

PDSC COMPLAINT POLICY AND PROCEDURES

The following Public Defense Complaint Policy and Procedures (PDCPP) is adopted by the Public Defense Services Commission (PDSC) pursuant to ORS 151.216(1)(f)(j) and (h), effective October 22, 2004.

Policy:

It is important for the Office of Public Defense Services (“OPDS”) to be aware of complaints regarding the performance of public defense providers and the cost of public defense services, to have a policy regarding the processing of such complaints, and to address such complaints in a manner which is consistent with its obligation to provide high quality, cost-efficient public defense services.

Certain complaints are in the jurisdiction of the courts or of the Oregon State Bar and should be conducted under procedures adopted by them for such matters. OPDS has an independent duty to oversee the quality and cost of public defense services and to take appropriate action to ensure quality and cost effectiveness.

The PDCPP governs the procedure for receiving, investigating, and responding to complaints regarding (1) the quality of services provided by public defense attorneys, and (2) payment from public funds of attorney fees and non-routine fees and expenses incurred in cases.

In order to provide OPDS with specific guidelines for the handling of complaints, the PDSC adopts the following procedures.

Procedures:

1. Complaints regarding the quality of services provided by public defense attorneys.
 - a. A “public defense attorney” is an attorney who provides legal representation at state expense pursuant to ORS 151.216 and other statutes.
 - b. A complaint regarding the quality of services provided by a public defense attorney shall be made in writing and signed by the complainant.
 - c. Upon receipt of a complaint under this paragraph, OPDS will make an initial determination whether the complaint raises a facially reasonable issue regarding the quality of services provided by a public defense attorney.
 - d. If the complaint raises a facially reasonable issue regarding the quality of services, OPDS shall determine whether:

- i. the complaint relates to a current concern or dispute which may be capable of resolution through OPDS intervention (for example, a current client contacts OPDS to report lack of contact with the client's lawyer); or
 - ii. the complaint relates to past or continuing conduct which cannot be resolved by OPDS intervention.
- e. If the complaint relates to a current concern which may be capable of informal resolution, OPDS shall provide the attorney and, if applicable, the attorney's employer or consortium administrator, with a copy of the complaint. OPDS shall attempt to resolve the issue with the attorney or the attorney's employer or consortium administrator by agreeing upon an appropriate course of action.
- f. If the concern is about past or continuing conduct which has not been or cannot be resolved by OPDS intervention, OPDS shall then determine whether the concern is one which is being or should be addressed:
 - i. by the court (for example, if the client is seeking to have counsel relieved and new counsel appointed, or if the client has filed a petition for post conviction relief alleging inadequate representation by counsel); or
 - ii. by the bar (for example, if the allegation is one of misconduct by the lawyer).
- g. If one or more of the collateral proceedings identified in *fi* and *fii* above has already been initiated, OPDS shall inform the complainant, the attorney, and, if applicable, the attorney's employer or consortium administrator that OPDS will monitor the progress of the proceeding in the court or bar.
- h. If the complaint is of a nature which would more appropriately be addressed by the court or bar and such proceedings have not been initiated, OPDS will inform the complainant of the availability of those processes and inform the attorney, and the attorney's employer or consortium administrator if applicable, that the complainant has been so advised.
- i. If:
 - i. the complaint is not capable of informal resolution and is also not properly the subject of a court or bar proceeding (such as an allegation that an attorney is continually failing to meet obligations under the attorney's contract with PDSC or fails to meet PDSC's Qualification Standards for Court Appointed Counsel to Represent Indigent Persons at State Expense), or
 - ii. the court or bar proceedings have resulted in a determination that the lawyer has failed to adequately represent the client or has violated an OSB disciplinary rule,
- j. Then:

OPDS shall review information submitted and findings made in collateral proceedings, if any, and may perform its own investigation. After notice to the attorney and the attorney's employer or consortium administrator, if

any, of the information obtained by OPDS and an opportunity for the attorney and the employer or administrator to respond, OPDS shall determine whether all of the information available establishes or fails to establish that the attorney's representation with respect to the matter complained of has been unsatisfactory.

- i. If OPDS determines that the representation has been unsatisfactory it may take appropriate action to attempt to correct the problem.
- ii. If corrective action is not possible or if the attorney or the employer or consortium administrator fails to correct the conduct complained of in a timely manner, OPDS may take such additional action as is appropriate under the circumstances, including but not limited to suspension of the attorney from appointment for any or all case types, in addition to any action authorized under PDSC's contract with the attorney or the attorney's employer or consortium.
- k. OPDS shall notify the attorney and the employer or consortium administrator, if any, in writing of its finding and of any action taken or sanction imposed in response to a finding of unsatisfactory representation.
- l. If a complaint is resolved informally, no written notice to the complainant is required. If a complaint is not resolved informally, OPDS shall notify the complainant in writing of its finding and of any corrective action taken or sanction imposed in response to a finding of unsatisfactory representation.
- m. OPDS shall maintain a record of each complaint filed under this section and of any action taken in response to the complaint.

2. Complaints regarding payment from public funds of attorney fees and non-routine fees and expenses.

- n. A complaint regarding payment from public funds of attorney fees or non-routine fees and expenses shall be made in writing and signed by the complainant.
- o. Upon receipt of a complaint under this paragraph, OPDS shall make an initial determination whether the complaint raises a facially reasonable claim regarding the payment from public funds of attorney fees or non-routine fees and expenses.
- p. If the complaint raises a facially reasonable claim, OPDS shall review records related to the attorney fees or non-routine expense authorization or payment.
- q. If the matter complained of is not resolved by a review of the records, OPDS shall contact the attorney or provider for an explanation. The attorney or provider may respond orally or in writing.
- r. If, after a review of the records and any additional information obtained from the attorney or provider, a reasonable concern remains that attorney

- fees or non-routine fees or expenses may have been unreasonable, OPDS shall notify the attorney or provider of its concern and shall conduct such further investigation as may appear appropriate under the circumstances.
- s. After completing its investigation, OPDS shall determine whether all of the information available establishes or fails to establish that the fee or expenditure complained of was unreasonable.
 - t. If OPDS determines that the fee or expense was unreasonable, it may take any or all of the following actions unless the fee or expense was specifically pre-authorized by OPDS and used for the purpose authorized:
 - i. decline payment for the goods or services in question;
 - ii. seek reimbursement for any funds determined to have been improperly obtained or used;
 - iii. warn the attorney or provider;
 - iv. upon approval by the executive director of OPDS, suspend the attorney's eligibility for appointment in public defense cases or decline to authorize future fees or expenses for the provider; and
 - v. take such additional measures as may be appropriate under the circumstances.
 - u. If a fee or expense determined to be unreasonable was specifically pre-authorized by OPDS and used for the purpose authorized, OPDS shall review its policies and procedures and take such action as appears appropriate to avoid future pre-authorization of unreasonable fees and expenses.
 - v. OPDS shall notify both the attorney or provider and the complainant in writing of its finding and of any action taken or sanction imposed in response to a finding that a fee or expense was unreasonable.
 - w. OPDS shall maintain a record of each complaint filed under this section and of any action taken in response to the complaint.
2. Nothing in the PDCPP prohibits OPDS from receiving information in any form from any source regarding the performance of public defense providers or the cost of public defense services, and taking such action as it deems appropriate.
 3. Submissions to OPDS may be made in confidence or may include information submitted in confidence. OPDS will not disclose such information, except as required by law, without the consent of the person making the submission.

