cases who are entitled to and financially eligible for appointed counsel at state expense receive legal representation consistent with Oregon and national standards of justice.

2. Selection of Lawyers for Specific Cases

Beginning January 1, 2008, when the court determines that a defendant in an aggravated murder case is entitled to appointed counsel the court shall notify the Office of Public Defense Services of the need for appointed counsel and of any circumstances of the alleged offense or of the defendant that may affect the selection of counsel in the case. The Office of Public Defense Services shall then advise the court of the attorney to be appointed as lead counsel in the case.

Upon motion by lead counsel who has received authorization from the Office of Public Defense Services for the appointment of co-counsel for a specified number of hours, the court shall appoint the attorney or attorneys approved by the Office of Public Defense Services as co-counsel for the number of hours authorized. Additional hours for appointed co-counsel may be requested and authorized as provided in the Public Defense Payment Policies and Procedures.

The Office of Public Defense Services shall authorize appointment of co-counsel whenever it is reasonable and necessary considering both the circumstances of the case and lead counsel's circumstances and needs. A denial of a request for appointment of co-counsel may be appealed to the presiding judge of the circuit court as a denial of a request for a nonroutine expense under ORS 135.055(3)(c). However, a denial by the Office of Public Defense Services of a request for a particular attorney to serve as co-counsel is final.

3. Qualification, Monitoring, Removal, and Training of Defense Counsel

The Office of Public Defense Services **shall**:

- a. Recruit and approve attorneys for appointment to represent defendants in death penalty cases;
- b. Publish and update the list of attorneys approved for appointment in death penalty cases;

- c. Continue to publish Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense (“Qualification Standards”);
- d. Prepare and publish procedures for assignment of counsel in death penalty cases.

The Office of Public Defense Services **should:**

- a. Continue to require that attorneys approved for appointment to represent defendants in death penalty cases have demonstrated:
 - i. substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
 - ii. skill in the management and conduct of complex negotiations and litigation;
 - iii. skill in legal research, analysis, and the drafting of litigation documents;
 - iv. skill in oral advocacy;
 - v. skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
 - vi. skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
 - vii. skill in the investigation, preparation, and presentation of mitigating evidence; and
 - viii. skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements;
- b. Monitor the performance of court-appointed attorneys providing representation in death penalty cases to ensure that clients are receiving high quality legal representation;
- c. Periodically review the list of approved attorneys, withdraw approval from any attorney who fails to provide high quality legal representation as provided in the attorney’s contract or in the Qualification Standards for non-contract attorneys, and re-approve an attorney whose approval has been withdrawn only in exceptional circumstances;

- d. Work with death penalty attorneys and organizations providing legal training for death penalty lawyers to create adequate training opportunities for such lawyers, and provide financial support if needed to make it possible for lawyers to participate in trainings which should include presentations in the following areas:
 - i. relevant state, federal, and international law;
 - ii. pleading and motion practice;
 - iii. pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
 - iv. jury selection;
 - v. trial preparation and presentation, including the use of experts;
 - vi. ethical considerations particular to capital defense representation;
 - vii. preservation of the record and of issues for post-conviction review;
 - viii. counsel's relationship with the client and his family;
 - ix. post-conviction litigation in state and federal courts;
 - x. the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science;
- e. Require attorneys in death penalty cases to have attended and successfully completed within the two-year period prior to certification of qualification at least 18 hours of specialized training on current issues in capital cases through established training programs awarding CLE credits;
- f. Investigate and maintain records concerning complaints made by judges, clients, attorneys or others about the performance of attorneys providing representation in death penalty cases and take appropriate corrective action without delay in accordance with the Public Defense Services Commission's Complaint Policy and Procedures and such additional policies as the Commission may adopt.

4. Defense Teams, Workload, Compensation and Performance Standards

- a. Unless the particular circumstances of the case or the defendant make such a team or a particular member of the team unnecessary for high quality representation, the Office of Public Defense Services shall require lead counsel at the trial level in each death penalty case to assemble a defense team including co-counsel, as needed and authorized under paragraph 2 above, an investigator

and a mitigation specialist. If the team does not include at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments counsel shall seek authorization for funds to obtain such services from a qualified provider.

- b. The Office of Public Defense Services shall authorize funds for experts, investigative and other professional services that are reasonable and necessary for the investigation, preparation and presentation of the defense as provided in ORS 135.055 and the Public Defense Payment Policies and Procedures.
- c. The Office of Public Defense Services shall ensure that the workload of attorneys representing defendants in death penalty cases is maintained at a level that enables counsel to provide each client with high quality legal representation.
- d. To the extent that funds are available to do so and in light of its obligation to provide defense services in other types of public defense cases the Public Defense Services Commission shall ensure that counsel in death penalty cases are fully compensated at a rate that is commensurate with high quality legal representation and reflects the extraordinary responsibilities inherent in death penalty representation.
- e. To the extent that funds are available to do so and in light of its obligation to provide defense services in other types of public defense cases, the Public Defense Services Commission shall ensure that non-attorney members of the defense team are fully compensated at a rate that is commensurate with the provision of high quality legal representation and reflects the specialized skills needed by those who assist counsel with the litigation of death penalty cases.
- f. The Public Defense Services Commission hereby establishes as the standards for performance for all counsel in death penalty cases the standards set forth in Guidelines 10.2 to 10.15.2 of the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Revised Edition, February 2003. (Exhibit A)

Exhibit A

Excerpt from
American Bar Association
Guidelines for the Performance of Defense Counsel in Death
Penalty Cases
Revised Edition
February 2003

[The following is an excerpt from the black letter guidelines. The entire Guidelines, complete with history, related standards, annotations and commentary may be found at:
<http://www.abanet.org/deathpenalty/resources/docs/HofstraLawReview.pdf>]

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Guideline 10.2 Applicability of Performance Standards

Counsel should provide high quality legal representation in accordance with these Guidelines for so long as the jurisdiction is legally entitled to seek the death penalty.

Guideline 10.3 Obligations of Counsel Respecting Workload

Counsel representing clients in death penalty cases should limit their caseloads to the level needed to provide each client with high quality legal representation in accordance with these Guidelines.

Guideline 10.4 The Defense Team

- A. When it is responsible for designating counsel to defend a capital case, the Responsible Agency should designate a lead counsel and one or more associate counsel. The Responsible Agency should ordinarily solicit the views of lead counsel before designating associate counsel.**
- B. Lead counsel bears overall responsibility for the performance of the defense team, and should allocate, direct, and supervise its work in accordance with these Guidelines and professional standards.**
 - 1. Subject to the foregoing, lead counsel may delegate to other members of the defense team duties imposed by these Guidelines, unless:**
 - a. The Guideline specifically imposes the duty on “lead counsel,” or**
 - b. The Guideline specifically imposes the duty on “all counsel” or “all members of the defense team.”**
- C. As soon as possible after designation, lead counsel should assemble a defense team by:**
 - 1. Consulting with the Responsible Agency regarding the number and identity of the associate counsel;**
 - 2. Subject to standards of the Responsible Agency that are in accord with these Guidelines and in consultation with associate counsel to the extent practicable, selecting and making any appropriate contractual agreements with non-attorney team members in such a way that the team includes:**
 - a. at least one mitigation specialist and one fact investigator;**
 - b. at least one member qualified by training and experience to screen individuals for the presence of mental or psychological disorders or impairments; and**
 - c. any other members needed to provide high quality legal representation.**
- D. Counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. If such resources are denied, counsel**

should make an adequate record to preserve the issue for post-conviction review.

Guideline 10.5 Relationship with the Client

- A. Counsel at all stages of the case should make every appropriate effort to establish a relationship of trust with the client, and should maintain close contact with the client.**
- B. 1. Barring exceptional circumstances, an interview of the client should be conducted within 24 hours of initial counsel's entry into the case.**
 - 2. Promptly upon entry into the case, initial counsel should communicate in an appropriate manner with both the client and the government regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards.**
 - 3. Counsel at all stages of the case should re-advise the client and the government regarding these matters as appropriate.**
- C. Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:**
 - 1. the progress of and prospects for the factual investigation, and what assistance the client might provide to it;**
 - 2. current or potential legal issues;**
 - 3. the development of a defense theory;**
 - 4. presentation of the defense case;**
 - 5. potential agreed-upon dispositions of the case;**
 - 6. litigation deadlines and the projected schedule of case-related events; and**
 - 7. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).**

Guideline 10.6 Additional Obligations of Counsel Representing a Foreign National

- A. Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals.**
- B. Unless predecessor counsel has already done so, counsel representing a foreign national should:**
 - 1. immediately advise the client of his or her right to communicate with the relevant consular office; and**
 - 2. obtain the consent of the client to contact the consular office. After**

obtaining consent, counsel should immediately contact the client's consular office and inform it of the client's detention or arrest.

- a. Counsel who is unable to obtain consent should exercise his or her best professional judgment under the circumstances.

Guideline 10.7 Investigation

A. Counsel at every stage have an obligation to conduct thorough and independent investigations relating to the issues of both guilt and penalty.

1. The investigation regarding guilt should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.
2. The investigation regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented.

- B.**
1. Counsel at every stage have an obligation to conduct a full examination of the defense provided to the client at all prior phases of the case. This obligation includes at minimum interviewing prior counsel and members of the defense team and examining the files of prior counsel.
 2. Counsel at every stage have an obligation to satisfy themselves independently that the official record of the proceedings is complete and to supplement it as appropriate.

Guideline 10.8 The Duty to Assert Legal Claims

A. Counsel at every stage of the case, exercising professional judgment in accordance with these Guidelines, should:

1. consider all legal claims potentially available; and
2. thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted; and
3. evaluate each potential claim in light of:
 - a. the unique characteristics of death penalty law and practice; and
 - b. the near certainty that all available avenues of post-conviction relief will be pursued in the event of conviction and imposition of a death sentence; and
 - c. the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited; and
 - d. any other professionally appropriate costs and benefits to the assertion of the claim.

B. Counsel who decide to assert a particular legal claim should:

1. **present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction; and**
 2. **ensure that a full record is made of all legal proceedings in connection with the claim.**
- C. Counsel at all stages of the case should keep under consideration the possible advantages to the client of:**
1. **asserting legal claims whose basis has only recently become known or available to counsel; and**
 2. **supplementing claims previously made with additional factual or legal information.**

Guideline 10.9.1 The Duty to Seek an Agreed-Upon Disposition

- A. Counsel at every stage of the case have an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these Guidelines to achieve an agreed-upon disposition.**
- B. Counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition. In so doing, counsel should fully explain the rights that would be waived, the possible collateral consequences, and the legal, factual, and contextual considerations that bear upon the decision. Specifically, counsel should know and fully explain to the client:**
1. **the maximum penalty that may be imposed for the charged offense(s) and any possible lesser included or alternative offenses;**
 2. **any collateral consequences of potential penalties less than death, such as forfeiture of assets, deportation, civil liabilities, and the use of the disposition adversely to the client in penalty phase proceedings of other prosecutions of him as well as any direct consequences of potential penalties less than death, such as the possibility and likelihood of parole, place of confinement and good-time credits;**
 3. **the general range of sentences for similar offenses committed by defendants with similar backgrounds, and the impact of any applicable sentencing guidelines or mandatory sentencing requirements;**
 4. **the governing legal regime, including but not limited to whatever choices the client may have as to the fact finder and/or sentencer;**
 5. **the types of pleas that may be agreed to, such as a plea of guilty, a conditional plea of guilty, or a plea of nolo contendere or other plea which does not require the client to personally acknowledge guilt, along with the advantages and disadvantages of each;**
 6. **whether any agreement negotiated can be made binding on the court, on penal/parole authorities, and any others who may be involved;**
 7. **the practices, policies and concerns of the particular jurisdiction, the judge and prosecuting authority, the family of the victim and any other**

persons or entities which may affect the content and likely results of plea negotiations;

8. concessions that the client might offer, such as:
 - a. an agreement to proceed waive trial and to plead guilty to particular charges;
 - b. an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;
 - c. an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case;
 - d. an agreement to forego in whole or part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications;
 - e. an agreement to provide the prosecution with assistance in investigating or prosecuting the present case or other alleged criminal activity;
 - f. an agreement to engage in or refrain from any particular conduct, as appropriate to the case;
 - g. an agreement with the victim's family, which may include matters such as: a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution;
 - h. agreements such as those described in Subsections 8 (a)-(g) respecting actual or potential charges in another jurisdiction;
9. benefits the client might obtain from a negotiated settlement, including:
 - a. a guarantee that the death penalty will not be imposed;
 - b. an agreement that the defendant will receive a specified sentence;
 - c. an agreement that the prosecutor will not advocate a certain sentence, will not present certain information to the court, or will engage in or refrain from engaging in other actions with regard to sentencing;
 - d. an agreement that one or more of multiple charges will be reduced or dismissed;
 - e. an agreement that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;
 - f. an agreement that the client may enter a conditional plea to preserve the right to further contest certain legal issues;
 - g. an agreement that the court or prosecutor will make specific recommendations to correctional or parole authorities regarding the terms of the client's confinement;
 - i. agreements such as those described in Subsections 9 (a)-(g) respecting actual or potential charges in another jurisdiction.

- C. Counsel should keep the client fully informed of any negotiations for a disposition, convey to the client any offers made by the prosecution, and discuss with the client possible negotiation strategies.**
- D. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution, and explain to the client the full content of the agreement along with the advantages, disadvantages and potential consequences of the agreement.**
- E. If a negotiated disposition would be in the best interest of the client, initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Similarly, a client's initial opposition should not prevent counsel from engaging in an ongoing effort to persuade the client to accept an offer of resolution that is in the client's best interest.**
- F. Counsel should not accept any agreed-upon disposition without the client's express authorization.**
- G. The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting litigation.**

Guideline 10.9.2 Entry of a Plea of Guilty

- A. The informed decision whether to enter a plea of guilty lies with the client.**
- B. In the event the client determines to enter a plea of guilty:**
 - 1. Prior to the entry of the plea, counsel should:**
 - a. make certain that the client understands the rights to be waived by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;**
 - b. ensure that the client understands the conditions and limits of the plea agreement and the maximum punishment, sanctions, and other consequences to which he or she will be exposed by entering the plea;**
 - c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions in court and providing a statement concerning the offense.**
 - 3. During entry of the plea, counsel should make sure that the full content and conditions of any agreements with the government are placed on the record.**

Guideline 10.10.1 Trial Preparation Overall

- A. As the investigations mandated by Guideline 10.7 produce information, trial counsel should formulate a defense theory. Counsel should seek a theory that will be effective in connection with both guilt and penalty, and should seek to**

minimize any inconsistencies.

Guideline 10.10.2 Voir Dire and Jury Selection

- A. Counsel should consider, along with potential legal challenges to the procedures for selecting the jury that would be available in any criminal case (particularly those relating to bias on the basis of race or gender), whether any procedures have been instituted for selection of juries in capital cases that present particular legal bases for challenge. Such challenges may include challenges to the selection of the grand jury and grand jury forepersons as well as to the selection of the petit jury venire.**
- B. Counsel should be familiar with the precedents relating to questioning and challenging of potential jurors, including the procedures surrounding “death qualification” concerning any potential juror’s beliefs about the death penalty. Counsel should be familiar with techniques: (1) for exposing those prospective jurors who would automatically impose the death penalty following a murder conviction or finding that the defendant is death-eligible, regardless of the individual circumstances of the case; (2) for uncovering those prospective jurors who are unable to give meaningful consideration to mitigating evidence; and (3) for rehabilitating potential jurors whose initial indications of opposition to the death penalty make them possibly excludable.**
- C. Counsel should consider seeking expert assistance in the jury selection process.**

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C. Counsel should consider seeking expert assistance in the jury selection process.

Guideline 10.11 The Defense Case Concerning Penalty

- A. As set out in Guideline 10.7(A), counsel at every stage of the case have a continuing duty to investigate issues bearing upon penalty and to seek information that supports mitigation or rebuts the prosecution's case in aggravation.**
- B. Trial counsel should discuss with the client early in the case the sentencing alternatives available, and the relationship between the strategy for the sentencing phase and for the guilt/innocence phase.**
- C. Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.**
- D. Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning penalty that they intend to present to the sentencing or reviewing body or individual, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.**
- E. Counsel should consider, and discuss with the client, the possible consequences of having the client testify or make a statement to the sentencing or reviewing body or individual.**
- E. In deciding which witnesses and evidence to prepare concerning penalty, the areas counsel should consider include the following:**
- 1. Witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, or would otherwise support a sentence less than death;**
 - 2. Expert and lay witnesses along with supporting documentation (e.g. school records, military records) to provide medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation, or adaptation to prison; to explain possible treatment programs; or otherwise support a sentence less than death; and/or to rebut or explain evidence presented by the prosecutor;**
 - 3. Witnesses who can testify about the applicable alternative to a death sentence and/or the conditions under which the alternative sentence would be served;**
 - 4. Witnesses who can testify about the adverse impact of the client's execution**

- on the client's family and loved ones;
5. **Demonstrative evidence, such as photos, videos, and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts, and letters of praise or reference.**

G. In determining what presentation to make concerning penalty, counsel should consider whether any portion of the defense case will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions *in limine*) to ensure that the defense case concerning penalty is constricted as little as possible by this consideration, and should make a full record in order to support any subsequent challenges.

H. Trial counsel should determine at the earliest possible time what aggravating factors the prosecution will rely upon in seeking the death penalty and what evidence will be offered in support thereof. If the jurisdiction has rules regarding notification of these factors, counsel at all stages of the case should object to any non-compliance, and if such rules are inadequate, counsel at all stages of the case should challenge the adequacy of the rules.

I. Counsel at all stages of the case should carefully consider whether all or part of the aggravating evidence may appropriately be challenged as improper, inaccurate, misleading or not legally admissible.

J. If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

- 1. carefully consider**
 - a. what legal challenges may appropriately be made to the interview or the conditions surrounding it, and**
 - b. the legal and strategic issues implicated by the client's co-operation or non-cooperation;**
- 2. insure that the client understands the significance of any statements made during such an interview ; and**
- 3. attend the interview.**

K. Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, or are inaccurate, or confusing and should offer alternative instructions. Post-conviction counsel should pursue these issues through factual investigation and legal argument.

L. Counsel at every stage of the case should take advantage of all appropriate opportunities to argue why death is not suitable punishment for their particular client.

Guideline 10.12 The Official Presentence Report

A. If an official presentence report or similar document may or will be presented to the court at any time, counsel should become familiar with the procedures governing preparation, submission, and verification of the report. In addition, counsel should:

- 1. where preparation of the report is optional, consider the strategic implications of requesting that a report be prepared;**
- 2. provide to the report preparer information favorable to the client. In this regard, counsel should consider whether the client should speak with the person preparing the report; if the determination is made to do so, counsel should discuss the interview in advance with the client and attend it;**
- 3. review the completed report;**
- 4. take appropriate steps to ensure that improper, incorrect or misleading information that may harm the client is deleted from the report;**
- 5. take steps to preserve and protect the client's interests where the defense considers information in the presentence report to be improper, inaccurate or misleading.**

Guideline 10.13 The Duty to Facilitate the Work of Successor Counsel

In accordance with professional norms, all persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client and should cooperate fully with successor counsel. This duty includes, but is not limited to:

A. maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the litigation;

B. providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;

C. sharing potential further areas of legal and factual research with successor counsel; and

D. cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

Guideline 10.14 Duties of Trial Counsel After Conviction

A. Trial counsel should be familiar with all state and federal post-conviction options available to the client. Trial counsel should discuss with the client the post-conviction procedures that will or may follow imposition of the death sentence.

B. Trial counsel should take whatever action(s), such as filing a notice of appeal, and/or motion for a new trial, will maximize the client's ability to obtain post-conviction relief.

C. Trial counsel should not cease acting on the client's behalf until successor counsel has entered the case or trial counsel's representation has been formally terminated. Until that time, Guideline 10.15 applies in its entirety.

D. Trial counsel should take all appropriate action to ensure that the client obtains successor counsel as soon as possible.

Guideline 10.15.1 Duties of Post-Conviction Counsel

A. Counsel representing a capital client at any point after conviction should be familiar with the jurisdiction's procedures for setting execution dates and providing notice of them. Post-conviction counsel should also be thoroughly familiar with all available procedures for seeking a stay of execution.

B. If an execution date is set, post-conviction counsel should immediately take all appropriate steps to secure a stay of execution and pursue those efforts through all available fora.

C. Post-conviction counsel should seek to litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality capital defense representation, including challenges to any overly restrictive procedural rules. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review.

D. The duties of the counsel representing the client on direct appeal should include filing a petition for *certiorari* in the Supreme Court of the United States. If appellate counsel does not intend to file such a petition, he or she should immediately notify successor counsel if known and the Responsible Agency.

E. Post-conviction counsel should fully discharge the ongoing obligations imposed by these Guidelines, including the obligations to:

- 1. maintain close contact with the client regarding litigation developments; and**
- 2. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;**

3. **keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments; and**
4. **continue an aggressive investigation of all aspects of the case.**

Guideline 10.15.2 Duties of Clemency Counsel

A. Clemency counsel should be familiar with the procedures for and permissible substantive content of a request for clemency.

B. Clemency counsel should conduct an investigation in accordance with Guideline 10.7.

C. Clemency counsel should ensure that clemency is sought in as timely and persuasive a manner as possible, tailoring the presentation to the characteristics of the particular client, case and jurisdiction.

D. Clemency counsel should ensure that the process governing consideration of the client's application is substantively and procedurally just, and, if it is not, should seek appropriate redress.

Attachment 7

**OPDS's Draft Final Report to the Public Defense Services
Commission on Service Delivery in Washington County
(June 8, 2007)**

Introduction

Since developing its first Strategic Plan in December 2003, the Public Defense Services Commission (PDSC) has focused on strategies to accomplish its mission to deliver quality, cost-efficient public defense services in Oregon. Recognizing that increasing the quality of legal services also increases their cost-efficiency by reducing risks of error and the delay and expense associated with remedying errors, the Commission has developed strategies designed to improve the quality of public defense services and the systems across the state for delivering those services.

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004, 2005 and 2006, the Commission completed investigations of the local public defense systems in Benton, Clatsop, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Wasco, Gilliam and Sherman Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of Washington County's public defense system, the comments and discussion that occurred during PDSC's public meeting in Washington County on Thursday, May 10, 2007 and a proposed service delivery plan. The final version of this report will contain PDSC's service delivery plan for Washington County.

PDSC's Service Delivery Planning Process

There are four steps to PDSC's service delivery planning process. First, the Commission has identified regions in the state for the purposes of reviewing local public defense delivery systems and services, and addressing significant issues of quality and cost-efficiency in those systems and services.

Second, starting with preliminary investigations by OPDS and the preliminary draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or region by holding one or more public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

Third, after considering OPDS's preliminary draft report and public comments during the Commission's meetings in a county or region, PDSC develops a "service delivery plan," which is set forth in the final version of OPDS's report. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's service delivery plans (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission's plans and in establishing other best practices in public defense management.

Any service delivery plan that PDSC develops will not be the last word on a local service delivery system, or on the quality and cost-efficiency of the county's public defense services. The limitations of PDSC's budget, the existing personnel, level of resources and unique conditions in each county, the current contractual relationships between PDSC and its contractors, and the wisdom of not trying to do everything at once, place constraints on the Commission's initial planning process in any region. PDSC's service delivery planning process is an ongoing one, calling for the Commission to return to each region of the state over time in order to develop new service delivery plans or revise old ones. The Commission may also return to some counties in the state on an expedited basis in order to address pressing problems in those counties.

Background and Context to the Service Delivery Planning Process

The 2001 legislation establishing PDSC was based upon an approach to public defense management, widely supported by the state's judges and public defense attorneys, which separates Oregon's public defense function from the state's judicial function. Considered by most commentators and authorities across the country as a "best practice," this approach avoids the inherent conflict in roles when judges serve as neutral arbiters of legal disputes and also select and evaluate the advocates in those disputes. As a result, while judges remain responsible for appointing attorneys to represent eligible clients, the Commission is now responsible for the provision of competent public defense attorneys.

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality

public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

Service delivery planning is one of the most important strategies PDSC has undertaken to promote quality and cost-efficiency in the delivery of public defense services. However, it is not the only one.

In December 2003, the Commission directed OPDS to form a Contractor Advisory Group, made up of experienced public defense contractors from across the state. That group advises OPDS on the development of standards and methods to ensure the quality and cost-efficiency of the services and operations of public defense contractors, including the establishment of a peer review process and technical assistance projects for contractors and new standards to qualify individual attorneys across the state to provide public defense services.

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the site teams visited contractors in Douglas, Jackson, Multnomah and Umatilla Counties. In 2006, teams have visited all of the the juvenile contractors in Multnomah and Lane Counties and criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams have visited the sole juvenile contractor in Clackamas County and the largest contract office in the state in Multnomah County.

In accordance with its Strategic Plan, PDSC has also developed a systematic process to address complaints about the behavior and performance of public defense contractors and individual attorneys.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC has undertaken a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers. In 2006, the Commission has devoted two of its meetings to investigating the condition of juvenile law practice across the state and to develop a statewide Service Delivery Plan for juvenile law representation.

In 2007 PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in these cases is being prepared for review by the Commission in June of 2007.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. The Commission has also found that the impact of such shortages is greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services.

Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and OPDS in the Commission’s service delivery planning process. That process is aimed primarily at reviewing and improving the “structure” for delivering public defense services in Oregon by selecting the most effective kinds and combinations of organizations to provide those services. Experienced public defense managers and practitioners, as well as research into “best practices,” recognize that careful attention to the structure of service delivery systems contributes significantly to the ultimate quality and effectiveness of public defense services.¹ A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and judgment, is best able to address systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

Most of PDSC’s other strategies to promote quality and cost-efficiency in the delivery of public defense services described above focus on the “performance” of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time to time in the course of the Commission’s service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed through the Commission’s deliberative processes. OPDS, with advice and assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

¹ Debates over the relative effectiveness of the structure of public defender offices versus the structure of private appointment processes have persisted in this country for decades. See, e.g., Spangenberg and Beeman, “Indigent Defense Systems in the United States,” 58 Law and Contemporary Problems 31-49 (1995).

In light of the distinction between structure and performance in the delivery of public defense services and the relative capacities of PDSC and OPDS to address these issues, this report will generally recommend that, in the course of this service delivery planning process, PDSC should reserve to itself the responsibility of addressing structural issues with policy implications and assign to OPDS the tasks of addressing performance issues with operational implications.

Organizations currently operating within the structure of Oregon's public defense delivery systems. The choice of organizations to deliver public defense services most effectively has been the subject of a decades-old debate between the advocates for "public" defenders and the advocates for "private" defenders. PDSC has repeatedly declared its lack of interest in joining this debate. Instead, the Commission intends to concentrate on a search for the most effective kinds and combinations of organizations in each region of the state from among those types of organizations that have already been established and tested over decades in Oregon.

The Commission also has no interest in developing a one-size-fits-all model or template for organizing the delivery of public defense services in the state. The Commission recognizes that the local organizations currently delivering services in Oregon's counties have emerged out of a unique set of local conditions, resources, policies and practices, and that a viable balance has frequently been achieved among the available options for delivering public defense services.

On the other hand, PDSC is responsible for the wise expenditure of taxpayer dollars available for public defense services in Oregon. Accordingly, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for proposals (RFPs) and responding to those proposals. As the largest purchaser and administrator of legal services in the state, the Commission is committed to ensuring that both PDSC and the state's taxpayers are getting quality legal services at a fair price. Therefore, the Commission does not see its role as simply continuing to invest public funds in whatever local public defense delivery system happens to exist in a region but, instead, to seek the most cost-efficient means to provide services in each region of the state.

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in

Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

The following discussion outlines the prominent features of each type of public defense organization in Oregon, along with some of their relative advantages and disadvantages. This discussion is by no means exhaustive. It is intended to highlight the kinds of considerations the Commission is likely to make in reviewing the structure of any local service delivery system.

Over the past two decades, Oregon has increasingly delivered public defense services through a state-funded and state-administered contracting system. As a result, most of the state's public defense attorneys and the offices in which they work operate under contracts with PDSC and have organized themselves in the following ways:

1. Not-for-profit public defender offices. Not-for-profit public defender offices operate in eleven counties of the state and provide approximately 35 percent of the state's public defense services. These offices share many of the attributes one normally thinks of as a government-run "public defender office," most notably, an employment relationship between the attorneys and the office.² Attorneys in the not-for-profit public defender offices are full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense

² Spangenberg and Beeman, *supra* note 2, at 36.

organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

Because of the professional management structure and staff in most public defender offices, PDSC looks to the administrators of these offices, in particular, to advise and assist the Commission and OPDS. Boards of directors of public defender offices, with management responsibilities and fiduciary duties required by Oregon law, also offer PDSC an effective means to (a) communicate with local communities, (b) enhance the Commission's policy development and administrative processes through the expertise on the boards and (c) ensure the professional quality and cost-efficiency of the services provided by their offices.

Due to the frequency of cases in which public defender offices have conflicts of interest due primarily to cases involving multiple defendants or former clients, no county can operate with a public defender office alone.³ As a result, PDSC expects public defender offices to share their management and law practice expertise and appropriate internal resources, like training and office management systems, with other contractors in their counties.

2. Consortia. A "consortium" refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to PDSC's RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few lawyers or law firms to 50 or more members. The organizational structure of consortia also varies. Some are relatively unstructured groups of professional peers who seek the advantages of back-up and coverage of cases associated with a group practice, without the disadvantages of interdependencies and conflicts of interest associated with membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for members, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs, and (d) plans for "succession" in the event that some of the consortium's lawyers retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

Consortia offer the advantage of access to experienced attorneys, who prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger law firms, but in which they no longer wish to practice law.

³ Id.

In addition to the access to experienced public defense lawyers they offer, consortia offer several administrative advantages to PDSC. If the consortium is reasonably well-organized and managed, PDSC has fewer contractors or attorneys to deal with and, therefore, OPDS can more efficiently administer the many tasks associated with negotiating and administering contracts. Furthermore, because a consortium is not considered a law firm for the purpose of determining conflicts of interest under the State Bar's "firm unit" rule, conflict cases can be cost-efficiently distributed internally among consortium members by the consortium's administrator. Otherwise, OPDS is required to conduct a search for individual attorneys to handle such cases and, frequently, to pay both the original attorney with the conflict and the subsequent attorney for duplicative work on the same case. Finally, if a consortium has a board of directors, particularly with members who possess the same degree of independence and expertise as directors of not-for-profit public defenders, then PDSC can benefit from the same opportunities to communicate with local communities and gain access to additional management expertise.

Some consortia are made up of law firms, as well as individual attorneys. Participation of law firms in a consortium may make it more difficult for the consortium's administrator to manage and OPDS to monitor the assignment and handling of individual cases and the performance of lawyers in the consortium. These potential difficulties stem from the fact that internal assignments of a law firm's portion of the consortium's workload among attorneys in a law firm may not be evident to the consortium's administrator and OPDS or within their ability to track and influence.

Finally, to the extent that a consortium lacks an internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services the consortium delivers. These methods would include (i) external training programs, (ii) professional standards, (iii) support and disciplinary programs of the State Bar and (iv) a special qualification process to receive court appointments.

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of

individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

The foregoing observations are not meant to suggest that law firms cannot provide quality, cost-efficient public defense services under contract with PDSC. Those observations simply suggest that PDSC may have less influence on the organization and structure of this type of contractor and, therefore, on the quality and cost-efficiency of its services in comparison with public defender offices or well-organized consortia.

Finally, due to the Oregon State Bar's "firm unit" rule, when one attorney in a law firm has a conflict of interest, all of the attorneys in that firm have a conflict. Thus, unlike consortia, law firms offer no administrative efficiencies to OPDS in handling conflicts of interest.

4. Individual attorneys under contract. Individual attorneys provide a variety of public defense services under contract with PDSC, including in specialty areas of practice like the defense in aggravated murder cases and in geographic areas of the state with a limited supply of qualified attorneys. In light of PDSC's ability to select and evaluate individual attorneys and the one-on-one relationship and direct lines of communications inherent in such an arrangement, the Commission can ensure meaningful administrative oversight, training and quality control through contracts with individual attorneys. Those advantages obviously diminish as the number of attorneys under contract with PDSC and the associated administrative burdens on OPDS increase.

This type of contractor offers an important though limited capacity to handle certain kinds of public defense caseloads or deliver services in particular areas of the state. It offers none of the administrative advantages of economies of scale, centralized administration or ability to handle conflicts of interest associated with other types of organizations.

5. Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's Preliminary Investigation in Washington County

The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are to (1) provide PDSC with an assessment of the strengths and weaknesses of those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense system begins with a review of an OPDS report like this.

PDSC's investigations of local delivery systems in counties or judicial districts across the state serve two other important functions. First, they provide useful information to public officials and other stakeholders in a local justice system about the condition and effectiveness of that system. The Commission has discovered that "holding a mirror up" to local justice systems for all the community to see can, without any further action by the Commission, create momentum for local reassessments and improvements. Second, the history, past practices and rumors in local justice systems can distort perceptions of current realities. PDSC's investigations of public defense delivery systems can correct some of these local misperceptions.

On May 10, 2007 from 9:00 a.m. to 1:00 p.m., PDSC held a public meeting in Room B-30 of the Public Services Building in Hillsboro, Oregon. The purpose of that meeting was to (a) consider the results of OPDS's investigation in the county as reported in the preliminary draft report, (b) receive testimony and comments from judges, the Commission's local contractors, prosecutors and other justice officials and interested citizens regarding the quality of the county's public defense system and services, and (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Washington County.

This preliminary draft report is intended to provide a framework to guide the Commission's discussions about the condition of Washington County's public defense system and services, and the range of policy options available to the Commission – from concluding that no changes are needed in the county to significantly restructuring the county's delivery system. The initial draft of this report was also intended to offer guidance to PDSC's invited guests at its May 10, 2007 meeting, as well as the Commission's contractors, public officials, justice professionals and other citizens who might be interested in this planning process, about the kind of information and comments that would assist the Commission in improving Washington County's public defense delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Washington County's justice system could turn out to be the single most important factor contributing to the quality of the final version of

OPDS's report to the Commission and its Service Delivery Plan for Washington County.

OPDS's Preliminary Findings in Washington County⁴

The Court

There are 14 judges in Washington County serving a current population of 514,269 county residents.⁵ Judge Thomas W. Kohl is the presiding judge and Richard Moellmer is the Trial Court Administrator. The court maintains a central docket with master calendaring.

The District Attorney

Robert Hermann is the District Attorney of Washington County. He has 37 deputies, two of whom are assigned to juvenile court. The office uses a lateral assignment system. Cases are handled from the initial filing to the conclusion of the case by the same deputy district attorney.

Criminal Case Processing

All criminal cases are processed initially through a courtroom in the Law Enforcement Center, which also houses the sheriff's office and the jail. Judge Rick Knapp is currently assigned to this court on a full-time basis. At arraignment defendants who are eligible for the new Early Case Resolution program (ECR), discussed below, are separated from those who are not. Persons ineligible for ECR treatment proceed to arraignment. Lawyers are not present for these arraignments. After arraignment the next hearing in felony cases is a preliminary hearing held a week later. In non-ECR cases a pre-trial conference is scheduled 2 weeks later if the defendant is in custody or 4 weeks later, if the defendant is not in custody. The county seeks to adjudicate all criminal cases within 120 days⁶. If a case is not resolved at the pretrial conference the next appearance is for case assignment on the Friday before the week of trial. All lawyers and their clients must be in the presiding judge's courtroom for case assignment to indicate whether each matter is ready for trial the following week. Cases are sometimes double set. If the first case does not proceed to trial, the back-up case is tried.

⁴ These findings were amended in light of the testimony and other input received by the Commission on May 10, 2007.

⁵ By way of contrast, Multnomah County has 38 judges and a population of 681,454. Washington County's population increased by 15% between 2000 and 2006. Source: US Census Bureau.

⁶ Criminal cases, including felonies other than Measure 11 offenses, are resolved within 120 days of the arraignment. In 2001 there were 545 cases over a year old. As of December of 2006 there was only one misdemeanor and six felonies over a year old.

Trials are held on Tuesdays through Fridays. Mondays are pre-trial conference days. Each judge handles a certain number of pretrial conferences. There is very little time for each pretrial conference, although the number of pretrial conferences is decreasing as a result of the ECR program. In addition the domestic violence docket, the diversion docket, the drug court, the mental health court and the civil motion docket are all scheduled on Mondays.

ECR Program

Prior to the implementation of the ECR program two of the judges undertook to conduct an early disposition program on their own. It was used primarily for probation violations and minor misdemeanors such as Driving While Suspended, Theft II and Theft III. A significant number of cases were resolved but there was no participation by defense counsel and there was some inconsistency in outcome depending on which judge was hearing the case.

In 2005, in order to address the issue of jail overcrowding, Washington County undertook to update its Criminal Justice System Master Plan. To assist with the project it retained the services of David M. Bennett, a nationally recognized criminal justice expert. To examine one mechanism for addressing overcrowding, Mr. Bennett took a team of Washington County officials to Reno, Nevada to observe its early disposition program. Adapting what they learned to their own county, Washington County officials created what may now be a model program, which appears to comply in all important respects with PDSC's Guidelines for Participation of Public Defense Attorneys in Early Disposition Programs.⁷

The list of misdemeanor and felony offenses eligible for ECR treatment is set forth in Exhibit B. The list includes property offenses, drug offenses and other miscellaneous non-person offenses. During the first three weeks of the program, of the 305 cases referred to the ECR court, 196 were resolved. The court also deals simultaneously with any pending probation violations and any violations arising out of the new criminal conduct, allowing the defendant full resolution of all pending matters and avoiding the need for additional court hearings. Probation staff is present in the ECR court with files for defendants with open probation cases. Probation staff also assists defendants in arranging for community service. Since the court also collects restitution and fees the trial court administrator plans to place a cashier at the justice facility to facilitate the receipt of these funds. Resolution of both the new charge and any probation violations at the initial appearance means that there will be significantly fewer Failures to Appear since defendants don't have to return to court.⁸

⁷ The Guidelines are attached as Exhibit A.

⁸ Sheriff Rob Gordon indicated that this category of offenses had already fallen significantly after the county implemented a policy requiring arraignment before release. After ECR went into effect the number of Failures to Appear went from 25-30 per week to none.

District Attorney Bob Hermann is very pleased with the results of the program to date. He assigned a very senior deputy to the court. The DA's office is able to provide discovery to the defense by 11:30 am for cases to be heard at 3 pm. Mr. Hermann believes that in his county the program will not result in a widening of the net.

Nine lawyers from four of the contract offices are participating in ECR. Currently contractors are receiving full case credit for these cases and a number of law enforcement and court representatives urged that PDSC not lower these rates because, although the lower level cases are now being resolved with less attorney time, the remaining cases are more difficult and will require more attention.

Drug court

Presiding Judge Thomas Kohl was instrumental in creating Washington County's drug court, which has now been operating for two years. Approximately 38 clients are currently being served by the drug court and, in view of its success, it will expand to include 50 people. Initially, the court was available only to defendants accused of possessing controlled substances but it soon became clear that others, including defendants with significant non-person felony histories, could benefit from the court. The program lasts from 12 to 18 months depending on the individual. Clients are in court once a week for the duration of their involvement. Keith Rogers of MPD has staffed this court since the beginning. A second attorney will be needed in the near future. MPD currently receives their normal case credit for these cases regardless of the number of appearances that may be required.

Mental Health Court

A court for probationers with mental health issues has just been inaugurated. Judge Marco Hernandez organized the Mental Health Court Policy Planning Committee which created the court. Keith Rogers of MPD is a member of the committee. According to Judge Hernandez, approximately 78% of Washington County's prisoners have mental health issues. Currently, there are only three participants in the court but the number is expected to grow to twenty and, eventually, to forty. Participants attend court proceedings once every two weeks. The length of the program is indefinite. A single MPD attorney currently staffs the court and the office receives the underlying case credit (generally a probation violation credit). A second attorney will be needed as the number of participants increases.

System Issues in Criminal Cases

A number of concerns about the operation of the criminal court system were brought to OPDS's attention during the course of meetings with local officials and

providers. These included the time that is wasted by attorneys who appear at case assignment. The cases are scheduled in alphabetical order by client so lawyers with more than one client often have to spend much of each Friday morning waiting for their cases to be called. Some lawyers say that pretrial conferences are a waste of time, since the deputy district attorney who is present usually has no authority to settle the case for anything other than the terms of the written offer. In Measure 11 cases some attorneys neglect to provide the state with information about the defendant that might persuade the district attorney to agree to a non-Measure 11 sentence. Attorneys are busy and sometimes cannot have their cases ready as soon as the court requires. One attorney suggested that the court create a special docket time for clients who have failed to appear so that they could come to court in lieu of turning themselves in to custody and waiting days for a court hearing. OPDS believes that all of these matters could be discussed and resolved at a meeting of stakeholders. Such meetings occur regularly in other counties. Judge Kohl indicated that he is willing to meet with anybody who has a suggestion for improving the system.

Juvenile System

Washington County has both a judge and a referee assigned full time to its juvenile court. The district attorney's office has two deputies handling juvenile cases. In addition to handling delinquency cases they also participate in dependency cases⁹ on behalf of the state until jurisdiction is established. Thereafter the Attorney General represents the Department of Human Services (DHS) and the State of Oregon in dependency and termination of parental rights cases.

Judge James Fun, a former deputy district attorney, was only recently assigned to the juvenile court. His predecessor, Judge Kirsten Thompson, worked with all of the involved parties to see that attorneys were present to represent parents and children at shelter hearings in dependency cases. In the past these parties had appeared without counsel at the initial hearing.

"Team decision meetings" are now being convened by DHS at the time of the initial shelter hearing in dependency cases in order to accelerate access to services for those parents who are willing to engage in them prior to adjudication.

Status conferences are set within 30 days of the shelter hearing and contested hearings are held approximately 30 days after that. There are no pretrial conferences in dependency cases so negotiations have to be conducted outside of the court process. The county generally achieves adjudication within the required 60-day period.

⁹ Deputy district attorneys are not always present for shelter and other hearings. DHS workers handle much of the legal work in the case, such as preparing the petition, creating and labeling exhibits, identifying witnesses and presenting the agency's position in court.

Once disposition has occurred, the court may not review the case until the permanency hearing, nine months later. This practice may be changing. It is reported that Judge Fun is scheduling more court hearings than his predecessor.

The Citizen Review Board customarily reviews each case within 180 days of the date the child came into care.

Judge John Lewis has just started a new mediation program in termination cases.

There is a strong Court Appointed Special Advocate (CASA) program in Washington County, which is part of the joint Multnomah County/Washington County program. There are a hundred volunteers and three full-time supervisors in the program.¹⁰ CASAs are currently appointed in approximately 15 to 18% of the cases. In Washington County all CASA appointments occur after jurisdiction has been established.

System Issues in Juvenile Court

For a period of time members of the local juvenile court community were not meeting regularly. Judge Fun and Referee Michele Rini recently conducted the first of what are planned to be quarterly meetings of the bench and bar. This will be an appropriate forum for discussion of some of the issues that were brought to OPDS's attention during interviews in preparation for the Commission's review. They include the following.

There is a lack of adequate physical space for the parties to gather before court hearings and for attorneys to confer in confidence with their clients. The juvenile court area is very small and crowded. There are conference rooms in the Juvenile Department but these are not intended for attorney conferences and are not usually available. There is one large conference room which could accommodate a meeting between all of the parties in a case but it, too, is often in use by Juvenile Department staff. Attorneys find themselves discussing confidential matters with their clients in very public areas. There is a need for a dedicated conference space. It was reported that the county is looking for additional space.

Lawyers are very busy and prefer to have cases set for specific times, if possible, to avoid the need to be in court waiting for a case to be called. Initial appearances in termination cases, for example, occur twice a month. All of them are set for the same time requiring all of the lawyers to be present. In addition court matters that are scheduled for a specific time are scheduled for only fifteen minutes. This is almost never enough time and, as a result, the court gets farther behind as the day progresses. People report spending hours of unnecessary

¹⁰ This CASA program also has a training coordinator on staff. CASAs receive 30 hours of initial training with 12 hours of additional training required per year.

time in court. When a case is delayed an attorney may be required to be in another court by the time the juvenile matter is finally called, further delaying that matter for the other parties and attorneys in the case. Although there are now two full-time judicial officers in the Washington County juvenile court, they are both very busy. Despite the press of other matters, it is said that they do a good job of taking as much time as needed for each case.

It was reported that Washington County takes longer to finalize adoptions than other counties. There appears to be a lack of available adoptive homes and, as a result, adoption committees sometimes have to be rescheduled. The parties may need to ask the court to monitor this process more closely.

Representation Issues in Juvenile Dependency Cases

Attorneys on all sides in juvenile proceedings in Washington County indicate that they enjoy good working relations with each other. While they may advocate forcefully for their clients in the courtroom, they reportedly maintain a professional relationship with each other and relate well to each other outside the courtroom. Some attorneys do not treat DHS workers with the same level of respect. In addition, there does not appear to be much collaboration between CASAs and some of the attorneys, even when their positions in a case are similar.

All of the attorneys are reported to work hard but some are considered less effective than others. The more experienced attorneys in all of the firms are described as good attorneys who know when to litigate. They raise appropriate issues and hold DHS accountable. For these attorneys the main concern is that they don't have enough time to meet with their clients.

Only a few lawyers are believed to meet with child clients regularly;¹¹ most meet with them rarely, and some never. Attorneys in this latter group acknowledge that their recommendations to the court are not based on first-hand information but on information provided by the DHS caseworker or the CASA. It was reported that a number of attorneys for children decline to present a position on behalf of their child clients, sometimes advising the court that they will decide whether to take a position when all of the evidence has been presented by the other parties in the case. This does not appear to constitute "representation" as contemplated in PDSC's contracts.¹²

¹¹ MPD attorneys as a group, a small number of individual lawyers from other firms, and several non-contract attorneys are generally held out as the attorneys who always meet with their clients, return phone calls and collaborate with parties sharing similar interests.

¹² One attorney reportedly advised the court that he would not take a position one way or another in a termination case for fear of liability if the outcome for which he successfully advocated resulted in injury to the child.

A lot of attorneys also reportedly fail to meet with parent clients before court. (Of course some parent clients may not cooperate with their attorneys.) Many attorneys also fail to attend DHS team decision meetings with their clients and fail to attend Citizen Review Board hearings.

For newer attorneys in offices other than MPD, it was reported that there is a lack of adequate training. They don't appear to have mentors or initial training. Their caseloads are also said to be high and their compensation inadequate.

Some attorneys are difficult to reach and do not return telephone calls.

Representation Issues in Delinquency Cases

In delinquency practice the quality of representation appears to vary substantially from one attorney to another. Some are reported to do very good work, to communicate well with their clients and to prepare for hearings. Other attorneys are reported to be unprepared for hearings or even absent without having arranged for another attorney to cover the hearing, to fail to see their clients before court, and to fail to respond to calls regarding their clients. Recently the release of one youth had to be delayed because the attorney had asked to be consulted about the youth's placement before he was moved and the attorney could not be reached. Sometimes law enforcement officers want to question a youth and staff are unable to contact the youth's attorney. Most attorneys don't meet with the parents of their clients and this is particularly true of non-English speaking parents who feel excluded from the process. Some attorneys provide their clients with reformation plans and police reports without deleting victim contact information. In the recent past there has been no forum in which the attorneys and juvenile court counselors could discuss issues of this nature. Judge Fun recently reinstated regular bench/bar meetings at which such issues might be discussed. Juvenile department staff members are not comfortable talking to supervisors in the attorneys' offices for fear they might jeopardize the good will that does exist and the efforts of a few in the past to raise performance issues was not well received by the attorneys.

Representation is currently not provided at in-custody shelter hearings in delinquency cases. Such hearings are fairly uncommon since the county has very few detention beds and most youth are released.

One commentator said that the younger attorneys may be pleading too many cases. They don't have the skills to make good decisions about which cases should be tried.

Caseload Trends

As indicated in the table below, both the criminal and the juvenile caseloads in Washington County have remained relatively stable during the current biennium.

Date	Total Caseload	Juvenile
July 2001- June 2002	16,037	2,444
July 2002 - June 2003	14,395 (<i>BRAC period</i>)	3,124
July 2003 - June 2004	17,236	3,995
July 2004 - June 2005	18,012	4,718
July 2005 - June 2006	17,927	4,952

Although the population of Washington County is increasing, according to local law enforcement agencies the crime rate appears to have leveled off.

As more juvenile cases are going to contractors, there are fewer cases for the private bar attorneys to handle.

Public Defense Providers

Most public defense services in Washington County are delivered under contract with PDSC. The principal providers are the Washington County office of Metropolitan Public Defender Services, Inc; the Oregon Defense Attorney Consortium; and four private law firms: Brindle, McCaslin & Lee; Garland, Burton & McCaffery; Karpstein & Verhulst; and Ridehalgh & Associates. Each of the contract offices is described briefly below. In addition there are non-contract attorneys who handle cases on an hourly basis.

Metropolitan Public Defender

MPD began operations in Multnomah County in 1971 and opened the Washington County office in 1973. MPD is a private, not-for-profit corporation that contracts with PDSC for 100% of its professional services. MPD has a 5-member Board of Trustees that oversees the affairs of the corporation. One member of the board is appointed by the chair of the Washington County Commission.

The MPD-WCO is one of two offices of MPD, Inc. As such, the central administration of MPD contracts with PDSC, and manages accounting and payroll, hiring and human resources, information technology, capital acquisitions and other aspects of the administration of MPD. The managers of MPD-WCO are part of the administration and are active participants in administrative decision-making. MPD-WCO functions independently and the managers have a great deal of autonomy in the day-to-day operations of the office.

MPD-WCO has 20 attorneys including the director, 6 investigators, 10 legal assistants, 4 secretaries, one data integrity specialist and one alternatives worker

who also acts as a legal assistant. Many employees have worked in the office for a long time; two years ago the median length of stay was reported to be 7.5 years.

A “team” at MPD-WCO generally consists of a full-time attorney, a half-time legal assistant and a one-third time investigator. Each team is assigned to one of the following groups within the office: the Major Felony Group, the Misdemeanor/Minor Felony Team, the ECR Team, the Juvenile Team, the Civil Commitment Team or the Spanish Language Team.

MPD-WCO evaluates every employee after the first six months of employment and has a goal of evaluating every employee once a year thereafter. A series of questionnaires has been developed which seek information about an employee’s performance. These questionnaires are distributed to the employee’s co-workers including both attorneys and staff. According to the director, feedback from judges and district attorneys has been solicited in the past. MPD-WCO has developed a form for obtaining client feedback but implementation of the process is reported to be in its infancy. There is a written complaint policy in place that can be used by clients and others.

MPD provides a formal full-day orientation for all newly hired employees. Immediate supervisors are responsible for the training of new employees in their sections. All new attorneys at MPD participate in a multi-day trial skills training program offered twice a year that utilizes a mock criminal case and lectures to teach trial tactics, strategy, ethics and professionalism. In recent years attorneys from other public defense offices have been invited to participate in this program if all of the openings are not needed for new MPD lawyers. Periodically, investigators, legal assistants and other members of the support staff have half-day or day-long training programs devoted to professional development and training. There are noon-hour brown bag sessions approximately every other week that focus primarily on legal issues. Occasionally there are after-hours trainings on specific topics. Limited reimbursement is available to other staff for training. MPD has an attorney trainer who plans brown bags, the trial skills training program, and other trainings. MPD also maintains a law library at each office and electronic motion and memo banks. The attorney trainer is available to consult with other attorneys regarding legal issues in their cases.

MPD staff attorneys and other MPD employees are represented by the American Federation of State, County and Municipal Employees (AFSCME).

This office is described as “very good, very stable” by one judge, and “the Cadillac” by another. A third judge said that while there are issues with some attorneys,¹³ the office is a solid, major player. One commentator said that the

¹³ OPDS was advised that the Director does not seem able to “ease out” unsatisfactory lawyers. On the other hand, Sheriff Rob Gordon said that if there is a problem with a public defender his office just calls MPD and it is taken care of.

office does a good job but that the attorneys are “buried” by the number of cases they handle.

The Director of the office, Keith Rogers, is considered an important partner in all community justice initiatives in the county. MPD is listed as a “key stakeholder,” for example, in the Criminal Justice System Master Plan referred to above. MPD is involved in all three of the county’s specialty courts and its attorneys and staff participate in many criminal and juvenile justice work groups and task forces.

MPD’s contract includes all categories of cases except Non-Support, Post-Conviction Relief, and DUII Diversion.

A copy of Keith Rogers’ response to a 2004 questionnaire regarding the functioning of his office, and an April 2007 update to the questionnaire are attached as Exhibit C.

Oregon Defense Attorney Consortium

The Oregon Defense Attorney Consortium (the consortium) was formed in 2005 for the purpose of contracting with PDSC on behalf of the member attorneys. It is organized as a private non-profit corporation. There are three members of its board of directors, all of whom are members of the consortium. The consortium plans to recruit two additional board members from outside the consortium. Rob Harris was instrumental in organizing the consortium and serves as its executive director. The consortium includes approximately 18 attorneys. Of the contractors, only MPD and the consortium handle Measure 11 cases and major felonies. The consortium also handles minor felonies and misdemeanors and participates in the ECR court. The consortium administrator receives information about any bar complaints against consortium members and actions taken by member firms in response. The administrator also inquires of the court periodically about member performance. The administrator receives complaints directly from clients and works with the attorney and client to resolve them. The consortium is seen as providing very good representation¹⁴ and creating an opportunity for some of the best and most experienced lawyers in the county to handle public defense cases. The Harris firm has added new attorneys who are now being trained and other consortium members may also be adding new lawyers in the future. Rob Harris is described as a great asset - he is knowledgeable, provides good advice, has good skills, and gets along with everyone.

Mr. Harris is not satisfied with the rates the consortium is receiving under its current contract because they are lower than the rates received by providers in other areas of the state. As he has informed OPDS staff, he believes that there should be a presumption that contractors will receive equal rates and if any

¹⁴ Two judges rated the consortium as the best provider in the county.

contractor receives more OPDS should be able to articulate the reasons for the difference.

The consortium handles all categories of felony cases, misdemeanors, probation violations and a small number of post-conviction cases.

A copy of Robert Harris's response to OPDS's questionnaire to consortium administrators and a copy of the by-laws of the non-profit Oregon Defense Attorney Consortium, Inc. are attached as Exhibit D.

Washington County Indigent Defenders, P.C.

This firm is also known as Garland, Burton and McCaffery. Marvin Garland is the contract administrator. His firm has contracted with OPDS since 1994. The firm has a board of directors comprised of its shareholders. There are currently eight associates. The firm handles C felonies, misdemeanors and probation violation cases, and participates in the ECR program. It also began taking juvenile cases in January of 2007. Its monthly quota for 2006 was 212 cases. The actual number of cases it received per month was 182.

The Garland firm has been identified in the past, prior to the addition of two new partners, as experiencing the most difficulty with performance. Under current management the firm appears to be operating more effectively. It was reported that it seems more settled and the lawyers appear to be happier.¹⁵

A number of interviewees expressed concern about the lack of training for new lawyers at this firm. It was considered a significant improvement that one of the partners was present in the courtroom to observe a new attorney in a recent jury trial. The firm has no formal training program but indicates that it is developing one. The firm reports that it performs regular evaluations of attorneys and staff. It also uses "team leaders" for the criminal and juvenile caseloads who communicate regularly with their team members by email. The lawyers also meet for lunch occasionally.

The distribution of funds within the firm was reported by observers outside the firm to be a problem. New attorneys were said to receive very poor salaries. Two interviewees recommended that PDSC review salaries in this firm (as well as in others) as part of the contracting process and require that adequate funds be distributed to the attorneys doing the work. The firm has now provided information regarding salaries which indicates that it pays competitive salaries.

A copy of the firm's questionnaire response and a copy of a letter received from Grant Burton regarding salaries at the firm are attached as Exhibit E.

¹⁵ One interviewee said that significant improvement is still needed. Attorneys continue to come to court without having met their clients. It was reported that two attorneys have just left the firm.

Karpstein & Verhulst

This firm has been contracting with PDSC since 1994. It does not have a board of directors. Steven Verhulst is the contract administrator.

The partners in this firm are well respected in the legal community. The bulk of their contract is for juvenile work. The firm has six attorneys, three of whom are new. The firm has no formal training program but has a “hands on practice,” assigning a supervisor who is available for consultation on a daily basis to each new attorney. Supervisors accompany new attorneys to their first trials. They are encouraged to ask questions and once or twice a month the attorneys get together to discuss cases over lunch.

The firm handles misdemeanors, probation violations and juvenile cases.

A copy of the firm’s questionnaire response is attached as Exhibit F.

Brindle, McCaslin & Lee, P.C.

The Brindle, McCaslin & Lee firm has seven associates. Under its previous name of McKeown & Brindle it has been providing public defense services in Multnomah County since 1988 and in Washington County since 1995. It does not have a board of directors. The firm is reported to have undergone a lot of changes lately. The fact that Ted Brindle, the senior partner in the firm, is now working in Washington County is considered a positive development. This firm does not have a formal training program for its new attorneys although senior attorneys review cases with newer attorneys. Lack of adequate training was reported to be a problem for this firm in the past. Recently, however, they have added some new but very experienced attorneys including a former deputy district attorney from Multnomah County.

The firm handles misdemeanors, probation violations and juvenile cases.

A copy of the firm’s questionnaire response is attached as Exhibit G.

Ridehalgh & Associates, LLC

The Ridehalgh firm has been contracting with PDSC since 2000. It has seven attorneys, including Ronald Ridehalgh, who represent clients in C felony, misdemeanor, ECR, DUII Diversion, Domestic Violence Deferred Sentencing and juvenile cases. The firm does not have a board of directors. It has an employee manual and written job descriptions. Employee performance issues are generally addressed in one-on-one discussions. A number of creative awards have been devised to recognize attorney achievements. The firm has a formal complaint procedure for clients and others. It also has a sophisticated case tracking system. Little direct comment was received about the firm from

interviewees although one judge said the firm did good work and had good staff continuity. In juvenile cases a single interviewee reported that Ridehalgh attorneys often fail to return calls and fail to attend treatment reviews. Mr. Ridehalgh has addressed this allegation in a letter of May 17, 2007 which is included in Exhibit H.

The firm handles C felonies, misdemeanors, probation violations, contempts, and juvenile cases.

A copy of the firm's questionnaire response is included in Exhibit H.

Private Bar

In addition to the contractors there are attorneys who handle cases from the court appointment list on an hourly basis. The attorneys who handle juvenile cases on an hourly basis are considered important participants in the juvenile court system.

OPDS's Recommendations for Further Inquiry at PDSC's May 10, 2007 Meeting in Hillsboro

In light of the information which came to its attention during interviews with representatives of the Washington County juvenile and criminal justice systems, OPDS recommended that the Commission focus its inquiries and discussion at the Commission's May 10 meeting in Hillsboro on the following topics:

1. Structural issues. Washington County has significant structural variety among its providers – a strong public defender office, a consortium with both experienced and new attorneys, and a number of firms and individual providers. It would appear to be a system that permits more experienced lawyers to continue to participate in public defense while maintaining their private practices but that also provides new attorneys with a variety of options for becoming involved in public defense representation. The Commission may well determine that this is at least one appropriate service delivery model. If caseloads decline there may be a need for fewer providers. One component of this system that may be especially vulnerable if caseloads decline is the hourly rate attorneys since OPDS must see that its contractors' quotas are met before authorizing appointment of hourly rate attorneys.
2. Quality improvement. Most of the issues raised by county officials in discussions with OPDS staff related to the quality of representation by, and the adequacy of training for, newer public defense attorneys, rather than the structure of these organizations.

Of course increased funding would be an important factor in the effort to improve quality. Despite the Commission's effort in the last contracting cycle to direct limited new funds to contractors with the lowest case rates, Washington County contractor compensation (except for MPD) remains below average.¹⁶

Whether or not additional funds are available, there are steps that contractors should be encouraged to take to improve representation. The consensus of opinion among those who see new lawyers in the courtroom on a regular basis is that there needs to be a basic training course for these lawyers. They need an opportunity to learn the essentials of courtroom practice before appearing in the courtroom with their first clients. Training should focus on the "how tos" of courtroom practice such as how the jury selection process works, when and how to make a motion for judgment of acquittal, which motions should be made outside of the presence of the jury, that adjudication needs to occur before the attorney addresses disposition, etc. The judges are willing to help but say they are rarely asked. Contractors who do not have in-house training like MPD should confer with MPD, the county bar association, OCDLA, the state bar and others about how to create an appropriate training plan for new attorneys. In lieu of such a training program an effective mentoring plan for each new attorney could be an effective option. One interviewee proposed that PDSC include in its contract a requirement that all attorneys with less than 18 months' experience be required to attend a practical skills training on the essentials of courtroom practice.

It was reported that defense attorneys are missing an opportunity to be more effective in presenting their cases to juries. The prosecution makes frequent use of new technologies such as power point to better outline and present their cases. Defense attorneys say they simply don't have the equipment but others say they don't appear to be making any effort to get it. The trial court administrator's office may have some equipment it could make available. Local commentators believe it is more of a training issue than a funding issue.

In the area of juvenile representation, the issues identified in Washington County are similar to those identified in other counties – failure by some attorneys to visit with child clients and to advocate effectively for them, failure to meet with adult clients prior to court hearings and to advocate forcefully on their behalf for needed services from DHS and appropriate findings by the court, failure to attend Citizen Review Board hearings and planning meetings convened by DHS. All of these issues are addressed in the Qualification Standards for Court Appointed Counsel, PDSC's model contract, the Oregon Rules of Professional Conduct and the

¹⁶ True "averages" are difficult to calculate in view of the number of variables which must be considered. By "average" this report means the approximate average among similar providers.

Oregon State Bar's Performance Standards. Heavy caseloads and insufficient training appear to be the principal causes of unsatisfactory performance, although some lawyers manage to do excellent work despite their caseloads.

3. Although attorneys are now present for shelter hearings in juvenile dependency cases and for the initial hearing in ECR cases, defendants who are not eligible for ECR and in-custody youth still appear without counsel at their arraignments. It is hoped that arrangements can be made in the near future for attorneys to be present at all initial hearings.
4. A number of interviewees noted the increasing need for bi-lingual and bi-cultural attorneys and office staff. The district attorney's office has ten employees who are Spanish speaking, including all of the receptionists, two victims' assistants, and two attorneys. MPD has a Spanish Language team to serve its Spanish speaking clientele. The consortium includes three member attorneys who speak Spanish. The Ridehalgh firm has successfully recruited a number of native Spanish speaking staff members, as has the Garland firm. But more Spanish speaking lawyers and staff are needed in both juvenile and criminal cases.
5. Because of its interest in the success of appropriately structured early disposition programs, the commission may want to closely monitor Washington County's ECR program and, if it proves successful, consider its use as a model in other jurisdictions.

PDSC's Public Meeting in Washington County

The Commission received comments on May 10 from the following guests, in order of appearance: Cal Downey, Susan Mandiberg, Judge Thomas Kohl, Judge Marco Hernandez, Susan Isaacs, Judge Kirsten Thompson, Robert Hermann, Rob Harris, Judge Donald Letourneau, Susan Kopplin, Grant Burton, Ron Ridehalgh, Warren Bruhn, Jim Hennings, and Keith Rogers. An edited transcript of their comments and discussions with the Commission's members is included in Attachment 2.

PDSC's Service Delivery Plan for Washington County

On the whole, PDSC found that the public defense delivery system in Washington County is working effectively.

Although there is a relatively large number of providers in Washington County, there does not appear to be a need for significant change in that regard. The system includes representatives of each type of provider - a well-established public defender office, a new but strong consortium, a number of private firms - and it also includes some private bar attorneys who work on an hourly rate

basis¹⁷. Each of these entities has found its own niche in the county. Only MPD seemed to indicate that it would like to receive a larger share of the caseload¹⁸. Except for some concerns regarding juvenile representation which are discussed below, each of the providers appears to be covering its cases adequately. No reports were received that attorneys were not appearing for court hearings or could not be reached by the court or clients. Each office also appears to deal with conflicts efficiently and effectively since no concerns about conflict management were brought to the Commission's attention. With the number and diversity of providers in Washington County, OPDS has some added flexibility. If any contractor were to cease to provide adequate representation there are alternative providers that could accept additional cases.

Suggestions for Improving Delivery

Training for lawyers

As noted above, there was broad consensus among those who see new lawyers in the courtroom that there needs to be a basic training course for these lawyers about the essentials of courtroom practice - the "how tos" of courtroom practice. Each provider needs to determine how best to provide this training for its own attorneys. It is recommended that these firms confer with MPD about its trial skills training program, and with the county bar association, OCDLA, the state bar and others about how to create an appropriate training or mentoring plan for new attorneys. One interviewee proposed that PDSC include in its contract a requirement that all attorneys with less than 18 months' experience be required to attend a practical skills training on the essentials of courtroom practice. If PDSC wished to impose such a requirement it would be more appropriate to include it in the Qualification Standards than in the contract. Currently, there are limited trainings of this type available and new lawyers must generally start handling cases shortly after they are hired. At the very least these firms should establish a mentoring plan for each new attorney that includes a comprehensive list of the topics to be covered by the mentor before the new attorney can appear in court without the mentor being present. MPD, OCDLA, the Oregon State Bar, the Washington County Bar Association and others could assist in the development of the checklist. Such a checklist could be part of a training manual developed by the law firm.

New lawyers also need to communicate with the judges about their initial appearances. Judges can provide helpful feedback.

If lawyers believe, as reported by the court, that the effectiveness of their presentations could be improved by the use of new technologies, they should

¹⁷ The Commission may want to consider whether affirmative steps should be taken to preserve private bar participation in Washington County.

¹⁸ In addition, MPD Board Member Susan Mandiberg testified that in order to retain attorneys for more than a few years, MPD needs to receive a sufficient number of "high end" cases

explore means of obtaining and learning how to use such technologies. The county bar association or OCDLA might be available to identify potential trainers.

Standards for Juvenile Representation

The Oregon Rules of Professional Conduct (ORPC), the Commission's Qualification Standards, the state bar's Performance Standards for representation in delinquency and dependency cases, and the Commission's model contract all require attorneys to meet with their clients in a timely way and to provide them with competent representation. The ORPC and the performance standards also require that attorneys keep the client informed about the status of their case, explain the case sufficiently to allow the client to make informed decisions in the case, and, with child clients, determine whether the child is capable of considered judgment about the decisions which are the child's to make and proceed either to represent the child's best interest or the child's expressed wishes as appropriate. These requirements are not met by those attorneys who fail to visit with child clients and to advocate effectively for them, who fail to meet with adult clients prior to court hearings and to advocate forcefully on their behalf for needed services from DHS and appropriate findings by the court, who fail to attend Citizen Review Board hearings and planning meetings convened by DHS when such attendance is required for competent representation.

It is recommended that each firm¹⁹ that handles juvenile cases consider whether its attorneys are providing representation which complies with the applicable standards and, if not, create a plan for improving representation to the appropriate levels. In approximately six months OPDS should contact each of the firms to learn about steps that have been taken to improve representation and should also contact the interviewees who reported concerns about representation to see if any improvement has been observed. Juvenile cases could then be directed to those firms that are complying with applicable standards.

Representation at initial hearings

Although attorneys are now present for shelter hearings in juvenile dependency cases and for the initial hearing in ECR cases, defendants who are not eligible for ECR and in-custody youth still appear without counsel at their arraignments. It is recommended that contractors work with the court, the district attorney's office and the juvenile department staff to arrange for attorneys to be present at all initial hearings as required by the model contract.

¹⁹ MPD is not "a firm" and was reported to be providing excellent representation.

Compensation issues

Rob Harris and witnesses at the May 10 meeting noted that MPD and contractors in other parts of the state receive higher rates of compensation than Washington County contractors. In 2005 the Commission approved modest increases for contractors receiving the lowest rates. At its August 2007 meeting and retreat the Commission will consider how public defense funds appropriated by the 2007 Legislature will be allocated.

A number of witnesses expressed concern about attorneys not being compensated at all, or not being compensated adequately for the work they do in special courts such as the drug court, the mental health court, and ECR.²⁰ In drug court and mental health court, it may not be adequate to award a single credit under the provider's contract for each of these cases some of which might involve as many as fifty court appearances. On the other hand, contractors receive a full case credit for each case that is processed through the ECR program even though the case may take only a few minutes of the attorney's time. The district attorney and the judges expressed support for not discounting these cases since, on balance, those that remain will be more complex and difficult. Contractors should work with OPDS to address any issues they have about the rates of compensation for special court cases.

Representation of non English-speaking clients.

Employers in Washington County, like those in some other Oregon counties, need to attract more bilingual and bi-cultural attorneys and office staff. The district attorney's office, MPD, the Ridehalgh, and the Garland firm have all had some success in attracting employees with Spanish language skills. Having these skills within the contract office benefits clients and requires less reliance on outside interpreters. OPDS should consider providing a stipend to contractors who employ bi-lingual attorneys and staff.

Monitoring of ECR Program

Because of its interest in the success of appropriately structured early disposition programs, the Commission may want to closely monitor Washington County's ECR program and, if it proves successful, consider its use as a model in other jurisdictions.

²⁰ Cal Downey also raised a concern that attorneys participating in formal accountability agreements might not be eligible for compensation. ORS 419C.245 clearly provides, however, for counsel at state expense in these matters.

Exhibit A

The Public Defense Services Commission's Guidelines For Participation of Public Defense Attorneys in Early Disposition Programs

In order to insure that Early Disposition Programs (EDPs) involving court-appointed attorneys compensated by the Public Defense Services Commission (PDSC) meet constitutional, statutory and ethical requirements, PDSC concludes that EDPs should comply with the following guidelines. These guidelines are intended to insure that clients of court-appointed attorneys who participate in EDPs are able to make knowing, intelligent, voluntary and attorney-assisted decisions whether to enter pleas of guilty and that court-appointed attorneys are able to provide meaningful counsel and assistance to those clients.

1. An EDP should insure that the program's operations and rules permit the establishment and maintenance of attorney/client relationships.

Commentary

Although EDPs offer defendants the opportunity for favorable dispositions of their pending criminal charges and the State of Oregon potential savings for its justice system, Oregon's Rules of Professional Conduct require defense attorneys who participate in EDPs to establish and maintain meaningful attorney/client relationships.

Oregon Rule of Professional Conduct 1.1, requires that "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3 requires that "A lawyer shall act with reasonable diligence and promptness in representing a client and not neglect a legal matter entrusted to the lawyer."

2. An EDP should provide the opportunity for necessary pre-trial discovery, including adequate opportunity to review discovery material and investigate the facts of the case and the background and special conditions or circumstances of the defendant, such as residency status and mental conditions. Defendants participating in an EDP should be notified on the record that their attorney has not been afforded the time to conduct the type of investigation and legal research that attorneys normally conduct in preparation for trial.

Commentary

Article I, Section 11 of the Oregon Constitution provides, "In all criminal prosecutions, the accused shall have the right to be heard by himself and counsel...." This constitutional right to counsel would be meaningless without an adequate opportunity for counsel to inform himself or herself about the nature of the charges against the defendant, the factual and legal circumstance of the case and the background of the defendant.

The following Oregon Principles and Performance Standards for Counsel in Criminal Cases (the "Oregon Standards") require defense attorneys to carefully review charging instruments, police reports, relevant background information with defendants. These Oregon Standards also require counsel to conduct necessary independent investigation or consultation with experts in appropriate circumstances before advising their clients concerning participation.

STANDARD 1.1 – Prerequisites for Representation

Counsel shall only accept an appointment or retainer if counsel is able to provide quality representation and diligent advocacy for the client.

STANDARD 1.2 – General Duties and Responsibilities of Counsel to Clients

Upon being retained or appointed by the court, counsel should contact the client as soon as practicable AND maintain regular contact thereafter. Counsel should endeavor to establish a relationship of trust and open communication with the client and should diligently advocate the client's position within the bounds of the law and the Rules of Professional Responsibility.

STANDARD 1.3 – Role of Counsel

Counsel should seek the lawful objectives of the client and should not substitute counsel's judgment for that of the client in those case decisions that are the responsibility of the client.

STANDARD 1.4 – Initial Client Interview

Counsel should conduct a client interview as soon as practicable after being retained or appointed by the court, in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel's representation and the case proceedings.

STANDARD 2.5 – Initial Court Appearances

Counsel should preserve all of the client's constitutional and statutory rights at initial court appearances.

STANDARD 2.6 – Independent Investigation

Counsel should promptly conduct an independent review and investigation of the case, including obtaining information, research and discovery necessary to prepare the case for trial or hearing.

3. An EDP should provide for adequate physical space to ensure necessary privacy and adequate time to conduct confidential consultations between clients and their attorneys.

4. An EDP should provide adequate time for defendants to make knowing, intelligent, voluntary and attorney-assisted decisions whether to enter pleas of guilty or whether to agree to civil compromises or diversion. Clients should be allowed a reasonable continuance to make their decisions in the event there is incomplete information or other compelling reasons to postpone entry of a plea, civil compromise or diversion agreement. Clients should be allowed to withdraw their pleas, petitions or agreements in an EDP within a reasonable period of time in extraordinary circumstances.

Commentary

The following Oregon Standards require that defense counsel with clients in Early Disposition Programs have adequate time and privacy to meet with their clients and carefully review the clients' rights, obligations and options. These standards, as well as applicable rules of law, require that defendants be given adequate time to consider their options, to knowingly and intelligently waive their rights and to withdraw guilty pleas or agreements to enter programs in appropriate circumstances.

STANDARD 2.7 – Pretrial Motions; Hearings Regarding Ability to Aid and Assist Counsel should research, prepare, file and argue appropriate pretrial motions whenever there is reason to believe the client is entitled to relief. Counsel should be prepared to provide quality representation and advocacy for the client at any hearings regarding the client's ability to aid and assist...

STANDARD 2.8 – Pretrial Negotiations and Admission Agreements
Counsel should:

1. with the consent of the client explore diversion and other informal and formal admission or disposition agreements with regard to the allegations;
2. fully explain to the client the rights that would be waived by a decision to enter into any admission or disposition agreement;
3. keep the client fully informed of the progress of the negotiations;
4. convey to the client any offers made by the prosecution and the advantages and disadvantages of accepting the offers;
5. continue to preserve the client's rights and prepare the defense notwithstanding ongoing negotiations; and
6. not enter into any admission or disposition agreement on behalf of the client without the client's authorization.

ORS 135.049(C) provides that every EDP must provide (i) written criteria for eligibility, (ii) victim notification and appearance, and (iii) a process to ensure representation and discovery.

5. An EDP should insure that attorney caseloads are sufficiently limited to provide for full and adequate legal representation of each client.

Commentary

Oregon Rule of Professional Conduct 1.1, requires that "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

6. An EDP should provide for alternative representation for a client eligible for an EDP where such representation would constitute a conflict of interest for the client's original attorney.

Commentary

The following Oregon Rules of Professional Conduct forbid attorneys from representing clients when that representation involves a conflict of interest.

RULE 1.16 DECLINING OR TERMINATION REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
- (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

RULE 2.1 ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political.

7. An EDP should not penalize clients or sanction their attorneys for acting in conformity with any of the foregoing standards.

NOTE: These guidelines will be accompanied by descriptions of at least two EDPs currently operating in the state that conform with these guidelines – one from a large, more populous judicial district and one from a small, less populous judicial district.



Exhibit B

CRIMES ELIGIBLE FOR PROPOSED EARLY CASE RESOLUTION (ECR) PROGRAM

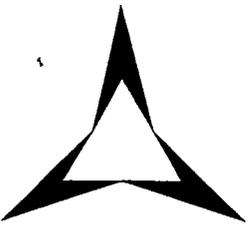
(Sorted Alphabetically)

Statute	Charge
166076	Abuse of a Memorial
496695	Aid in F/G Violation
	All Fish & Game
	ALL TRAFFIC
167340	Animal Abandonment
163208(1)	Assault on Police Ofc.
8115401b	Attempt to Elude - Foot
164215	Burglary 2
477515	Burn in Restricted Area
811135	Careless Driving
166240	Carry Concealed Weapon
7010551	Contract w/o Registration
6471251	Countrft Mark/Manuf/Sell-Mis
164345	Crim Mischief 3
164354	Crim Mischief 2
164365	Crim Mischief 1
1641404a	Crim Poss Rent Prop <\$500
1641404b	Crim Poss Rent Prop >\$500
164245	Crim Trespass 2
164255a	Crim Trespass 1
164255b	Crim Trespass 1 - reentry
163245	Custodial Interference 2
164813	Cut/Transp Spec Forest Prod
475991	Del Imitation Control Subst
1647751	Deposit Trash Near Water
1647752	Deposit Trash In Water
166025	Disorderly Conduct
3234802	Distrib Cigarettes w/o License
806010	Driving Uninsured
8111823	DWS Felony
8111824	DWS Misd
8111824R	DWR Misd
811182FR	DWR Felony
468951	Environmental Endangerment
807570	Fail Carry/Present ODL
806012	Fail Carry Proof Insurance
803505	Fail Carry Registration Card
803540	Fail Display License Plate
811265	Fail Obey Traffic Control Dev.
807530	False Application DL
8060501	False Cert Finan Resp
165692	False Claim Health Care Pymt
807620	False Info to Police
162385	False Info to Police on Cite
806055	False Liab Ins Info to Police
807520	False Swear to Receive Lic
475981	Falsify Drug Test Records
806050	Falsify Finan. Responsibility
496162	Fish & Game Violation
496162a	Fish & Game Misd
803230	Forged Title or Registration

165007	Forgery 2
165013	Forgery 1
1650554a	Fraud Use Credit Card <\$750
1650554b	Fraud Use Credit Card >\$750
167222	Freq Place Cntrld Sub Used
4714101	Furn Liquor Intox Person
4714102	Furn Liquor Minor - Misd
4714103	Furn Liquor Minor - Viol
166429	Furnish Firearm/Further Fel
811700	Hit & Run - Misd.
803550	Illegal Alter/Display Plates
165570	Improper Use of 911
162375	Initiate False Report
811150	Interf w/ Emergency Veh
166116	Interfere Public Transportation
165572	Interfere w/ Making Report
807590	Lend ODL to Another
607045	Livestock at Large
164162	Mail Theft
3140752	Make False Tax Return
4714301	Minor Poss/Purch Liquor
4714303	Minor Enter Liq Premises
166095	Miscond Emerg Phone Call
165805	Misrep Age by Minor
807430	Misuse ID Card
1650653a	Negotiate Bad Check Misd
1650653b	Negotiate Bad Check Fel
165107	No Metal Purchase Records
8070101	No Op License
701990	No Valid Builder Registr
166450	Oblit ID Marks Firearm
165540	Obtain Contents Communic
475994	Obtain CS Unlawfully
164805	Offensive Littering
443725	Op Unlicensed Care Facility
624320	Opr Commissary/Vend No Lic
	PCS Cocaine
	PCS Ecstasy
	PCS Heroin
	PCS Meth
	PCS MJ
	PCS MJ <oz
4759992b	PCS MJ near School
	PCS Sched 1
	PCS Sched 2
	PCS Sched 3
	PCS Sched 4
	PCS Sched 5
163709	Point Laser Light at Officer
1647851	Place Pollution Sub in Water
1647852	Place Poll Sub Highway/Prop
164235	Poss Burglary Tools
165017	Poss Forged Instr 2
164022	Poss Forged Instr 1
165032	Poss Forgery Device

165070	Poss Fraud Commun Device
166385	Poss Hoax Destr Device
819300	Possess Stolen Vehicle
167007	Prostitution
1641621e	Receive Stolen Mail
811140	Reckless Driving
163195	Reckless Endangering
471478	Remove Keg ID
162315	Resist Arrest
471360	Serve Alcohol w/o Permit
4961621a	Take F/G Prohib Method
167212	Tamper w/ Drug Records
166090	Telephonic Harassment
164043	Theft 3
164045	Theft 2
164055	Theft 1
1641255a	Theft of Services <\$50
1641255b	Theft of Services \$50-\$749
1641255c	Theft of Services \$750-\$9999
476715	Throw Lighted Material
647150	Trademark Counterfeit 1
164272	UEMV
167385	Unauth Use Livestock
164383	Unlaw Apply Graffiti
478960	Unlaw Burn Commerc. Waste
1662201b	Unlaw Discharge Weapon
466100	Unlaw Disposal Haz Waste
323482	Unlaw Distrib Cigarettes
164868	Unlaw Label Sound Recrdng
339020	Unlaw Maintain Child School
411630	Unlaw Obtain Public Assist
165813	Unlaw Poss Fictitious ID
164386	Unlaw Poss Graffiti Implmt
166250	Unlaw Poss Weapon
166425	Unlaw Purchase Firearm
480120	Unlaw Sale/Use Fireworks
164865	Unlaw Sound Recording
1643772	Unlaw Use Computer
411840	Unlaw Use Food Stamps
477740	Unlaw Use of Fire
1678085a	Unlawful Inhalent Use
471475	Unlic Serve Liquor
807600	Use Another's ODL
807580	Use Invalid License
164135	UUV
809500	VBR
468943	Water Pollution 2

Exhibit C



**METROPOLITAN PUBLIC DEFENDER
WASHINGTON COUNTY SECTION**

April 26, 2007

Ingrid Swenson
Executive Director
Office of Public Defense Services
1320 Capitol St., NE, Suite 190
Salem, OR 97301

Dear Ingrid:

In response to your request that I update our response to the "Questionnaire to the Director" from the 2004 Peer Review evaluation of the Washington County office of MPD, enclosed is an addendum to that questionnaire.

After reviewing the original document, I determined that most of my responses to the questions would not materially change. Therefore, my responses are limited to those areas where changes have occurred over the last two years. I hope they are helpful and please let me know if further information is needed.

Sincerely,

Keith B. Rogers
Director

KBR/r

Addendum to 2004 Peer Review Evaluation Questionnaire: Metropolitan Public Defender, Washington County Office

(Note: responses are referenced to the format and questions of the original questionnaire for those questions where updated information is appropriate)

Availability

(3) Is an MPD attorney present for the initial court appearance of criminal defendants in felony cases, in misdemeanor cases, whether or not the client is in custody? If not, why not?

In response to the 2004 questionnaire, I indicated that with the exception of major cases, or in cases where we already represented the defendants and received notice from our clients, no appointed attorneys were routinely present at the initial arraignments. I noted that this has been the local court practice for at least the last 20 years and that the Court's policy was not to appoint counsel until the conclusion of the initial arraignment. Even when retained counsel are present, the Court has not allowed any substantive challenge to the charging document or release status of the defendants at that hearing. The Court does not consider that the defendants have waived any rights not asserted at this first appearance. This practice was criticized in the evaluation and we were encouraged to try to change it.

The practice has not yet fundamentally changed in the intervening two years, but substantial progress has been made in altering the arraignment proceedings. In 2005, a task force was organized to work towards implementation of an Early Disposition Program. Working in conjunction with a paid consultant, the team, including myself as the representative of the defense bar, traveled to Washoe County, Nevada to tour and evaluate their EDP. Out of the work of this group has come Washington County's Early Case Resolution (ECR) Court, which began operating on March 7, 2007. The new system is evolving but has dramatically changed the practices in the LEC arraignment court and I think will continue to do so.

In its first seven weeks of operation, the Court has disposed of substantial numbers of misdemeanors and lower level felonies on the day of arraignment. The program has allowed defendants the opportunity to plead guilty and resolve both substantive and probation violation matters at arraignment when it is to their advantage to do so. It also allows for the flexibility of delaying the case when appropriate for further investigation or consultation without prejudice to the client.

MPD has committed one team to the court full time, including an experienced felony attorney and legal assistant. They appear at an average of 6.5 of the 10 dockets per week. We handle approximately one third of the cases assigned because there are attorneys from two firms present at each docket. The attorney handles all aspects of the

arraignment for the clients assigned to us as ECR clients.

Although I have always thought that the current system was imperfect but workable, it has always been our intention, as we worked towards developing this process, to also work towards changing the practice to include representing non-ECR appointed clients at arraignments. Over the last two months, we have been reviewing staffing realignment plans to allow us to cover non-ECR client arraignments in conjunction with our ECR coverage. The diversion of many low level cases by the program may allow us to utilize misdemeanor staff to assist with the arraignment process. We haven't implemented the program yet because the ECR court is evolving weekly and our status with this Court is not yet clear for the new biennium's contract. We intend to respond to the RFP with information and proposals on these issues.

(4) Is an MPD attorney present for the initial shelter hearing in juvenile dependency cases? If not, why not?

It was strongly recommended in the 2004 evaluation of our office that our attorneys appear at all initial appearances in Juvenile Court, including the shelter care hearings in dependency cases. The standard practice for the Juvenile Court was to appoint counsel at those hearings and only notify us of the appointments after the hearing.

Subsequent to the evaluation, in early 2005, we helped implement a change in that policy and the Court now contacts and notifies us of our appointments prior to the first hearings. An MPD attorney is now present at all of those initial appearances. I would add that although we had repeatedly advocated for such a change prior to the evaluation and worked with the Court to implement it, I believe it was actually the advocacy by the Peer evaluation team which provided the impetus to the Court to implement the change.

Since the change was made, we've seen clear improvement in our ability to contact our new clients and to dramatically affect the case disposition at its earliest stage. I'm told that many fewer status conferences end up being set over by the Court because of the better client contact.

(5) Is an MPD attorney present for the initial appearance of a youth in a juvenile delinquency proceeding? If not, why not?

The changes the Court made in dependency shelter care hearings were not fully applied to the procedures for delinquency proceedings. On many cases, we are still not notified of our appointment until after the youth's first court appearance. Some improvements have been made however. We are now receiving advance notice of all cases where we have previously represented the youth and due to our increased presence at the Court, we are now present for a sizeable percentage of all first appearances.

Community Education

(1) How is your office involved with the local community, local government, local criminal justice system and the local legal community?

We continue to encourage all staff members to participate in the local legal system “community”. Attorneys in our office sit on the local supplemental trial court rules committee, as a coordinator of the Washington County Women Lawyers group, as members of the juvenile and criminal sections of the Oregon State Bar, the local Lawyers’ Guild chapter and other school, neighborhood and community groups.

I continue to be the primary representative of the office in the local justice system and legal community. I have been a member of the local Public Safety Coordinating Council since 1998, was its president for two years, and currently sit on its Community Corrections Plan Advisory Committee.

I was a member of the task forces which created and implemented Washington County’s Drug Court, Mental Health Court and Early Case Resolution Court. I attend monthly meetings of the local CJIS group of justice system managers. I speak periodically at events organized by the Hillsboro Chamber of Commerce and the Beaverton Public Affairs Forum. I serve as a pro bono attorney at the St. Andrew Legal Clinic. I have been on the Board of the Washington County Bar Association for three years and am President elect of the Bar Association.

(2) Does your office provide trainers to the local community? If so, how and on what topics?

The attorneys from my office are all members of OCDLA and many participate as speakers or authors in OCDLA sponsored training.

Our office trainer, currently Martha Spinhirne, regularly organizes and conducts noon CLE programs in our office. We have made an effort over the last two years to invite members of the local criminal defense community to some of these training sessions. Examples include sessions on Mandatory Child Abuse Reporting, Conflicts of Interest, and the defense of major sex crimes.

Competence and Case Management

(2) What is your case file protocol?

In 2006, MPD implemented a new software docketing system known as Defender Data. It’s a comprehensive information system which allows staff to enter case data in all files electronically, and allows all staff to communicate and calendar within the system. We continue to maintain our traditional paper file system, as well.

(3) What is your case assignment process?

Our case assignment process and staffing have changed somewhat since 2004. The cases continue to be assigned to individuals by the case type of their groups, but the teams have evolved and we now have six specialty teams.

The major felony group is supervised by a management attorney and consists of five attorneys and support staff.

The minor felony and misdemeanor team consists of a management attorney, five attorneys and staff.

The Civil Team handles child support contempt cases, restraining order violation cases and civil commitments. It consists of two half time attorneys and a legal assistant. One of the attorneys handles Mental Health Court.

The Spanish team represents Spanish speaking clients. It consists of a Senior Attorney, a second attorney and two legal assistants who are fluent in Spanish.

The Juvenile team consists of 3.6 attorneys and 2.5 support staff. Since 2004, we have added an attorney position and one half staff position to this group to try to reduce caseloads. Because of increasing numbers, we are considering adding one more attorney to this group soon.

The Early Case Resolution Court team consists of one experienced attorney and one staff assistant.

The Drug Court is staffed by one attorney who currently spends approximately 30% of his time on the representation of Drug Court clients. The Drug Court became operational in 2005 and has gradually expanded as funding increased. MPD currently represents all of the 38 clients in Drug Court and it is expected that the Court will grow to 50 clients this year. Staffing meetings and Court proceedings are held from 12:30 to 4:00 every Monday afternoon.

(11) Have any attorneys in your office been disciplined by the Oregon State Bar for violation of Disciplinary Rules? What were the circumstances?

In 2004, I wrote that no attorney, while working in our office in Washington County, had been disciplined by the OSB since at least 1980. Just this month, one of our experienced attorneys accepted a non-published letter of admonition from the Bar for what it characterized as a negligent act in representing a client. The client was not prejudiced and I personally disagree with the Bar's analysis, but the lawyer sought to end the matter without further process. The issue was based on a discreet procedural issue and we are currently planning a training session in the office to help avoid repetition of

the problem.

Conclusions

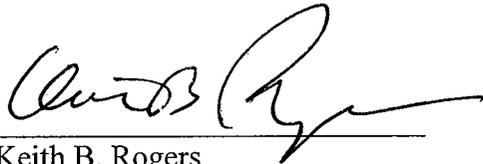
(2) Are there any areas in which improvement is needed? What are they? How do you intend to address them?

I identified two areas in which improvement was needed in the 2004 response to these questions: evaluations and motion practice.

Since 2004, we developed a plan to systematize the formal evaluation process and the six management employees of this office now each are assigned to complete an evaluation either each month or every other month depending on the size of their section. We are on course to have completed a formal evaluation of every employee in the office by the end of the year.

Motion practice has improved, I believe, since 2004. Once again, the level of emphasis on this part of the practice varies greatly between attorneys, each attorney playing to their respective strengths. We continue to strive to encourage the newer attorneys in this area with training and supervision. I believe that our office continues to lead the defense bar of Washington County in this area.

Dated this 26 day of April, 2007



Keith B. Rogers
Director
Washington County Office
Metropolitan Public Defender

Attachment: 2007 Attorney Wage Scale

Current Attorney Wage Scale, 2007

Attorney Annual Wage Scale:

Start	\$39,677.04
6 mos	\$42,064.62
1 Yr	\$43,778.28
2 Yrs	\$46,348.38
3 Yrs	\$49,157.42
4 Yrs	\$51,236.12
5 Yrs	\$53,413.10
6 Yrs	\$55,702.40
7 Yrs	\$58,089.98
8 Yrs	\$60,603.92
9 Yrs	\$63,244.74

APPEAL

(1) How and when are clients advised of their appellate rights in criminal, juvenile and civil commitment cases?

Criminal In criminal cases, clients usually have their first conversation with their attorney regarding their appeal rights in the course of discussing their options on disposition of their case (plea, trial, stipulated facts trial, etc.) For those who enter a guilty plea, the plea petition has a section on appeal rights which the client reads and discusses with their attorney prior to the plea. In all cases, it is our practice to review appeal rights with our clients at the time of sentence if they are convicted. We contact the LSD office on their behalf after the sentence or seek the appointment of counsel on misdemeanor cases. Occasionally, but not commonly, we handle the appeals for our clients.

Juvenile The plea petition in juvenile cases does not include an advice of appeal rights section and each attorney is responsible for such advice at the conclusion of the case.

Civil Commitments The Court in Washington County consistently advises civil commitment clients of their appeal rights at the beginning of the proceeding. Our attorneys advise their clients of their appeal rights as they would a criminal charge client.

AVAILABILITY

(1) Under what circumstances are attorneys made available to members of the public seeking information about criminal, juvenile and civil commitment matters?

Our office has a "duty attorney" system. Each attorney is duty attorney for one week at a time in rotation. The duty attorney is available to any caller from the public who has general questions regarding the criminal justice system. The duty attorney will also attempt to assist any caller with specific questions by referral to other sources of help and with general advice about the specific questions. In some cases in which it is imperative that the person get immediate assistance, we seek an appointment from the court to represent the client. And in some cases, we give specific advice and representation pro bono to clients who approach us for help.

In more general terms, our office encourages attorneys to participate in public forums or settings which provide information to the public about the criminal justice system. I am frequently asked to speak to civic groups such as the Hillsboro Chamber of Commerce or the Beaverton Public Forum about criminal justice issues. The attorneys in my office are all so involved, in various degrees.

(2) When is an MPD attorney first available to a person suspected of a law violation?

We receive the vast majority of our cases through appointment from the court. We receive notice of the appointments from the court early on the morning of the day after the arraignment of the client.

In major cases, such as murder cases, we are normally notified of our impending appointment prior to arraignment and appear at the arraignment of the client. As noted above, occasionally we come into contact with a client outside of the normal appointment system and affirmatively seek an appointment from the court prior to charge or arraignment. Currently, this is rare.

(3) Is an MPD attorney present for the initial court appearance of criminal defendants in felony cases, in misdemeanor cases, whether or not the client is in custody? If not, why not?

With the exception noted above on murder or other major cases, our attorneys are rarely present for the initial appearance of defendants in any of our cases, unless we are already attorney of record on another case and chose to appear. To my knowledge this has always been the procedure in Washington County and has definitely been the system since my arrival here in 1986. Out-of-custody arraignments occur in the morning and when the court appoints us, the client is handed a paper with contact information and a map to our office. Many arrive soon thereafter as "walk-ins". The in-custody arraignments take place at 3:00 p.m. In both cases, our docket clerk picks up the appointment information at 7:00 a.m. the next morning and all cases are usually distributed to staff prior to 10:00 a.m.

This system seems to work well. Because our county has only one adult jail and this jail is very close to our office, we rarely are faced with the problem that the in-custody client has been moved to another location before we can see them the next day. Our policy and practice is to see those clients on the same day as we receive our appointment.

(4) Is an MPD attorney present for the initial shelter hearing in juvenile dependency cases? If not, why not?

Our attorneys are not present at the initial shelter hearings because it is at that point we are appointed by the court. The exception to this is on those cases where we are currently representing the child or have in the past. On those cases, our legal assistants, having reviewed the daily dockets, alert the attorney to the impending appointment and the attorney appears.

(5) Is an MPD attorney present for the initial appearance of a youth in a juvenile delinquency proceeding? If not, why not.

The same procedure applies as noted above in dependency proceedings.

(6) At what point in a civil commitment proceeding does an MPD attorney or other defense team member first have contact with the client?

We are normally appointed on civil commitment cases either one or two days prior to hearing. We have one attorney who does most of the civil commitments and all attorneys

do an occasional civil commitment. Our practice is for the attorney to see the client in the hospital if possible and our primary civil commitment attorney is able to do this about 75% of the time. When she isn't able to, her Legal Assistant is usually able to see the client at the hospital and our attorney meets with the client at the court prior to hearing. Occasionally, circumstances or the condition of the client result in no hospital visit, but this is rare.

(7) Does MPD have a policy requiring contact within a specified period with in-custody and out-of-custody clients? What is the policy? Does MPD monitor compliance with this policy? How? Is the policy generally followed?

MPD's policy is that each in-custody client will be seen by a member of staff within 24 hours of our appointment on the case and that the assigned attorney will see the client that day or as soon as possible thereafter if they are unavailable for whatever reason on the day of appointment. Our practice is for at least one member of each team see a new client on the same day as we receive the appointment. This is more than a policy in our office. I consider it part of our culture and we pride ourselves in complying with it.

As noted above, we see many "walk-in" out-of-custody clients on the day of arraignment, but otherwise, our policy and practice is for the legal assistant assigned to the case to send a notice letter to the client as soon as we receive the assignment. The letter provides the client with a reminder of their next court appearance and requests that the client contact us to set an appointment. This is followed by a phone call if possible or second letter if the client does not respond.

We do not have a formal process for monitoring the immediate contact policy. Because it is one of the most important functions of our legal assistants, the attorney for each team provides oversight for the task. Our Chief Legal Assistant, Alicia Arguello, provides supervision for the legal assistants and fields complaints when the job is not done. I routinely, almost daily, receive phone calls from clients who wish to complain or have questions or who can't reach their attorney for some reason. It is extremely rare for me to receive a call from an in-custody client complaining that they have not yet seen their attorney. In fact, I can't ever recall this happening and our in-custody clients are by nature our squeakiest wheels. This has given me confidence that our policy is being complied with.

BOARD OF DIRECTORS

(1) Who serves on your Board of Directors?

The current Board members are Steve Houze, Elise Marshall, Jonathan Ater, Kristine Olson and Susan Mandiburg. Steve is the Board Chair and is in private criminal law practice. Elise is a former aide to Mayor Vera Katz. Jonathan is a civil attorney in private practice. Kristine is a former U.S. Attorney and aide to Congressman Earl Blumenauer. And Susan is an attorney and Professor of Law at Northwestern School of Law.

(2) How are the board members selected and how long do they serve?

The Chief Justice of the Oregon Supreme Court, the President of the Oregon State Bar, the Washington County Board of Commissioners, and the Multnomah County Board of Commissioners each appoint one Board member. The Board members appoint the fifth position. The Members choose their Chair from among its members. They serve three year terms and are eligible for reappointment. Over the 33 years of the operation of the Board, most Board members have served multiple terms.

(3) How often does your Board meet?

The Board of Trustees generally meets seven times a year from September through July.

(4) What are the functions of the Board?

The basic functions of the Board are set out in the attached white paper which was adopted by the Board in 1985. The main functions are oversight, quality assurance, and serving as the "sword and the shield" for MPD.

(5) Does the board have written policies and procedures?

Board policies and procedures are set out in the Articles of Incorporation and the Bylaws of MPD and resolutions formally adopted by the Board. These resolutions and materials compose the heart of the Board member training manual provided to each new Board member. See attached.

COMMUNITY EDUCATION

(1) How is your office involved with the local community, local government, local criminal justice system and local legal community?

All of the staff members in our office are encouraged to participate in the local legal and system "community".

I am a member of the local Public Safety Coordinating Council and served as its' president for two years, 2001 through 2003. I have been a member of the Washington County Drug Court implementation task force for the last year and have attended federally sponsored training programs with the team in Chico and Newport Beach California in April and October. We meet weekly. I am a member of an ad hoc committee made up of the District Attorney, the Presiding Judge, the Director of Community Corrections, the Sheriff, the Juvenile Court Director and the County Manager which usually meets for lunch monthly to informally discuss system issues. I am regularly invited to speak to local organizations on matters of interest in the community. I am active in the Washington County Bar Association.

Attorneys in my office are represented on the Oregon State Bar disciplinary committee, as a board member for the Oregon Woman' Legal Society, as volunteer judges in Beaverton Municipal juvenile peer court, on the local supplemental court rules committee, on the local community corrections advisory committee, and as a member of the Juvenile Law Section of the Oregon State Bar.

(2) Does your office provide trainers to the local community? If so, how and on what topics?

The attorneys from my office are all members of OCDLA and many participate as speakers or authors in OCDLA sponsored training. Among others, Greg Scholl, Laurie Shertz (past employee) and Ryan Scott come to mind in this category.

Our office trainer is Paul Levy and he frequently organizes training in our office. We have begun the practice of inviting other contractors and the private bar practitioners to selected in-office CLE programs. The next one on our schedule is set for December 5th involving mandatory child abuse reporting.

(3) If not described in response to items 1 and 2, how does your office participate in efforts to improve the local public safety system?

COMPETENCE AND CASE MANAGEMENT

(1) What standards do you use for hiring, monitoring and managing the professional competence of your staff?

Our hiring process involves a paper screen by our human resources department, followed by an interview with three staff members from different job descriptions within the office. Finalists are interviewed by the three directors of the office. We hire the best people we can find relying on the old standard "gut instinct" to make the final call. We look for people who are smart, genuinely interested in trial work and who appear to understand that respect for our clients is paramount.

See attached for our evaluation process.

(2) What is your case file protocol?

Files are opened and assigned as noted below. We insist, with varying levels of success, that each action taken be logged in the file. Our files for the last four years are kept on premises and we have storage off site for the remainder. We have a computerized docket control program known as "Old Bailey". Files are closed by the filing of a closing sheet to our docket clerk who enters the information on our system and the file is then filed within the file room. Each team manages the physical location of the file and the filing of information in the file as they cooperatively agree upon.

(3) What is your case assignment process?

Dee Ann Meharry is our appointments and case assignment clerk. She receives the appointments from the court each day at 7:00 a.m., makes up the files and distributes them to staff by about 10:00 a.m.

We have five sections in the office. There are six lawyers in the Major Felony section. Greg Scholl is the other management attorney in the office and he supervises this section. The group handles most major felonies and some "minor" felonies such as drug cases.

The Minor Felony/Misdemeanor section contains seven lawyers and handles minor felonies and misdemeanors. The new attorneys generally start in this section and each attorney receives a mix of misdemeanors and/or lower level felonies depending on their experience level.

The Spanish Team consists of two attorneys who handle Spanish speaking clients of all case levels.

The Juvenile Team consists of three lawyers and handles all juvenile law cases.

The Civil Team consists of one lawyer who handles most civil commitments, child support contempt matters and VRO matters.

The cases are distributed to teams based on these criteria.

(4) How do you determine whether cases are being distributed fairly among staff?

Our docket clerk, Dee Ann, balances the distribution using a combination of science and art, taking into consideration caseloads, vacation schedules, type of cases and trial schedules. She claims she does not take bribes.

Dee Ann provides me with printouts of each attorney's case list on a regular basis and I review them to insure fairness, balance and to look for any problems with burnout or other hidden practice issues.

(5) What policy or procedure do you have for case relief when needed?

The review I note above gives me feedback to the need of attorneys for case relief and Dee Ann keeps me apprised of case relief issues, usually before the attorney knows they have one. When we see a problem, we give temporary relief (a week with no new cases) or otherwise deal with the problem. Periodically, I will take the office out of the court's pick up rotation completely for a week, when we are getting too far over quota or need the relief.

(6) What is your procedure for identifying and handling conflicts?

Dee Ann is our first line of defense against conflicts. She reviews cases when she opens them and routinely identifies obvious conflicts which have been missed by the court (such as co-defendants).

Our legal assistants review the indictment and police reports in each case in the first days after appointment to check for conflicts by checking our computer records for both offices.

If an attorney believes that they have a conflict, and it is not an completely obvious one, they review the case with a supervisor prior to conflicting off of the case.

(7) How do you review the casework of your staff? How is that review shared with the staff?

We have a regular evaluation process, which has as its' goal, a yearly evaluation of all staff. In the course of that evaluation process, an attorney's work is scrutinized and discussed. In addition, because of the manageable size of our office and the public nature of our in-court work, all staff work is open for evaluation by collective observation by the attorneys and the attorneys aren't shy about communicating with me if they observe a problem.

I receive feedback from the judges, D.A.'s, court staff and our legal staff on a regular basis and the judges are not hesitant to give me a call when a problem arises.

I periodically send an evaluation form to the judges asking for feedback on our attorneys and then share and review that information with the attorneys. A copy of the last evaluation I requested from the judges is attached.

(8) Do you have written statements of office procedures? How are they provided to staff?

See attached.

(9) Do you have a complaint process for staff, clients, others? How is it used? Do you have a procedure in place to obtain regular feed-back from clients regarding the representation they received in your office? What is it?

See attached for our formal office complaint process.

I think we are very successful in encouraging an atmosphere where complaints can be informally and quickly dealt with by communication with the staff.

We have developed a form for feedback from clients and it is in it's infancy as far as implementation. A copy of the post-representation interview form is attached. A staff member is assigned to follow up a sampling of clients after closure of the case. We are

still experimenting as to how extensive that sample will be and how to deal with the clients who remain in DOC custody.

In addition, I routinely field calls from clients, parents, judges, D.A.'s and victims who wish to have their opinions heard about the work of our staff and this feedback is always shared with the staff affected. I attempt to personally and quickly respond to any such complaint.

(10) Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?

MPD maintains records of post-conviction and ethics complaints dating back to 1980. However, I can not vouch for the completeness of these records prior to my arrival here as director in 1998. Our records show that no post conviction release cases have been granted on cases from our office in that time since at least 1980.

(11) Have any attorneys in your office been disciplined by the Oregon State Bar for violation of Disciplinary Rules? What were the circumstances?

No attorney, while an attorney in our office in Washington County, has been disciplined by the Oregon State Bar since 1998 and to my knowledge, none have been disciplined since at least 1980.

CULTURAL COMPETENCE

What steps have you taken to address cultural competence in your office?

As noted, our office has a Spanish Section which represents Spanish speaking clients almost exclusively. Each of the two legal assistants in that section are fluent in Spanish. We have a total of 7 staff who have qualified for a language stipend for their fluency in Spanish and approximately three or four others speak Spanish. Our alternatives expert, Elizabeth Soennecker, keeps in touch with agencies and organizations in the community which represent the interests of our minority clients.

Our office has held a one day conference each year for the entire office which we have labeled our "cross cultural awareness program". The program has traditionally consisted of speakers and other media to raise the level of cultural awareness of all employees within the office. The office has addressed the communities identified as African-American, Hispanic, Asian, battered women, gangs and the mentally ill, among others.

Ultimately, I believe that we address cultural awareness in our office by attempting to hire people in the first place who come from a broad background of cultural identities and who share the value of respect for diversity.

JUDICIAL CONTROL

How do you insure that your office remains independent of inappropriate judicial control?

As I noted, I am actively involved in almost every task force, committee or ad hoc group which meets in Washington County to address issues in the criminal justice system. I rarely have to demand the right to participate. I am invariably invited and I am proud to be considered part of the system. I consider many of the judges to be my friends and I find these personal relationships to be invaluable in managing our office.

With this familiarity and involvement inevitably comes the risk of being lulled into complacency in our relations with the court and I am well aware of the need to guard against losing sight of our primary role as aggressive advocates for our clients. Our office policy is that the interests of the client come first, even if it is against the interests of the office. We have consistently and quickly hired independent counsel for any lawyer in the office who is faced with contempt or disciplinary charges against them if the actions were taken in good faith in the representation of our client. I make it a point, as well, to advocate personally for individual attorneys who have incurred the wrath of any particular judge. All in all, I think the office balances these conflicting issues well.

PERSONNEL

(1) What are your office personnel policies?

See attached.

(2) What are your office job descriptions?

See attached.

(3) How do they address the supervision and improvement of your staff (attorney and non-attorney).

See attached.

(4) What is your staff evaluation process?

See attached.

(5) How do you address issues of underperformance?

See attached.

(6) How do you acknowledge and reward excellence?

Excellence is awarded through private positive feedback from managers to employees and public acclaim for any particular job well done. In Washington County we have a traveling trophy, "the pig" which makes it's way from office to office to celebrate trial wins or other notable accomplishments.

We have "senior" positions which come with a small stipend and a modicum of additional responsibility and leadership expectations. These positions rotate and are used to acknowledge office leaders.

(7) What are your salary scales? How do they compare to other local attorney offices?

See attached.

(8) Do you have a plan in place to permit new attorneys to join your firm?

Our organization has traditionally hired approximately 10 new attorneys per year, or about 16% turnover. We are graying along with every other criminal defense organization, but have had good luck in continuing to recruit smart and motivated younger attorneys. We typically start newer attorneys in misdemeanors, but make a conscious effort to challenge our newer attorneys by moving them into felonies after one to two years. We routinely rotate the more senior attorneys back into misdemeanors if necessary to open up opportunities for growth among the newer attorneys.

(9) How do you monitor the general quality of the working environment at MPD-Washington County? Are there regular staff meetings? Is there a process for obtaining feedback from staff regarding the working environment?

Our office is small enough that the quality of the working environment is fairly open for all to see. We have regular attorney meetings, which double as CLE meetings, on most Wednesdays. We have a full office meeting every other month. We have an annual picnic and annual staff holiday party in December. Feedback from the staff tends to be informal; if anyone has a problem, they come to my office and we talk about it and try to fix it.

TRAINING

(1) How do you orient new staff to your office?

See attached form on our formal orientation practice. In Washington County, new staff meets with each of the managers for orientation and is trained primarily by their immediate supervisor. We tend to rely on the "immersion" method of training to a great extent after that.

(2) How do you insure that attorneys are familiar with the Oregon Standards for Representation in Criminal, Delinquency, Dependency, and Civil Commitment cases?

All new attorneys are provided with a copy and it is made clear to them at their orientation that these standards are the minimum standards acceptable at MPD.

(3) What ongoing professional development training is offered to staff by your office?

See attached summary of our training program.

(4) What assistance or support do you provide to staff in order to encourage participation in professional development training outside the office?

See attached summary of our training program.

UNION

Have you been able to work effectively with the union which represents MPD staff to achieve common goals? If not, are there steps which can be taken to improve working relationships?

Our working relationship with the Union representing employees of MPD has had its' ups and downs, but has improved dramatically over the last three years. We have made a conscious effort to keep the Union informed of all major decisions affecting the office and have made a conscious effort to make our financial position transparent to the Union. The Union officers and the Directors of MPD meet monthly to share information and to discuss issues of mutual interest even when no negotiations are ongoing. Our executive director and the Union's professional representative speak informally on a regular basis and all of these lines of communication have paid off with a generally amicable working relationship.

ZEAL

What steps have you taken to inspire and support MPD staff in providing zealous representation of clients?

We provide regular training. We publicly acknowledge success or hard work. We make it clear that we expect nothing less than zealous representation and respect for our clients. Perhaps unfairly, we aren't hesitant to gossip about any poor representation we see from other practitioners at the courthouse. This may be elitist, but it raises a certain expectation in the office that unless an attorney cares about their clients and knows what they are doing, they don't belong here. We hire good people. We acknowledge that it's really not paranoia when they really *are* out to get us. We try to make the office a fun and exciting place to work and we are very quick support each other. We may rely on black humor and cynicism for stress relief, but I think we are able to maintain a positive attitude nonetheless.

CONCLUSIONS

(1) In what area do you believe MPD-Washington County excels?

I genuinely believe that day in, day out, the attorneys and staff of MPD Washington County provide quality legal representation to our clients, treat our clients with respect, and act ethically and professionally within the Washington County criminal justice system.

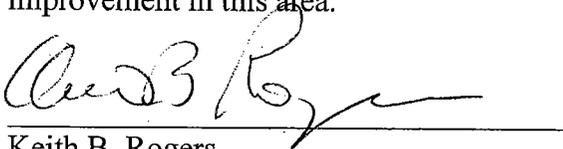
Although I believe that all of our attorneys do good work, it is my opinion that our juvenile court attorneys and staff provide legal work far beyond that which is required and well beyond that provided by the average juvenile practitioner in Washington County.

I believe that we generally have a very good relationship with the other players in the system and that our attention to these relationships pays off for our clients.

(2) Are there any areas in which improvement is needed? What are they? How do you intend to address them?

The Investigator, Legal Assistant and Secretarial Section managers have done a great job of providing regular evaluations of the staff employees, but the same can't yet be said about the attorney managers. One area needing improvement is the regular evaluation of attorneys. Evaluation and feedback is provided almost daily to the attorneys, but the systematic evaluation process is lagging and inconsistent. We are in the process of setting very specific goals and deadlines to attempt to improve our track record in this respect.

The level of innovative and aggressive "academic" legal research and advocacy ebbs and flows with the rotation of attorneys through the office. Over the years, we have had higher and lower levels of motion practice depending on the skills of particular attorneys. At the moment, I would suggest that we could improve in this area. I intend to address this issue by working with our training director to continue to train and encourage improvement in this area.



Keith B. Rogers
Director
Washington County Office
Metropolitan Public Defender

Date: 11-16-04

Exhibit D

BY-LAWS
OF
OREGON DEFENSE ATTORNEY CONSORTIUM, INC.

ARTICLE I - NAME

Section 1.1 The name of this non-profit private organization shall be Oregon Defense Attorney Consortium, Inc.

ARTICLE II – PURPOSE

Section 2.1 The corporation shall be organized and operated for any lawful purpose, but primarily for the purpose of contracting with the State of Oregon for the conduct of indigent criminal defense. Subject to the limitations stated in the Articles of Incorporation, the purposes of this corporation shall be to engage in any lawful activities, none of which are for profit, for which corporations may be organized under Chapter 65 of the Oregon Revised Statutes.

ARTICLE III – MEMBERSHIP

Section 3.1 This corporation shall have no members.

ARTICLE IV – BOARD OF DIRECTORS

Section 4.1 Duties. The affairs of the corporation shall be managed by the board of directors, including the authority to determine personnel, fiscal and program policies; manage and control the affairs, funds, records and property of the corporation; and approve contracts with the State of Oregon for indigent defense services.

Section 4.2 Number. The number of directors may vary between a minimum of three and a maximum of seven.

Section 4.3 Term of Directors - Except as provided below regarding initial terms for directors. The term of office for directors shall be two years. A director may be reelected without limitation on the number of terms he/she may serve. The board shall elect its own members, except that a director shall not vote on that member's own position. Terms shall be staggered. The initial Board Member Terms shall be for the following periods: Position 1 – 1 Year; Position 2 – 2 Years; Position 3 – 3 Years; Position 4 – 4 Years; Position 5 – 5 Years. The initial Directors shall be: 1. Vacant; 2. Vacant; 3. David Audet; 4. Ray Bassel; 5. Robert J. Harris. Position 5 shall also act as the Executive Director of the Consortium.

Section 4.4 Removal. Any director may be removed from the board, with or without cause, by a vote of two thirds of the directors then in office. Except that position 5 shall only be removed pursuant to Section 6.3 herein.

Section 4.5 Vacancies. Vacancies on the board of directors and newly created board positions will be filled by a majority vote of the directors then on the board.

Section 4.6 Composition of Board. To the extent practicable. The Board shall be made up of at least 3 indigent legal services providers and 2 outside Directors.

Section 4.7 Quorum and Action. A quorum at a board meeting shall be a majority of the number of directors in office immediately before the meeting begins. If a quorum is present, action is taken by a majority vote of the directors present, except as otherwise provided by these bylaws. Where the law requires a majority vote of the directors in office to establish committees to exercise board functions, to amend the Articles of Incorporation, to sell assets not in the regular course of business, to merge, or to dissolve, or for other matters, such action is taken by that majority as required by law.

Section 4.8 Annual Meeting. There shall be an annual meeting at a time and place to be set by the board of directors. The meeting is designated by the board for the purpose of electing directors, officers, committee chairpersons and members and for the transaction of such other business as may come before the board.

Section 4.9 Regular Meetings. Regular meetings of the board of directors shall be held at the time and place to be determined by the board of directors. No other notice of the date, time, place, or purpose of these meetings is required.

Section 4.10 Special Meetings. Special meetings of the board of directors shall be held at the time and place to be determined by the board of directors. The presiding officer of the board or 20 percent of the directors then in office may call and give notice of a meeting of the board. Notice of such meetings, describing the date, time, place and purpose of the meeting, shall be delivered to each director personally or by telephone or by mail not less than five days prior to the special meeting.

Section 4.11 Meeting by Telecommunication. Any regular or special meeting of the board of directors may be held by telephone or telecommunications in which all directors participating may hear each other.

Section 4.12 No Salary. Except for a Director also acting as the Executive Director, Directors shall not receive salaries for their board services, but may be reimbursed for expenses related to board service.

Section 4.13 Action by Consent. Any action required by law to be taken at a meeting of the board, or any action which may be taken at a board meeting, may be taken without a meeting if a consent in writing, setting forth the action to be taken or so taken, shall be signed by all the directors.

ARTICLE V – COMMITTEES

Section 5.1 Establishing Committees. The board of directors may establish such other committees as it deems necessary and desirable. Such committees may exercise functions of the board of directors or may be advisory committees.

Section 5.2 Composition of Committees Exercising Board Functions. Any committee that exercises any function of the board of directors shall include two or more directors in office.

Section 5.3 Quorum and Action. A quorum at a committee meeting exercising board functions shall be a majority of all committee members in office immediately before the meeting begins. If a quorum is present, action is taken by a majority vote of persons present.

Section 5.4 Limitations on the Powers of Committees. No committee may authorize payment of any part of the income or profit of the corporation to its directors or officers; may approve dissolution, merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets; may elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; nor may adopt, amend, or repeal the articles of incorporation, bylaws, or any resolution by the board of directors.

ARTICLE VI – OFFICERS

Section 6.1 Titles. The officers of the corporation shall be an Executive Director and a secretary.

Section 6.2 Election and Term of Office. The board of directors shall elect the officers of the corporation to serve two year terms. Excepting that the initial term for the Executive Director shall be five (5) years, as provided in Article IV, an officer may be reelected without limitation on the number of terms the officer may serve. There is no limitation to the number of different offices a person may hold at different times.

Section 6.3 Removal. Any officer or member of the executive committee may be removed from office by a two-thirds majority vote of a quorum of the board, at any time, with or without cause. Except the initial Executive Director shall only be removed with cause.

Section 6.4 Vacancy. Any vacancy in any office shall be filled not later than the first regular meeting of the board of directors following the vacancy.

Section 6.5 Executive Director. Robert J. Harris is named as the initial Executive Director. The Executive Director shall be the chief officer of the corporation. The Executive Director may sign, with the secretary or any other designated person, contracts or other instruments which the board has authorized to be executed, except in cases where the signing and execution thereof shall be required by law to be otherwise signed or executed. The Executive Director shall perform such other duties as are customary for that office and as may be prescribed by the board from time to time.

Section 6.6 Secretary. The secretary shall keep the minutes of the meetings of the board and executive committee; see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of the corporate records; and in general perform all duties incident to the office of secretary and such other duties as may be prescribed by the board from time to time. The board may expressly delegate to some other officer, agent or employee of the corporation performance of any of the duties enumerated above, by the responsibility for proper performance shall remain with the secretary. The initial Secretary shall be Jenny Henderson

Section 6.7 Other Officers. The board of directors may elect or appoint other officers, agents and employees as it shall deem necessary and desirable. They shall hold their offices for such terms and have such authority and perform such duties as shall be determined by the board of directors.

ARTICLE VII – AMENDMENTS TO BYLAWS

The bylaws may be amended or repealed, and new bylaws adopted, by the board of directors by a two-thirds vote of the quorum present. Prior to the adoption of the amendment, each director shall be given at least two days notice of the date, time, and place of the meeting at which the proposed amendment is to be considered, and the notice shall state that one of the purposes of the meeting is to consider a proposed amendment of the bylaws and shall contain a copy of the amendment.

ARTICLE VIII – CORPORATE BUSINESS AND FINANCIAL RECORDS

Section 8.1 Records. The corporation shall maintain adequate and correct books, records and accounts of its business and properties. All books, records and accounts of the corporation shall be open to inspection by the directors for any proper purpose at a reasonable time.

Section 8.2 Contracts. The board may, except as otherwise provided in the bylaws, authorize any officer or agent, or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation and such authority may be general or confined to specific instances.

Section 8.3 Fiscal Records.

1. Deposits. All funds of the corporation not otherwise employed shall be expediently deposited to the credit of the corporation in such banks, trust companies, or other depositories as the Board may select.

2. Checks, Drafts. All checks, drafts or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the Board.

3. Gifts. The board may accept on behalf of the corporation any contribution, gift, bequest or a devise for the general purpose or any special purpose of the corporation.

4. Loans. The corporation shall not make any loans to any members, officers or employers.

5. Fiscal Year. The fiscal year of the corporation shall end on December 31 of each year.

Section 8.4 Audit. An independent audit of the corporation books shall be made within 120 days after the end of each fiscal year by a certified public accounting firm selected by the board.

The chair of the board shall make the audit available to the members of the board, and shall submit a detailed financial statement based upon the audit at the first meeting of the board following receipt of the audit, but no later than 120 days following the close of the fiscal year.

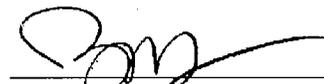
ARTICLE IX – LIABILITY AND INDEMNIFICATION

Section 9.1 Liability. The civil liability of a member of the board for the performance or non-performance of the director's duties shall be limited to gross negligence or intentional misconduct.

Section 9.2 Indemnification. The corporation shall indemnify its officers and directors to the fullest extent allowed by Oregon Law.

ARTICLE X – DISSOLUTION

Upon the dissolution of the corporation, the board of directors and/or trustees shall, after paying or making provisions for the payment of all the liabilities of the corporation, dispose of all the assets of the corporation exclusively for the purpose of the corporation in such manner, or to such organizations or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c)(3) of the Internal Revenue Code, or to an organization organized for similar purposes, as the board of directors and/or trustees shall determine. Any such assets not so disposed of shall be disposed of by the Circuit Court of Washington County.



Board Member

Board Member

Board Member

Board Member

Questionnaire for Administrator of Consortium

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide.

YES: ATTACHED

2. Does the consortium have a board of directors? If so describe the role that your board plays. Who are the members? How often does it meet? What kinds of issues are directed to the board? Are there limits on how long a board member can serve or how long one member can chair the board? Are there seats designated for "lay" or "community" board members?

WE HAVE AUTHORIZED THREE TO SEVEN DIRECTOR SEATS. THEY HAVE A TWO YEAR TERM AND ARE STAGGERED.

THE BOARD CONSISTS OF THE EXECUTIVE DIRECTOR (ROBERT HARRIS), DAVID AUDET AND RAY BASSEL. WE HAVE TENTATIVELY DECIDED THAT WE WOULD LIKE TO GET UP TO FIVE DIRECTORS. WE WOULD LIKE TO ADD A NON PROVIDER ATTORNEY, AND A NON LAWYER. THOSE HAVEN'T BEEN FILLED YET, DUE TO THE FACT THAT AT THIS EARLY POINT IN THE CONSORTIUM, THE BOARD AND ITS PROVIDERS ARE ATTEMPTING TO GET THE BASIC ORGANIZATIONAL FLOW IN PLACE AND DETERMINE WHAT TYPE OF ADDITIONAL BOARD MEMBERS, WITH WHAT TYPE OF BACKGROUNDS WOULD BE MOST USEFUL AND HELPFUL.

WE HAVE TENTATIVELY CONCLUDED THAT SOMEONE WITH POLITICAL OR COMMUNITY ACTIVITY BACKGROUND WOULD BE APPROPRIATE FOR THE NON LAWYER POSITION AND THAT WE COULD ASK THE WASHINGTON COUNTY BAR PRESIDENT TO NOMINATE A NON PROVIDER LAWYER FOR ANOTHER SEAT.

BECAUSE OUR GROUPS IS RELATIVELY SMALL – EIGHT MEMBERS – MOST MEETINGS ALL OF THE MEMBER ATTORNEYS ATTEND. WE'VE HAD MEETINGS EVERY THREE MONTHS, APPROXIMATELY. AT THOSE MEETINGS WE UPDATE EVERYONE ON ALL CHANGES AT THE COURTHOUSE, SCHEDULING ISSUES, CONFLICT ISSUES AND EVERYONE IS WELCOME TO BRING UP ANY ISSUES THEY HAVE ENCOUNTERED.

3. How is the administrator of your consortium selected? Compensated? Evaluated? Are there formal qualifications to be the administrator? Does the consortium or its board of directors have a "plan for succession" to insure an orderly transition from one administrator to the next?

BOARD MEMBERS RECEIVE NO COMPENSATION. THE EXECUTIVE DIRECTOR RECEIVES 3% OF THE TOTAL MONTHLY PAYMENT OF THE CONSORTIUM. FOR THIS PAYMENT THE DIRECTOR PROVIDES STAFF TO PICK UP CASES, ASSIGN THEM TO THE PROVIDER ATTORNEYS, TRANSMIT ALL DISCOVERY AND COURT ORDERS TO ATTORNEYS. TRACK ASSIGNMENTS, REASSIGN CONFLICT CASES, OCCASSIONALLY COVER CASES WHERE THE PROVIDER ATTORNEY CANNOT GET COVERAGE, PAY CERTAIN EXPENSES RELATED TO BOOK-KEEPING, BANKING AND TAX MATTERS, AND ATTEND MEETINGS WITH THE BENCH AND OTHER GROUPS INVOLVED WITH THE CRIMINAL JUSTICE SYSTEM.

BECAUSE THIS CONSORTIUM WAS PLANNED AND INSTITUTED BY ROBERT HARRIS, WHO GAVE UP HIS CONTRACT FROM HIS FIRM TO START THE CONSORTIUM AND GAVE UP SIGNIFICANT CONTROL OVER HIS FIRM, THE CONSORTIUM BY LAWS WERE SET UP SO THAT HE WOULD BE THE INITIAL EXECUTIVE DIRECTOR FOR FIVE YEARS, EXCEPT THAT HE COULD RESIGN, OR BE TERMINATED FOR CAUSE BY A MAJORITY VOTE OF THE DIRECTORS. AFTER FIVE YEARS, ASSUMING ROBERT HARRIS IS STILL THE EXECUTIVE DIRECTOR, THE BOARD CAN NAME AN ED OF ITS CHOICE.

OFFICERS, INCLUDING THE EXECUTIVE DIRECTOR ARE APPOINTED FOR TWO YEAR TERMS, EXCEPTING AS OTHERWISE PROVIDED ABOVE.

4. What percentage of the administrator's overall workload is related to consortium matters? Is there a formal limit to the percentage?

THERE IS NO FORMAL LIMIT. I WOULD GUESS THAT APPROXIMATELY 10% OF THE ADMINISTRATORS TOTAL TIME IS DEVOTED TO CONSORTIUM BUSINESS. IN ADDITION THERE IS SUBSTANTIAL STAFF TIME EXPENDED ON CONSORTIUM BUSINESS. APPROXIMATELY 20% OF THE DIRECTORS ASSISTANTS TIME IS SPENT ON CONSORTIUM BUSINESS.

5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? Is there a formal or informal back-up administrator?

THE ED'S (EXECUTIVE DIRECTOR) STAFF CAN COVER THE CASE ASSIGNMENTS. DAVID VEVERK, A LAWYER IN THE ED'S FIRM HAS STEPPED IN TO MAKE DECISIONS THAT CALL FOR A LEGAL ANALYSIS. IN ADDITION, THE TWO OTHER DIRECTORS ARE NOTIFIED WELL PRIOR TO WHEN THE ED HAS BEEN ON VACATION AND THE ED'S STAFF IS IN VERY GOOD CONTACT WITH THOSE DIRECTORS.

6. What are the requirements for membership in the consortium?

THE INITIAL PANEL OF ATTORNEYS WAS SELECTED BY ROBERT HARRIS AND BASED ON HIS INDIVIDUAL KNOWLEDGE OF THEIR ABILITIES.

7. What is the process for applying for membership?

THIS HASN'T COME UP YET, BUT THE BOARD HAS DISCUSSED COMING UP WITH A STANDARD FORM APPLICATION THEN HAVING THE BOARD VOTE ON MEMBERSHIP AS ADDITIONAL CASELOADS MAY APPEAR.

8. How long has each of the attorneys been a part of the consortium?

SINCE JANUARY 2006 WHEN WE INITIALLY STARTED. WE'VE HAD NO DROP OUTS YET.

9. To what extent do consortium attorneys specialize in criminal and juvenile defense, representation of the allegedly mentally ill? In public defense? Is there a limit on the percentage of an attorney's practice that can be consortium related?

THERE IS A DIFFERENCE BETWEEN THE ATTORNEYS WHO ARE AT HARRIS LAW FIRM AND THE OTHER PRIVATE PRACTICE ATTORNEYS (I'LL REFER TO THE NON HARRIS LAW FIRM ATTORNEYS AS OUTSIDE ATTORNEYS)

ALL OF THE OUTSIDE ATTORNEYS ARE EXPERTS IN CRIMINAL DEFENSE. EACH ATTORNEY MUST ALSO HAVE A PRIVATE PRACTICE.

WHILE THERE IS NO RULE ON THE PERCENTAGE OF ID CASES THAT ANY PROVIDER CAN TAKE, THE ESSENCE OF THE CONSORTIUM WAS AS FOLLOWS: HARRIS LAW FIRM WILL TAKE APPROXIMATELY 3 CASELOADS. IT IS RESPONSIBLE FOR BRINGING IN NEW, OR INEXPERIENCED, ATTORNEYS AND TRAINING THEM IN CRIMINAL DEFENSE. IT WOULD ALSO BE RESPONSIBLE FOR TEACHING THESE NEWER ATTORNEYS OTHER SKILLS THAT COULD BE USED IN THE PRIVATE PRACTICE OF LAW AND FINANCIALLY SUPPORT THEM BY WAY OF BENEFITS, ADVERTISING AND PRACTICE BUILDING. HARRIS LAW FIRM PROVIDES FOR THESE ATTORNEYS OPPORTUNITIES TO REDUCE THEIR ID CASELOAD IN INCREMENTS AS THEIR PRIVATELY RETAINED PRACTICE PICKS UP. IF THOSE ATTORNEYS CHOSE TO LEAVE HARRIS LAW FIRM, THEY WILL BE OFFERED FIRST CHANCE TO TAKE ON A CONSORTIUM CASELOAD AS AN OUTSIDE ATTORNEY SO THEY CAN SET UP THEIR OWN PRACTICE.

IN GENERAL THE OUTSIDE ATTORNEYS ARE GIVEN A 50%-70% CASELOAD DEPENDING ON THE STATUS AND AGE OF THEIR PRIVATE PRACTICE.

THE ED HAS ALSO ENCOURAGED OUTSIDE ATTORNEYS TO TAKE ON YOUNGER ATTORNEYS AS MENTORS AND IF THEY DO SO, AND IF THERE IS CASELOAD AVAILABLE, THEN THOSE OUTSIDE ATTORNEYS WILL BE GIVEN ADDITIONAL CASES THAT CAN BE ASSIGNED TO THEIR YOUNGER ASSOCIATES IN ORDER TO SUPPORT THEIR MENTORING EFFORTS. ONE OUTSIDE ATTORNEY HAS TAKEN ADVANTAGE OF THAT OFFER THUS FAR.

10. How do you insure that new attorneys can become part of the consortium?

THE PLAN IS FOR NEW ATTORNEYS TO BE ASSOCIATED WITH EITHER HARRIS LAW FIRM OR THE OUTSIDE ATTORNEYS WHO ACT AS MENTORS

11. What materials and orientation are provided to new consortium members?

THIS HASN'T COME UP YET, HOWEVER, FOR HARRIS LAW FIRM THE NEWER ATTORNEYS ARE MENTORED BY THE EXPERIENCED ATTORNEYS AND THE NEWER ATTORNEYS HAVE ALL CLE'S PAID FOR BY THE FIRM.

12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? Do you have a formal mentoring system? Please describe your system.

SEE ABOVE

13. How are cases distributed among attorneys? Do you have a process for assigning cases based on the seriousness and complexity of the case? If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

EACH OF THE SUBCONTRACTORS (THE OUTSIDE ATTORNEYS AND HARRIS LAW FIRM) HAVE A CONTRACT TO TAKE A CERTAIN MIX OF CASES. THAT MIX WAS AGREED ON AT THE TIME OF THE SUBCONTRACT. THE ED AND HIS STAFF MEET DAILY TO ASSIGN CASES SO THAT THE CASES ASSIGNED MATCH, AS CLOSE AS POSSIBLE THE AMOUNT OF CASES EACH SUBCONTRACTOR HAS AGREED TO TAKE. EACH OF THE OUTSIDE ATTORNEYS HAS A MIX OF SERIOUS AND LESS SERIOUS CASES. HARRIS LAW FIRM HAS MORE OF THE LESS SERIOUS CASES SINCE IT IS TRAINING THE NEWER ATTORNEYS. THE ED DOES HIS BEST IN KEEPING RETURNING CLIENTS WITH THE SAME ATTORNEY, AND PACKAGING UP CASES AS THEY COME IN SO THAT THE OUTSIDE ATTORNEYS HAVE MULTIPLE APPEARANCES IN ORDER TO SAVE TIME.

14. How soon are attorneys notified of appointment to a case? Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC?

THE ED STAFF SCANS AND EMAILS THE COURT APPOINTMENT TO THE ASSIGNED ATTORNEY. SHE CAN ALSO PERSONALLY DELIVER THE INFORMATION. THAT OCCURS EVERY MORNING AT THE TIME THE CASES ARE ASSIGNED. I BELIEVE THE ATTORNEYS GENERALLY MEET THEIR IN CUSTODY CLIENTS IN A TIMELY MANNER.

15. Does your system provide continuity of representation when possible? If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney?

YES. SEE ABOVE

16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? When are conflict checks conducted? How soon is a case reassigned after a conflict is identified?

THE ED STAFF CHECKS FOR CONFLICTS THAT WE ARE ABLE TO IDENTIFY BEFORE MEETING WITH THE ED TO ASSIGN CASES. THEN IT IS UP TO THE OUTSIDE ATTORNEYS TO CHECK FOR CONFLICTS INTERNALLY.

17. Do consortium members meet regularly as a group? If so, how frequently?

WE MEET APPROXIMATELY EVERY TWO MONTHS.

18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing?

YES. THE ED HAS A LIST TO COMMUNICATE WITH OUTSIDE ATTORNEYS. THERE HAS BEEN A YAHOO GROUP SET UP, BUT BECAUSE OF THE LIMITED NUMBER OF ATTORNEYS, I DON'T BELIEVE ANYONE USES IT. IT IS EASIER TO SEND GROUP EMAILS.

19. Is there a mechanism for sharing research or forms?

INFORMAL ONLY

20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? How do you insure that attorneys are not handling too many cases?

THE ED AND STAFF UPDATE THE ASSIGNMENTS DAILY. THE ED KEEPS ALL ASSIGNED CASES IN A BINDER WITH A RUNNING TALLY OF TOTAL CASES ASSIGNED PER MONTH. THESE CASES ARE BROKEN DOWN BY OUTSIDE ATTORNEY AND NUMBER AND TYPE OF CASES ASSIGNED. THE ED ALSO KEEPS A RUNNING TALLY OF THE TOTAL DOLLAR VALUE OF THE CASES ASSIGNED AND HOW THAT COMPARES TO THE TOTAL CONTRACTED FOR SO THAT HE CAN SEE IF ANY ATTORNEY STARTS TO GET BEHIND.

21. How do you insure that attorneys are providing quality representation? Are there regular evaluations of attorneys? If so, how and by whom are they performed? Are there other mechanisms in place to insure that consortium attorneys are providing quality representation.

FOR OUTSIDE ATTORNEYS, NO REGULAR EVALUATION, HOWEVER THEY ARE REQUIRED TO REPORT TO THE ED ANY CONTACT BY THE OSB FOR BAR COMPLAINTS OR DISCIPLINARY MATTERS. THE ED IS ALSO IN CONTACT WITH THE PRESIDING JUDGE AND THEY HAVE AN AGREEMENT ON CONTACT IF ANY PROBLEMS ARISE.

WITHIN THE HARRIS LAW FIRM THE ED HAS MORE OVERSIGHT CAPABILITY AND REGULARLY COMMUNICATES WITH ALL ATTORNEYS AND KEEPS TRACK OF THEIR TRIALS AND NUMBER OF COURT APPEARANCES.

22. How do you address problems of underperformance by attorneys?

SO FAR THAT HASN'T BEEN AN ISSUE. HOWEVER, WE DID HAVE TWO ATTORNEYS RECEIVE REPRIMANDS AND I ASKED THE SUPERVISING ATTORNEY TO SEND A LETTER TO ME OUTLINING THE ISSUES ALONG WITH THE CORRECTIVE MEASURES TAKEN.

23. Do you provide training or access to training for consortium lawyers? Please describe. Do you require a minimum number of criminal, juvenile or civil commitment law or trial practice-related CLE credits per year?

NONE OTHER THAN WHAT HAS ALREADY BEEN STATED.

24. Are attorneys required to report disciplinary action by the bar? How many consortium attorneys have been disciplined by the bar? What were the circumstances?

TWO ATTORNEYS WERE REPRIMANDED. BOTH WERE WITH NACHTIGAL AND EISENSTEIN. FRED NACHTIGAL NOTIFIED ME OF THE REPRIMANDS. I ASKED HIM TO GET ME A LETTER OUTLINING THE ISSUES AND WHAT CORRECTIVE STEPS HE TOOK. BOTH ISSUES INVOLVED THE ATTORNEYS FAILURE TO COMMUNICATE WITH CLIENTS IN PCR CASES.

25. What is the consortium's process for handling complaints from judges? Clients? Others? Is there a designated contact person for complaints? Is that person's identity generally known in the criminal and juvenile justice community?

THE ED IS THE DESIGNATED CONTACT PERSON. I BELIEVE EVERYONE IN WASHINGTON COUNTY IS THE CONTACT PERSON. CLIENTS RECEIVE A LETTER FROM THE CONSORTIUM WITH THE ED'S NAME AND PHONE NUMBER AND THAT OF HIS STAFF.

SO FAR THERE HAVE BEEN NO COMPLAINTS FROM JUDGES. THE ED HAS RECEIVED A FEW COMPLAINTS FROM CLIENTS AND HAS CALLED THESE CLIENTS AND IN MOST CASES, WAS ABLE TO SATISFY THE CLIENT THAT THE ATTORNEY WAS DOING AN ADEQUATE JOB. IN APPROXIMATELY

THREE CASES IT WAS CLEAR THAT THERE WAS LITTLE WE COULD DO TO SATISFY THE CLIENT. IN ANY CASE WHERE A CLIENT COMPLAINS TO THE ED, THE ED WILL CONTACT THE ASSIGNED ATTORNEY TO DISCUSS THE MATTER. MOST COMPLAINTS HAVE TO DO WITH ADEQUATE COMMUNICATION AND IN GENERAL THOSE COMPLAINTS CAN BE DEALT WITH.

26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences?

HARRIS LAW FIRM HAS MATERIALS IN ITS LIBRARY ON IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS. HARRIS LAW FIRM HAS TWO ATTORNEYS WHO SPEAK SPANISH. ONE OF THE OUTSIDE ATTORNEYS SPEAKS SPANISH.

27. Do you have a system in place that allows clients to evaluate the quality of services received from consortium attorneys?

NO

28. Are consortium attorneys and the administrator active participants in policy-making bodies of your criminal and juvenile justice systems?

YES

29. What are some of the things your consortium does especially well? Please describe.

ORGANIZATION AND ASSIGNMENT OF CASES TO INCREASE EFFICIENCY.

HANDLING SERIOUS CASES

COVERAGE FOR EACH OTHER. WE WORK TOGETHER WELL.

THE ED HAS A GOOD RELATIONSHIP WITH THE DA'S OFFICE AND HAS ACTIVELY SOUGHT OUT AREAS WHERE WE CAN AGREE SO TO BUILD THE TRUST THAT CAN BE LACKING BETWEEN DEFENSE BAR AND THE PROSECUTOR.

30. Are there any areas in which you think improvement is needed? Please describe.

Exhibit E

Washington County Indigent Defenders
150 N. First Ave.
Hillsboro, Oregon 97124
503-648-0707

Appeal:

How and when are public defense clients advised of their appellate rights in criminal and juvenile cases?

ANSWER: The plea petition documents in Washington County explain appeal rights when a defendant enters a plea of guilty. The court is very consistent in asking each defendant if he/she read and understood the contents of the plea petition, and if they had an adequate opportunity to discuss the issues with their attorney before signing the petition. For those cases that are tried, our attorneys include an explanation of appeal to their clients at the time the decision to go to trial is made, and following trial, if a conviction occurs. Each of our attorneys confirm that they do this.

Availability

- 1. Under what circumstances are attorneys in your office made available to indigent members of the public seeking information about criminal and juvenile matters?*

ANSWER: The only way we know that we have been appointed to represent an indigent accused is when the Court provides us with notification we have been appointed and that is usually done the day following the individual's initial court appearance. If this question is directed towards availability to the public, this is very ad hoc, and only occasionally a person will call this office on a random basis asking for legal advice. An attorney here is often available to discuss a matter with a potential client on an "as needed" basis.

- 2. When is an attorney with your firm first available to an indigent person suspected of a law violation?*

ANSWER: We are obligated under our contract to "contact" newly appointed clients within 72 hours if they are out of custody. This is done usually the day we receive notice of the appointment. In custody clients are to be seen within 24 hours, or the next business day if appointment is on a Friday. Our attorneys are aware of this requirement and comply.

- 3. Is an attorney present for the initial court appearance in criminal and juvenile public defense cases? If not, why not?*

ANSWER: In Washington County there are numerous contractors that are appointed by Court personnel. We have not been asked or required to be present at the various arraignments to receive appointment at that time or advise clients at that time with two exceptions. In the past we contracted to see person accused of domestic violence at the time of arraignment. We do not now. We are now participating in the Court's early disposition program and do appear at arraignment to advise clients who are offered an immediate guilty plea arrangement.

- 4. Do you have a policy requiring contact with in-custody and out-of-custody public defense clients within a specified period of time? What is the policy? Do you monitor compliance with this policy? How? Is the policy generally followed?*

ANSWER: This has been partially answered in number 2 above. In addition to that we do monitor to see that this is done and complied with. Staff, as stated above, make that initial contact the day of appointment, and indeed the Court does send persons to this office from Court and we make contact at that time. Attorneys are the personnel from this office that visit with clients and we continually remind them of their obligation to see clients within the time we have contracted to see them.

Board of Directors

- 1. Do you have a board of directors or other body overseeing the firm's public defense work?*

ANSWER: This is a private for profit corporation and we do have a board of directors consisting of the shareholders.

- 2. Who serves on your board of directors?*

ANSWER: Marvin Garland, Grant Burton, and David McCaffery.

- 3. How are board members selected and how long do they serve?*

ANSWER: The Board of Directors are elected by the shareholders, and serve one year terms.

- 4. How often does the board meet?*

ANSWER: The official Board meeting is once a year annually, however, the shareholders have a regularly scheduled weekly meeting to discuss business of the firm.

- 5. What are the functions of the board?*

ANSWER: To make major decisions for the firm, such as banking, major purchases, and leases.

6. *Does the board have written policies and procedures?*

ANSWER: Yes, contained in the Bylaws.

Case Management

1. *What is your case file protocol for public defense cases?*

ANSWER: After an initial conflict check has been done and case assigned, the file is opened into our data base. If the client is in custody, an email is sent out to the attorney notifying them of the new in custody client. Notices are printed and sent to the client regarding their next court appearance and a letter asking them to make an appointment with their attorney if they are not in custody or have not already made an appointment. A request for discovery is generated and sent to the district attorney's office in the court run. The file is then placed into the attorney's box for review. The case is set for a to-do in a week to check to see if we have received discovery or if the client has made an appointment. If we have not received discovery, we will call the DA's office to inquire. If they have not made an appointment, another letter will be sent out or a phone call if necessary. When we receive the discovery, and after the second conflict check has been done, it is attached to the front of the file and given to the attorney to review.

After a court appearance, the file is given to the assigned assistant to either calendar a future court date and generate notice or to be closed. If the client bench warranted, then a letter would be sent to the defendant advising there there is a warrant out for their arrest.

2. *What is your case assignment process in public defense cases?*

ANSWER: First check for conflicts, then check to see if it is a reappointed case or if there are any pending cases for a specific attorney. I then separate files by case type (felony, misdemeanor and pvs). I then check to see which attorneys need to get cases to get them to their target case load. If the attorney is available for that case, then it is assigned to them, otherwise, I proceed to the next attorney in line.

3. *How do you determine whether cases are being distributed fairly among attorneys?*

ANSWER: Use quatro-pro to tally amount of cases and to get the % of their target case load.

4. *What policy or procedure do you have for case relief when needed?*

ANSWER: If an attorney is unable to cover an appearance for his/her case, then it is the attorney's responsibility to obtain coverage for the case.

5. *What is your procedure for identifying and handling conflicts?*

ANSWER: When we first receive case from the court, an initial conflict check is done checking the charging instrument or what ever information has been provided to us. If we have a conflict at that point, an email is sent to the verifiers letting them know we cannot take the case due to a conflict and to reassign to another firm. When we receive the discovery from the district attorney's office, any names listed in the police reports are entered into Notes for a conflict check. Then all names are checked in both active and archive cases/contacts. If there is a conflict, a withdrawal motion and order is prepared and submitted to the court.

Community Education

1. *How is your office involved with the local community (local government, local criminal and juvenile justice systems, and local legal community)?*

ANSWER: WCID is involved in the local community in a variety of ways. Our firm has long been involved in the Hillsboro Chamber of Commerce and has helped fund and organize the Hillsboro Tuesday Market. We encourage our attorneys to educate themselves regarding community issues and to attend public interest meetings on a regular basis. We are also involved in the Washington County Bar Association and attend its monthly meetings whenever possible.

2. *Does your office provide trainers to the local community? If so how and on what topics?*

ANSWER: Some of our attorneys have participated in high school mock trial programs, and we have educated the community regarding landlord-tenant legal issues.

3. *If not described in response to items 1 and 2, how does your office participate in efforts to improve the local public safety system?*

ANSWER: We have actively participated in helping develop and implement the new Early Case Resolution Program in Washington County.

Competence

1. *What standards do you use for the hiring, monitoring, and management of the professional competence of staff involved in public defense cases?*

ANSWER: WCID seeks to hire and retain staff who are committed to working in the field of indigent defense. We interview both attorney and legal assistant applicants

on a regular basis and try to be selective in who we hire. This year, we participated in the University of Oregon interview program in March to plan for our future hiring needs. Factors we consider in hiring include demonstrated interest in indigent defense, prior work experience, recommendations, and enthusiasm.

2. *How do you review the casework of your staff? How is that review shared with the staff?*

ANSWER: WCID reviews the performance of its employees on a regular basis. Support staff are given formal evaluations twice per year. Attorneys' performance in meeting their obligations and zealously advocating for their clients are monitored on a continual basis. Senior attorneys observe less experienced attorneys in court, particularly in trial, and offer suggestions for improvement.

3. *Do you have a complaint process for use by staff, clients, others? How is it used?*

ANSWER: WCID has an open door policy which allows staff to express concerns to shareholders privately. WCID has regular staff lunches to share concerns regarding the work environment and to promote team cohesion. Staff are encouraged to critique the performance of management and to participate in building the firm's practice.

4. *Do you have a procedure in place to obtain regular feed-back from public defense clients regarding the representation they received from your office? Please describe.*

ANSWER: We do not currently have a formal procedure in place to obtain regular feedback from public defense clients. However, shareholders routinely communicate with public defense clients regarding their experiences with our attorneys, both positive and negative.

5. *Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?*

ANSWER: I am not aware of any post-conviction relief petitions being granted.

6. *Have any attorneys in your office been disciplined by the Oregon State Bar for violation of the Rules of Professional Conduct or the former Disciplinary Rules? What were the circumstances?*

ANSWER: Not to my knowledge.

Cultural Competence

What steps have you taken to provide culturally competent representation to clients of diverse backgrounds?

ANSWER: Our firm has focused on trying to make sure non-native speakers have the opportunity to meet with their attorney and a translator in advance of their court date. To that end, we have Spanish speaking staff who are key in arranging office conferences with translators present. In addition, discussion within the firm has focused on the varied significance of collateral consequences resulting from conviction for the different populations we represent (ie Section 8 housing residents, documented and undocumented immigrants).

Personnel

- 1. Do you have written policies and procedures for handling personnel matters? If not, do you have a system you use? Please describe.*

ANSWER: New employees at WCID receive a memorandum setting forth the terms and conditions of their employment. Issues discussed in the memorandum include WCID's "open door" policy, as well as its non-discrimination policy. Each employee's job description is also set forth in the memorandum.

- 2. Do you have written job descriptions? If not, please outline the functions of each category of employee involved in public defense work.*

ANSWER: New employees at WCID receive a memorandum setting forth the terms and conditions of their employment. Issues discussed in the memorandum include WCID's "open door" policy, as well as its non-discrimination policy. Each employee's job description is also set forth in the memorandum.

- 3. Do you have written policies regarding supervision of your staff? If not, describe your system of supervision.*

ANSWER: Attorneys are encouraged to share their concerns regarding the performance of their legal assistants. Positive behaviors by support staff are also acknowledged by the firm.

- 4. What is your staff evaluation process?*

ANSWER: WCID reviews the performance of its employees on a regular basis. Support staff are given formal evaluations twice per year. Attorneys' performance in meeting their obligations and zealously advocating for their clients are monitored on a continual basis. Senior attorneys observe less experienced attorneys in court, particularly in trial, and offer suggestions for improvement.

5. *How do you address issues of underperformance?*

ANSWER: In addition to personal observation of attorneys in court, WCID shareholders are very proactive in addressing any concerns various judges may have regarding our attorneys' performance. Staff who may be underperforming are given written feedback regarding management's concerns. If necessary, WCID has and will terminate employees who consistently fail to live up to the firm's expectations.

6. *How do you acknowledge and reward excellence?*

ANSWER: Excellence is acknowledged and rewarded in a variety of ways, including increased pay, public praise, and for attorneys, the opportunity to become a shareholder.

7. *Do your salary scales compare to other local attorney offices?*

ANSWER: WCID feels that its salaries compare favorably to other contracting firms in Washington County, particularly when balanced against attorneys' caseloads.

8. *Do you have a plan in place to permit new attorneys to join your office?*

ANSWER: We have set criteria to measure associates' progress in becoming shareholders.

9. *How do you monitor the general quality of the working environment at your firm? Are there regular staff meetings? Is there a process for obtaining feedback from staff regarding the working environment?*

ANSWER: Discussed above.

Training

1. *How do you orient new staff to your office?*

ANSWER: New staff are typically trained by senior staff members. However, WCID is currently working to develop more formal training procedures for both attorneys and support staff.

2. *How do you insure that attorneys are familiar with and abide by the Oregon Rules of Professional Conduct?*

ANSWER: Compliance with the Oregon Rules of Professional Conduct is encouraged by frequent communication among staff regarding any ethics issues that arise on cases.

3. *What ongoing professional development training is offered to staff by your office?*

ANSWER: Attorneys and staff are encouraged to attend CLE programs on a regular basis. WCID pays for attorneys' OCDLA memberships, and also pays for its attorneys to attend the OCDLA conference in Bend. WCID has a season pass to OSB CLE programs, which attorneys are encouraged to use. Finally, WCID has subscribed to the BarBooks service, allowing our attorneys to access all CLE materials online.

4. *What assistance or support do you provide to staff in order to encourage participation in professional development training outside the office?*

ANSWER: Discussed above.

Zeal

What steps have you taken to inspire and support your staff in providing zealous representation to public defense clients?

ANSWER: Discussed above.

Conclusions:

1. *In what areas do you believe your firm excels?*

ANSWER: This firm has had a contract for indigent defense beginning in February, 1980. We have prided ourselves in providing legal services for each indigent defendant with the same quality as if they had hired us themselves to represent them. We require our attorneys to know what current law is concerning initial police contact, and help them make the decisions about their case. We feel strongly that the decision about the case needs to be made by the client, obviously with our advice and counsel. I feel that we excel in integrity.

2. *Are there any areas in which improvement is needed? What are they? How do you intend to address them?*

ANSWER: There is always room for improvement. The improvement needs to be done at the management level of this firm and specifically in the areas of making sure each attorney adheres to our strict standards of education, awareness, and integrity.

WASHINGTON COUNTY DEFENDERS

ATTORNEYS AT LAW

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503-681-2388 • FAX 503.693.1353 • info@garlandlaw.com

May 8, 2007

Delivery by facsimile to 1-503-378-4462

Ingrid L. Swenson
Office of Public Defense Services
1320 Capitol Street NE, Suite 190
Salem, Oregon 97303

Re: Draft Report

Dear Ms. Swenson:

Thank you for meeting with Marv and I to discuss our firm's indigent defense representation in Washington County. I will certainly attend the PDSC meeting in Hillsboro on May 11th, and would be happy to talk to the commission about how the public defense system is working in Washington County.

I am pleased that PDSC is aware of the recent positive developments at our firm. I also recognize that we need to improve our training of newly hired attorneys who lack prior criminal and juvenile law experience. As is noted in the report, we are currently developing a formal training and orientation program for new attorneys.

I strongly disagree with the comment that our firm pays its attorneys below-market rates for indigent defense representation. I believe that whoever made this assertion to PDSC lacked knowledge of our firm and its salary structure.

When Mr. McCaffery and I joined the firm in September 2006, we were paying \$3,750-\$4,000 per month for a one-FTE caseload, plus benefits. These base salaries were higher than other contractors' rates, which allowed us to hire two experienced attorneys from other firms to stabilize the office and improve the quality of our representation. One of these attorneys (Sara Snyder) previously worked as a deputy DA in Columbia County.

We have tried to accommodate our attorneys' requests for partial contract caseloads when the attorneys have significant retained caseloads or other personal interests. For example, the firm gave Robert Olsen a \$2,000 base salary for a one-half FTE caseload as he also works part-time as a fireman. We also reduced Bert Dupre's caseload and salary at his request so that he could spend more time with his newborn child. I can only speculate that these partial-caseload base salaries may have created the false impression that funds are unfairly distributed in our firm, as alleged in the draft report.

Three new attorneys with felony-level indigent defense experience will be joining our firm in May. We will then have 6.5 FTEs handling contract cases, which does not include any phantom management-level FTEs. We will then be paying \$3,400-\$4,000 per month per FTE in return for very manageable caseloads. Most of our attorneys also have some retained cases, allowing them to earn significant additional income. Our shareholders all earn very low base salaries compared to our full-FTE attorneys and compared to shareholders at other firms in the county.

Given the facts set forth above, I respectfully request that you consider revising the comments about our firm in the final report. I would note that, to the best of my knowledge, WCID has been paying the highest wages among contracting firms in Washington County since at least 2002.

Please contact me if you would like to discuss these issues in greater detail. I look forward to attending the PDSC meeting on May 11th and hope to see you there.

Yours truly,

A handwritten signature in black ink, appearing to read "Grant R. Burton". The signature is fluid and cursive, with a prominent initial "G" and a long, sweeping underline.

Grant R. Burton
Attorney at Law

Exhibit F

Please respond as completely as possible to the following questions. Questions in some categories may overlap with questions in other categories. Please feel free to refer to previous answers when appropriate. Please provide any written materials that are responsive to the questions set forth below. If the requested information is contained in a document being provided with the responses, no additional response is necessary. If your response to any particular question or questions would be unduly burdensome, please note that fact and suggest other ways in which PDSC could obtain the requested information.

Appeal:

How and when are public defense clients advised of their appellate rights in criminal and juvenile cases?

A: The attorney advises clients of his or her appellate rights usually when reviewing the plea petition. The Judge advises the client of his or her appellate rights again when the client is accepting the plea.

Availability

1. Under what circumstances are attorneys in your office made available to indigent members of the public seeking information about criminal and juvenile matters?

A:

2. When is an attorney with your firm first available to an indigent person suspected of a law violation?

A: Once appointed, our first contact with the client is by phone. If the client is in custody, we have contact with the client within 24 hours at the jail. If the client is out of custody, we send notification letters asking the client to call and make an appointment. The letter includes a reminder of their upcoming court dates.

3. Is an attorney present for the initial court appearance in criminal and juvenile public defense cases? If not, why not?

A: We are present during the preliminary hearings in our juvenile defense cases. However, we are not present for the initial court appearance in criminal cases because we are not appointed until after the arraignment.

4. Do you have a policy requiring contact with in-custody and out-of-custody public defense clients within a specified period of time? What is the policy? Do you monitor compliance with this policy? How? Is the policy generally followed?

A: Our policy is to contact the in-custody clients within 24 hours of notification of appointment. We immediately send our notification letters to our out of custody clients. We do monitor compliance on a case by case basis.

Board of Directors

1. Do you have a board of directors or other body overseeing the firm's public defense work?

A: No

2. Who serves on your board of directors?
3. How are board members selected and how long do they serve?
4. How often does the board meet?
5. What are the functions of the board?
6. Does the board have written policies and procedures?

Case Management

1. What is your case file protocol for public defense cases?

A:

2. What is your case assignment process in public defense cases?

A: We have six attorneys practicing who take on a specified number of cases per month. All attorneys take on an approximate, even number of cases.

3. How do you determine whether cases are being distributed fairly among attorneys?

A: We conduct a monthly status check to ensure case count accuracy.

4. What policy or procedure do you have for case relief when needed?

5. What is your procedure for identifying and handling conflicts?

A: Our database is equipped with software that enables us to run conflict checks. Conflict checks are run immediately after receiving case/client information so any potential conflicts are identified.

Community Education

1. How is your office involved with the local community (local government, local criminal and juvenile justice systems, and local legal community)?

A: We attend quarterly Juvenile Bench Bar Meetings.

2. Does your office provide trainers to the local community? If so how and on what topics?

A: No

3. If not described in response to items 1 and 2, how does your office participate in efforts to improve the local public safety system?

Competence

1. What standards do you use for the hiring, monitoring, and management of the professional competence of staff involved in public defense cases?

A: We have a "hands on practice". That is, supervising attorneys are assigned cases and in Court and available for consult on a daily basis.

2. How do you review the casework of your staff? How is that review shared with the staff?

A: We conduct a periodic review of files, but we do not have a formal review process.

3. Do you have a complaint process for use by staff, clients, others? How is it used?

A: All problems and communication from the clients and Court are discussed with the attorney.

4. Do you have a procedure in place to obtain regular feed-back from public defense clients regarding the representation they received from your office? Please describe.

A: No

6. Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?

A: One. Years ago, one was filed for a client to get an unfair suspension set aside.

7. Have any attorneys in your office been disciplined by the Oregon State Bar for violation of the Rules of Professional Conduct or the former Disciplinary Rules? What were the circumstances?

A: No

Cultural Competence

What steps have you taken to provide culturally competent representation to clients of diverse backgrounds?

A: We attend diversity CLE's.

Personnel

1. Do you have written policies and procedures for handling personnel matters? If not, do you have a system you use? Please describe.

A: No

2. Do you have written job descriptions? If not, please outline the functions of each category of employee involved in public defense work.

A: We do not have written job descriptions but a brief outline of employees involved in public defense work is as follows:

-Legal Secretary: Assigns cases and reconciles the case count with the State.

-Receptionist: Schedules appointments and takes the initial information from clients.

3. Do you have written policies regarding supervision of your staff? If not, describe your system of supervision.

A: Hands on open door policy.

4. What is your staff evaluation process?

A: Most of our staff are long time employees. We had two secretaries retire from our office.

5. How do you address issues of underperformance?

A: We have not had to address issues of underperformance.

6. How do you acknowledge and reward excellence?

A: We give periodic salary increases.

7. Do your salary scales compare to other local attorney offices?

A: They are comparable.

8. Do you have a plan in place to permit new attorneys to join your office?

A: No

9. How do you monitor the general quality of the working environment at your firm? Are there regular staff meetings? Is there a process for obtaining feed-back from staff regarding the working environment?

A: We have an open door policy with staff to ensure we receive feedback regarding the working environment.

Training

1. How do you orient new staff to your office?

A: We have little turnover, but when new attorneys are hired they are given cases we feel they are competent to handle. We then gradually increase their caseload.

2. How do you insure that attorneys are familiar with and abide by the Oregon Rules of Professional Conduct?

A: Through observation.

3. What ongoing professional development training is offered to staff by your office?

A: Attorneys are in regular attendance of the CLE's offered through the OCDLA, and the Oregon State Bar paid for by our office.

4. What assistance or support do you provide to staff in order to encourage participation in professional development training outside the office?

A: Attorneys are in regular attendance of the CLE's offered through the OCDLA, and the Oregon State Bar paid for by our office.

Zeal

What steps have you taken to inspire and support your staff in providing zealous representation to public defense clients?

A: We advise all new attorneys to treat public defense clients the same as retained clients.

Conclusions:

1. In what areas do you believe your firm excels?

A: We excel in legal representation of our clients. We also have a good reputation among the legal community and have respect from the Judges.

2. Are there any areas in which improvement is needed? What are they? How do you intend to address them?

A: No

Exhibit G

Please respond as completely as possible to the following questions. Questions in some categories may overlap with questions in other categories. Please feel free to refer to previous answers when appropriate. Please provide any written materials that are responsive to the questions set forth below. If the requested information is contained in a document being provided with the responses, no additional response is necessary. If your response to any particular question or questions would be unduly burdensome, please note that fact and suggest other ways in which PDSC could obtain the requested information.

Appeal:

How and when are public defense clients advised of their appellate rights in criminal and juvenile cases?

Clients are advised of their rights to appeal the findings of the court or jury as part of the pretrial consultations and then again upon the court or jury making a finding.

Availability

Under what circumstances are attorneys in your office made available to indigent members of the public seeking information about criminal and juvenile matters?

We can and do take phone calls from non-clients and can give limited advice regarding their situation provided they do not already have an appointed attorney.

When is an attorney with your firm first available to an indigent person suspected of a law violation?

If this is regarding a case which is being arraigned or prelied, the court will notify the firm and we attempt to communicate with the client prior to the hearing. There are times when we will not have contact information. For dependency cases, the pick up attorney arrives early to court to consult with the prospective client.

Is an attorney present for the initial court appearance in criminal and juvenile public defense cases? If not, why not?

Assuming we are notified by the court which is usually the case, we do have an attorney present for these proceedings.

Do you have a policy requiring contact with in-custody and out-of-custody public defense clients within a specified period of time? What is the policy? Do you monitor compliance with this policy? How? Is the policy generally followed?

We do not have a written policy on time frames for contact with the clients. The staff will provide written notification for clients for which appointments come in to the office without a court proceeding. Generally, attorneys try to make an office appointment with

out of custody clients at the prelim or the arraignment. In custody clients are met with within a day or two.

Board of Directors

1. Do you have a board of directors or other body overseeing the firm's public defense work?

No board of directors.

Who serves on your board of directors?

How are board members selected and how long do they serve?

How often does the board meet?

What are the functions of the board?

Does the board have written policies and procedures?

Case Management

What is your case file protocol for public defense cases?

What is your case assignment process in public defense cases?

The lead paralegal distributes the juvenile cases. Our managing attorney, Fred Anderson, distributes the criminal cases to the associate attorneys.

How do you determine whether cases are being distributed fairly among attorneys?

The lead paralegal keeps tabs on cases distribution via a computer program and distributes the cases according to the current number of cases each attorney has. There is a little flexibility given previously scheduled court hearing. Fred Anderson can access the current criminal cases distribution when assigning out criminal cases to the associates. Criminal cases are of course distributed to different attorneys based on complexity and attorney experience. We are fortunate to have two very experienced juvenile associates so the distribution is done primarily by caseload percentages and availability in schedules.

What policy or procedure do you have for case relief when needed?

If I understand what you mean by case relief, the attorneys at the WACO office work together to make sure the attorneys have the time they need to work on cases that are more complex or time consuming. Attorneys in our Portland office are available to assist as well.

What is your procedure for identifying and handling conflicts?

As the cases come into the office, a paralegal will fill out an informational form regarding the cases and the associated names involved. This is then entered into our conflicts program. Actual conflicts cases are then prepared for substitution. Potential conflicts are noted on the conflict form which is part of the case file so the assigned attorney will continue to be on notice of this issue.

Community Education

How is your office involved with the local community (local government, local criminal and juvenile justice systems, and local legal community)?

Fred Anderson is a member of several Washington County organizations.

Does your office provide trainers to the local community? If so how and on what topics?

No.

If not described in response to items 1 and 2, how does your office participate in efforts to improve the local public safety system?

Competence

1. What standards do you use for the hiring, monitoring, and management of the professional competence of staff involved in public defense cases?

I assume the following questions specifically respond to this question.

How do you review the casework of your staff? How is that review shared with the staff?

We have formal reviews every six months in March and September of each calendar year. This consists of self-evaluation and evaluation by the supervising attorney and other attorney and staff feedback. I have also checked in with the court from time to time to get a sense of what the bench thinks.

Do you have a complaint process for use by staff, clients, others? How is it used?

Staff is encouraged to bring any issues directly to a partner of the firm. There are also monthly staff meetings where issues can be addressed.

Do you have a procedure in place to obtain regular feed-back from public defense clients regarding the representation they received from your office? Please describe.

Currently any concerns by clients are dealt with by the managing attorney. With the potential restructuring of the contract as a consortium, we will develop a policy for random feedback from clients.

Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?

No.

Have any attorneys in your office been disciplined by the Oregon State Bar for violation of the Rules of Professional Conduct or the former Disciplinary Rules? What were the circumstances?

No.

Cultural Competence

What steps have you taken to provide culturally competent representation to clients of diverse backgrounds?

We attempt to hire staff and attorneys with diverse backgrounds. This seems to ebb and flow depending on the applicant pool during any one position recruitment period. We have made a specific effort to hire bilingual attorneys and staff personnel so that we can address our clients needs in a way that will be most comfortable for them. Additionally, we pay for the offered diversity trainings for attorneys.

Personnel

Do you have written policies and procedures for handling personnel matters? If not, do you have a system you use? Please describe.

Yes

Do you have written job descriptions? If not, please outline the functions of each category of employee involved in public defense work.

Yes

Do you have written policies regarding supervision of your staff? If not, describe your system of supervision.

No written policies. Fred Anderson, and myself to a lesser extent, supervise the associates including case staffings and any other concerns. Attorney meeting are held every two weeks. Individual meetings are available to the associates upon request.

What is your staff evaluation process?

See above.

How do you address issues of underperformance?

We first try to mentoring the attorney more based on their stated needs. If there is not sufficient improvement, we would unfortunately need to hire an attorney for that position who is capable to meet the needs of our clients. If we had the ability we would try to utilize the attorney's strengths in a different capacity.

How do you acknowledge and reward excellence?

Partners individually talk to associates about outstanding job performance. We will sometimes take associates out for dinner and some have gone to Vegas with several partners. Salary increases as a result of the bi-annual evaluations are also given if finances allow.

Do your salary scales compare to other local attorney offices?

Other local indigent defense firms - Yes

Do you have a plan in place to permit new attorneys to join your office?

No.

How do you monitor the general quality of the working environment at your firm?

See above.

Are there regular staff meetings? Is there a process for obtaining feed-back from staff regarding the working environment?

See above.

Training

How do you orient new staff to your office?

For general office procedure, our office manager meets with new employees on their first day on the job. The majority of the time, new staff are partnered with the staff member who is leaving to be trained on the staff member's job responsibilities. At the WACO office the staff is trained to do the whole spectrum of paralegal functions, whether it pertains to the specific attorney areas that they primarily work in.

How do you insure that attorneys are familiar with and abide by the Oregon Rules of Professional Conduct?

All attorneys are required to review the ORPC and staff any complicated matters with the supervising attorney.

What ongoing professional development training is offered to staff by your office?

We do not offer any particular outside training to support staff. As for the attorneys, we offer and pay for several different organizations CLE offerings, including OSB and OCDLA.

What assistance or support do you provide to staff in order to encourage participation in professional development training outside the office?

As previously noted, we will pay for trainings in areas of interest.

Zeal

What steps have you taken to inspire and support your staff in providing zealous representation to public defense clients?

We try to instill a sense of pride by acknowledging successes. The associates we have currently specifically want to do defense work and have a lot of motivation to get the best outcomes for their clients.

Conclusions:

1. In what areas do you believe your firm excels?

The attorneys that work indigent defense cases have worked hard to develop trusting relationships with the clients. Many of the clients do not come to court proceeding initially with a lot of trust in the system given previous experiences in court and in life. They are in this line of work because they want to be and it shows. The office as a whole is motivated to support the attorneys who do contract work to be successful and satisfied with their work and the work environment.

2. Are there any areas in which improvement is needed? What are they? How do you intend to address them?

There are always ways to improve. I think one area which could use improvement is working with the courts to make the procedural system more efficient for the attorneys involved. There can be a lot of stress in the way that attorney time is not being efficiently used given the current operation of the court. While I believe it probably works for the court, it can be inefficient for the bar.

Exhibit H

MAY 18 REC'D

Ridehalgh & Associates, LLC
Attorneys at Law

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May 17, 2007

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Ingrid Swenson ✓
Executive Director
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Salem, Oregon 97301-7869

Re: *Public Defense Report Regarding Ridehalgh & Associates & Juvenile Cases;*

Dear Ingrid & Caroline:

In the report to the PDSC, the only negative statement regarding R&A involved the statement that our attorneys have failed to return calls and that we do not attend treatment reviews. I take such concerns rather seriously.

Our standard practice requires attorneys to return calls and when unable to have our juvenile coordinator (Cindy) do so. The software system we use allows Cindy to enter the record of the call and the summary of the conversation, as well as her follow-up, into the same data file that the attorney uses to enter the attorney's notes and records (Microsoft OneNote).

Cindy also attends team decision meetings (and all other types of meetings we are invited to attend at DHS) whenever the attorney is unable to attend (court appearances and other meetings make it impossible for the attorneys to attend all meetings personally). Whenever Cindy attends on behalf of an attorney, we have a form that Cindy relies upon to raise the attorney's concerns at the meeting and Cindy writes a report for the attorney upon her return to the office to report the events at the meeting.

Additionally, our receptionist has instructions to direct any calls of complaint directly to me and I take those calls. We also have a questionnaire that we provide to any client who wishes to make a complaint that comes to me directly once completed.

Since we have these systems in place, I was concerned regarding the report to the PDSC. I have not been receiving this type of complaint. I have raised the concern mentioned in the report with all of the attorneys at our Friday meeting. I have also raised it with Cindy and our other support staff. At this stage, I do not know where I should make changes to our system as I do not know where it may have broken down so as to allow the problems referenced in the report.

Caroline Meyer & Ingrid Swenson

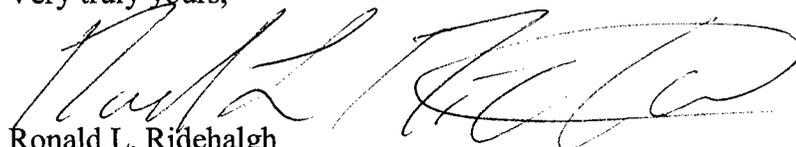
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May 17, 2007

If the assurances of anonymity that you likely gave to interviewees permit, I would appreciate any detail that would help me identify where, if anywhere, our system may have missed something.

Thank you for your help. It is useful to receive an outside report. Judges do not give me this type of helpful feed back when I ask them about our firm's performance.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ronald L. Ridehalgh". The signature is fluid and cursive, with a large initial "R" and "L".

Ronald L. Ridehalgh
Attorney at Law

Please respond as completely as possible to the following questions. Questions in some categories may overlap with questions in other categories. Please feel free to refer to previous answers when appropriate. Please provide any written materials that are responsive to the questions set forth below. If the requested information is contained in a document being provided with the responses, no additional response is necessary. If your response to any particular question or questions would be unduly burdensome, please note that fact and suggest other ways in which PDSC could obtain the requested information.

Appeal:

How and when are public defense clients advised of their appellate rights in criminal and juvenile cases?

At the time of an appealable adverse judgment, our attorneys are expected to discuss the option and process for appeal with the client. We then follow-up by sending the client a letter that details the process and timelines.

Availability

1. Under what circumstances are attorneys in your office made available to indigent members of the public seeking information about criminal and juvenile matters?

We schedule each attorney for one hour each day (as permitting per any individual attorney's calendar) for what we call "Consult/Office Time." That hour remains available for consultations and if none occur, the attorney uses that hour as guaranteed time to work in the office without other appointments. Additionally, our phones are manned continuously from 8:00 a.m. to 5:00 p.m. including during the lunch hour to answer calls.

2. When is an attorney with your firm first available to an indigent person suspected of a law violation?

We often receive calls before the court has arraigned and provided appointments. We then schedule consultations with attorneys, or occasionally, discuss the matter by phone. However, we only answer general questions over the phone due to conflict of interest concerns.

3. Is an attorney present for the initial court appearance in criminal and juvenile public defense cases? If not, why not?

Yes.

4. Do you have a policy requiring contact with in-custody and out-of-custody public defense clients within a specified period of time? What is the policy? Do you monitor compliance with this policy? How? Is the policy generally followed?

Yes. We have a staff person assigned to do initial jail visits in the morning and afternoon of each working day. This person picks up the appointment information and then does an initial visit prior to returning to the office. She relies upon a questionnaire that we have designed to obtain information necessary for release issues as well as to ask about evidence or witnesses that may need immediate actions to prevent the dissipation of that evidence. The form is then processed by our frontdesk person to open the file and is presented to the attorney assigned to that case. Compliance is ensured as our system will not create the new file without this step. Additionally, that staff person is charged with following up with the attorney regarding release issues as she is our contact person with the release office. This ensures that the attorneys have also followed up.

Board of Directors

1. Do you have a board of directors or other body overseeing the firm's public defense work?

We are a small firm and therefore do not have an outside board. We run very efficiently with exceptional, hands on management, daily management of cases, weekly staff meetings regarding cases, and a policy of procedure review and improvement.

2. Who serves on your board of directors? N/A
3. How are board members selected and how long do they serve? N/A
4. How often does the board meet? N/A
5. What are the functions of the board? N/A
6. Does the board have written policies and procedures? N/A

Case Management

1. What is your case file protocol for public defense cases?

Here is an excerpt from our employee manual:

"When you receive the file, the support staff will have already filed the demand for discovery, sent a letter to the client, calendared any existing court dates, entered the case into the conflict system and conducted an initial conflict check. If the case is an out-of-custody criminal case, the Criminal Coordinator will have already made several

attempts to call the client for an initial telephone interview and to schedule a follow up conference for you with the client. A report regarding the phone interview will be in the file. If the case is an in-custody criminal case, the Criminal Coordinator will have already visited the client in the jail for an initial interview and contacted any potential persons we may use at a release hearing. A report regarding the jail interview will be in the file.

When you receive the file, check your calendar to ensure that the court dates have been correctly added. You should also check the letter to the client to ensure that we sent the correct information to the client. You should also check that on the cover where the court dates are listed that you find both a check mark to the right of the date and that initials have been placed next to the court date (the checkmark is a reference to the letter notifying the client of the date and the initials are a reference to the entry of the court date on your calendar). If, when you do this initial review of the file, you notice that any of the tasks that should have been done are missing from the file, contact the front desk to fix the error. Your review of the file is a critical step in our quality control assurance procedures. ”

2. What is your case assignment process in public defense cases?

We have an allocation system based upon an attorney's qualifications and the number of cases that attorney may receive in a month. Each month this is updated and is relied upon during the course of the following month. If a client has an existing relationship with an attorney, we will assign that case to the prior attorney as long as that attorney meets the qualifications for that level of matter.

3. How do you determine whether cases are being distributed fairly among attorneys?

Our allocation system limits the number of cases any attorney may receive per month. Additionally, our conflicts of interest system lists the number and type of cases currently open by each attorney. During the monthly update of the allocation system, the number of active cases is reviewed to account for those cases that remain open longer than originally predicted.

4. What policy or procedure do you have for case relief when needed?

See #3 above.

5. What is your procedure for identifying and handling conflicts?

Our conflicts of interest system is on our server and accessible by all members of the firm. This system lists clients, victims, police officers, witnesses, and all other persons mentioned. The system also includes dates of births for each entry as well as case numbers for the clients. When we open the initial file, the staff performs the initial check. Once discovery is received, the staff performs an additional check based upon any information in the reports. Additionally, throughout the course of the case, if a staff person or attorney encounters a new name, that staff person or attorney is expected to check the name in the list. The software is integrated into our email and contacts system; therefore, the search feature is readily accessible to all. If a conflict is found, the potential conflict is first addressed by the attorney assigned to the case. Usually, the managing attorney is contacted to consider the possibility of a waiver of the conflict. If the conflict is confirmed and a waiver does not appear appropriate, we prepare a copy of the discovery for the new attorney, prepare the withdrawal motion and contact the client. We continue the representation of the client until the appointment of a new attorney.

Community Education

1. How is your office involved with the local community (local government, local criminal and juvenile justice systems, and local legal community)?

We make sure awareness of our office and services throughout the community is kept high. We have excellent relations with many local legal entities and communicate with them on a regular basis. And of course, as contractors, we are active participants in the local criminal and juvenile justice systems. Since our office provides the counsel for the domestic violence deferred sentencing system and the driving under the influence diversion program in the county, we are often called upon to provide instruction to other attorneys and firms on these matters. We are also constantly involved with the court's review of these systems as well as continual involvement in the review of the court's juvenile court process. Most of the meetings to review the two diversion programs and the juvenile court's system involve treatment providers, the district attorney's office, the probation office as well as us on behalf of defense.

2. Does your office provide trainers to the local community? If so how and on what topics?

As our office provides counsel for the domestic violence deferred sentencing system and the driving under the influence diversion

program in the county, we are often called upon to provide instruction to other attorneys and firms on these matters.

3. If not described in response to items 1 and 2, how does your office participate in efforts to improve the local public safety system?

We are additionally involved with the planning of a variety of the county's systems such as the early case resolution system (know as EDP in other counties).

Competence

1. What standards do you use for the hiring, monitoring, and management of the professional competence of staff involved in public defense cases?

Our standards are very high and we expect and receive a high degree of professionalism from our attorneys and support staff. We pay special attention to trying to attract bilingual candidates to more effectively communicate with clients. Additionally, as a small firm, it is expected that the attorneys involve the managing attorney in case strategy decisions. Additionally, we hold meetings each Friday where firm wide discussion of each attorney's cases occurs. The review by the managing attorney and the Friday meetings are based upon a "two heads are better than one" operating philosophy.

2. How do you review the casework of your staff? How is that review shared with the staff?

As a small firm, casework is evaluated every day. Areas needing attention are attended to immediately and training is provided or policies adjusted as necessary. See #1 regarding the constant involvement of other attorneys in each attorney's caseload for review purposes.

3. Do you have a complaint process for use by staff, clients, others? How is it used?

All calls that the frontdesk determines to be calls regarding a complaint are directed to the managing attorney. The managing attorney discusses the issue and follows up as necessary. The routine requires a call to the client once the managing attorney has investigated the area of concern. We also have an official compliant form that is provided to clients. Should a client return the form, it is directly routed to the managing attorney for review. For concerns from within the

office, the small nature of our office facilitates constant communications between the managing attorney and all staff.

4. Do you have a procedure in place to obtain regular feed-back from public defense clients regarding the representation they received from your office? Please describe.

We have a "closing case questionnaire" that is sent to clients after the conclusion of the case as well as a self addressed stamped envelope. This is periodically sent to a random selection of clients. The questionnaire asks a series of questions regarding the client's satisfaction and when returned is directed to the managing attorney. A copy of the questionnaire is then provided to the attorney discussed in the questionnaire and occasionally posted for all to review within the office.

6. Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?

No.

7. Have any attorneys in your office been disciplined by the Oregon State Bar for violation of the Rules of Professional Conduct or the former Disciplinary Rules? What were the circumstances?

No.

Cultural Competence

What steps have you taken to provide culturally competent representation to clients of diverse backgrounds?

We pay special attention to trying to attract bilingual candidates to more effectively communicate with clients. This has been very successful in the past as we have had a large number of support staff who natively spoke Spanish. We also work with many interpreters and try to only use those that are extremely competent and are well versed in the culture of the language they speak. Additionally, we rely upon other experts (investigators and others) who are familiar with the cultural aspects.

Personnel

1. Do you have written policies and procedures for handling personnel matters? If not, do you have a system you use? Please describe.

Yes. We have an employee manual that is divided into three sections. The first section concerns personnel policies. This covers a variety of issues from our sexual harassment policy to our compensation policies. It is too lengthy and detailed to include in this response.

2. Do you have written job descriptions? If not, please outline the functions of each category of employee involved in public defense work.

Yes. Our support staff have written descriptions and are categorized as a "Criminal Coordinator," "Juvenile Coordinator," "Frontdesk" and "Law Clerk." We additionally have a floating support staff person who is not given specific area of concern, but helps with all the others. The duties of these support staff are detailed in our manual; however, the titles are fairly self-explanatory. The attorneys' duties are detailed in the employee manual; however, they do not have titles as does our support staff.

3. Do you have written policies regarding supervision of your staff? If not, describe your system of supervision.

Our system of supervision and redundancy is set by written policy. This is designed as a quality control procedure and is referenced above in the quote of our employee manual. However, the heart of much of the supervision is the constant involvement by the managing attorney and other attorneys and support staff that is made possible due to our nature as a small firm and our commitment to a "two heads are better than one" philosophy.

4. What is your staff evaluation process?

As a small firm with the high level of constant involvement by the managing attorney and the other attorneys and support staff, we are constantly evaluating our performances. Concerns are immediately addressed. At our Friday meetings, we discuss which intuitional improvements can be made and evaluate the changes that have already been made and praise accomplishments by individuals within the firm.

5. How do you address issues of underperformance?

Such concerns are addressed immediately. When in the past we have had such a concern, we have identified it by the review of other attorneys and support staff. Additionally, we have our complaint procedure so that clients may directly call the managing attorney as

well as fill out a written complaint form which is directed to the managing attorney.

6. How do you acknowledge and reward excellence?

We have four awards that rotate within the office based upon performance specific criteria. When the award changes hands, the attorney is photographed holding the award and that photo is placed on a wall where we keep these photos. Additionally, an announcement is placed on our internal website. These awards are highly prized and are a source of competition within the firm.

7. Do your salary scales compare to other local attorney offices?

We understand that our salaries are comparable with other public defense firms.

8. Do you have a plan in place to permit new attorneys to join your office?

Over the years, we have added many new attorneys to our office and have developed a system of mentoring so as to integrate new attorneys.

9. How do you monitor the general quality of the working environment at your firm? Are there regular staff meetings? Is there a process for obtaining feed-back from staff regarding the working environment?

One of the matters for our weekly staff meetings held every Friday is the general quality of the working environment. At these meetings, we often brainstorm possible improvement and continually evaluate our existing systems and environment. Additionally, there is constant involvement by the managing attorney with the attorneys and support staff so as to facilitate constant communications.

Training

1. How do you orient new staff to your office?

We have excellent shadowing and mentoring protocols for new staff and a policy of cross training to ensure new staff become familiar with various positions and how they all work together to provide excellent public defense. We have a special emphasis in teaching why we do things certain ways as we have discovered that many of our best initiatives for improvement over the years come from those performing the tasks rather than from management.

2. How do you insure that attorneys are familiar with and abide by the Oregon Rules of Professional Conduct?

Ethically appropriate behavior is routinely discussed while discussing case strategy individually as well as during our firm meetings each Friday. Each member of our office is expected to raise the issue with the managing attorney should concerns over another's behavior arise.

3. What ongoing professional development training is offered to staff by your office?

The office provides a variety of CLE opportunities. Additionally, the third section of our employee manual is our "Practice Manual" which functions as "how to" instructions for practice in our county. We also never wish staff to feel that they have "topped out" and are always urging individuals to pursue new skills to better their work performance and their ability to serve clients.

4. What assistance or support do you provide to staff in order to encourage participation in professional development training outside the office?

We are very positive and offer staff the time and encouragement they need to upgrade their skills. Days off for out of the office training are scheduled by the individual and the firm pays for all of these courses.

Zeal

What steps have you taken to inspire and support your staff in providing zealous representation to public defense clients?

Our firm's culture is built on advocacy and constant review and encouragement. We have awards that are given within the firm for excellent representation to public defense clients and employees are given public acknowledgement firm-wide of exceptional service. More specifically, we have awards for jury victories, court trial victories, victories involvement the reunification of a family in juvenile dependency matters, as well as an award for successful representation of unusually "difficult" clients. When one wins this award, their picture is taken and posted holding the award and an announcement is made on our internal website. These, and our general culture of zealous advocacy, have been great moral boosts that encourage zeal to the benefit of our clients.

Conclusions:

1. In what areas do you believe your firm excels?

We utilize routines and checklist procedures that have virtually eliminated errors and have greatly freed the attorneys to exert their efforts in creative defense strategy development, communication with clients and communication with the district attorneys office. Additionally, our "two heads are better than one" philosophy has institutionalized a brainstorming form of representation whereby our clients receive the best from all our minds and experiences rather than from just one attorney.

2. Are there any areas in which improvement is needed? What are they? How do you intend to address them?

Our practice is that we are constantly in a state of internal review. Our managing attorney maintains a list entitled "Issues" where ideas and concerns from the daily interactions with the attorneys and support staff as well as from the weekly Friday meeting are listed. This "Issues" list is used to develop new procedures and to improve existing ones. Although there are always a number of areas being explored through this procedure, a current significant one is how to deal with the lower rate of appointment to cases that has occurred over the last six months. Nevertheless, we have great faith in our collective ability to adapt and create benefit to our clients and our professional lives from our constant re-evaluation even in times of potential economic adversity.

Attachment 8

OPDS QUALITY ASSURANCE TASK FORCE SITE VISIT SUMMARY
June, 2007

1. **Crabtree & Rahmsdorff** (Deschutes County) – criminal, juvenile and civil commitment cases. May, 2004. Team members: Marty Cohen (Clackamas County), team chair; Tom Sermak (Lane County); Doug Fischer (Umatilla County).
2. **CIDC** (Clackamas Indigent Defense Consortium) – criminal cases. September, 2004. Team members: Tom Sermak (Lane County), team chair; Dave Audet (Washington County); Robert Elliott (Washington County); Guy Greco (Lincoln County); Cathy Ruckle (Multnomah County); Robert Thuemmel (Clackamas County)
3. **Metropolitan Public Defender Services, Inc.** (Washington County) – criminal, juvenile and civil commitment cases. November, 2004. Team members: Janise Augur (Lane County), Ann Christian, Tom Crabtree (Deschutes County), Ron Gray (Clackamas County), Carole Hamilton (Coos County), Julie McFarlane (Multnomah County) and Bert Putney (Jackson and Josephine Counties).
4. **Jackson County Public Defense Contractors**, February, 2005. Team members: Carole Hamilton (Coos County), chair; James Arneson (Douglas County); Angel Lopez (Multnomah County); Karla Nash (Deschutes County); Janet Miller (Multnomah County); Keith Rogers (Washington County); Kathy Wood (Benton County).
 - a. **Southern Oregon Public Defender, Inc.**, Jackson County office – criminal cases
 - b. **Los Abogados** – criminal cases
 - c. **Jackson Juvenile Consortium** – juvenile and civil commitment cases
5. **Umatilla/Morrow Counties**, April, 2005. Team members: Tom Sermak (Lane County), chair; Tom Crabtree (Deschutes County); Jamesa Drake (LSD attorney); Lynn Holguin (Multnomah County)
 - a. **Intermountain Public Defender, Inc.** -- criminal, juvenile and civil commitment cases.
 - b. **Umatilla/Morrow Consortium** – criminal, juvenile and civil commitment
6. **Portland Defense Consortium** (Multnomah County) – criminal and juvenile cases, July, 2005. Team members: Lisa Greif (Jackson County), chair; Tom Collins (Washington County); Hollis McMilan (Multnomah County); Shawn Wiley (LSD attorney); Jack Morris (Gilliam, Hood River, Sherman, Wasco and Wheeler Counties); Steve Krasik (Marion County)

7. **Douglas County** – September, 2005. Site team: Paul Levy (Multnomah County), chair; Gary Berlant (Josephine County); Jeni Feinberg (Jackson County); Carole Hamilton (Coos County); Jennifer Kimble (Crook, Jefferson Counties); Janet Miller (Multnomah County) Bert Putney (Jackson County)
 - a. **Umpqua Valley Public Defender** – criminal, juvenile, and civil commitment cases
 - b. **M.A.S.H.** – criminal, juvenile and civil commitment cases
 - c. **James A. Arneson, PC** – criminal and juvenile cases
 - d. **Richard Cremer** – criminal and juvenile cases

8. **Multnomah County Juvenile Contractors** – January, 2006. Site team: Leslie Harris (University of Oregon, chair), Mike Clancy (Clackamas County), Daphne Mantis (Lane County/statewide appeals), Jennifer Nash (Benton County), Holly Preslar (Josephine County), Tahra Sinks (Marion County), Karen Stenard (Lane County)
 - a. **Bertoni & Todd**
 - b. **Alan Karpinski**
 - c. **Ronnee Kliewer**
 - d. **Juvenile Rights Project**
 - e. **McKeown & Brindle**
 - f. **Metropolitan Public Defender**
 - g. **Multnomah Defenders, Inc.**
 - h. **Native American Program Oregon Legal Services Corporation (NAPOLS)**

9. **Linn County** – March, 2006. Site team: Jim Hennings (Multnomah and Washington Counties), chair; Janan Billesbach (Clackamas County); Jeff Carter (Marion County); Steve Krasik (Marion County); Valerie Wright (Deschutes County)
 - a. **Linn County Juvenile Defense Consortium** – juvenile cases
 - b. **Linn County Legal Defense Corporation** – criminal and civil commitment cases

10. **Lane County Juvenile Contractors** – June, 2006. Site team: Sibylle Baer (Multnomah County), chair; Dan Cross (Washington County); Valerie Eves (Deschutes County); Dick Garbutt (Klamath County); Liz Sher (Multnomah County); Dean Smith (Washington County)
 - a. **Lane Juvenile Lawyers Association**
 - b. **Public Defender Services of Lane County**

11. **Lincoln Defense Consortium** – September, 2006. Site team: David McDonald (Multnomah and Clark Counties) chair, Andrew Chilton

(Multnomah County), Ron Gray (Clackamas County), Greg Hazarabedian (Lane County), Stuart Spring (Multnomah County), Mark Taleff (Linn County)

12. **Independent Defenders, Inc.** (Clackamas County juvenile provider)—February 2007. Site Team: Jeff Carter (Marion County), chair; Lissa Kaufman (Multnomah County); Inge Wells (Lane County); Christine Herbert (Jackson County); Clare Bruch (child welfare specialist, Jackson County).
13. **Metropolitan Public Defender** (Multnomah County, adult criminal)—April 2007. Site Team: Kathryn Wood (Benton County), chair; Bert Putney (Jackson County); Lisa LeSage (Multnomah County); Gordon Mallon (Harney, Grant Counties); Tom Sermak (Lane, Marion Counties); Ellen Pitcher (Federal courts).
14. **Benton County Legal Defense Corporation**—July 2007 (pending)
15. **Crook/Jefferson County**—September 2007 (planned)

Contract offices evaluated to date handle approximately 55% of the trial level non-death penalty caseload.