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Janet C. Stevens



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Peter A. Ozanne

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, February 9, 2006 Meeting*

9:00 a.m. to 12:00 p.m.**

Office of Public Defense Services
Basement Meeting Room***
Capitol & Gaines Building
1320 Capitol Street N.E.
Salem, Oregon 97303

AGENDA

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| 1. Action Item: Approval of the Minutes of PDSC's January 12, 2005 Meeting (<i>Attachment 1</i>) | Barnes Ellis |
| 2. OPDS's Monthly Report | OPDS's Management Team |
| 3. Action Item: Review and Approval of a Service Delivery Plan for Yamhill County (<i>Attachment 2</i>). | Peter Ozanne |
| 4. Action Item: Review and Approval of Changes in OPDS's Personnel Policies (<i>Attachment 3</i>) | Kathryn Aylward |
| 5. Review Selected Aspects of PDSC's Contracting Process <ul style="list-style-type: none"> • RFPs & Multi-Function Contracts • Wind-Down Options • Current Bid Disclosure Policy | Peter Ozanne
Kathryn Aylward |
| 6. Review Revisions to OPDS's Confidentiality Policy (<i>Attachment 4</i>) | Ingrid Swenson |
| 7. Action Item: Review and Approval of Proposed Contracts | Kathryn Aylward |

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| 8. Action Item: Consideration of OCDLA's Proposals to Revise PDSC's Attorney Qualification Standards (<i>Attachment 5</i>) | Ingrid Swenson
OCDLA Representatives |
| 9. Update of the Service Delivery Plan for Marion County (<i>Attachment 6</i>) | Peter Ozanne |
| 10. Discussion of Proposed Meeting Agendas for 2006 (<i>Attachment 7</i>) | Peter Ozanne |
| 11. Executive Session: **** PDSC's Annual Review of Peter Ozanne's Job Performance (<i>Attachment 8</i>) | Barnes Ellis |

NOTES

****PDSC's next meeting is scheduled for April 13, 2006 in Hood River, Oregon. PDSC's March 9, 2006 meeting is canceled.***

*****Box lunches will be served at 12:00 p.m. on February 9 for Commission members, staff and others in attendance who place their orders in advance with Laura Anson at OPDS.***

******Directions to OPDS's Basement Meeting Room: Through the main entrance of the Capitol & Gaines Building, turn immediately to your left and take the stairway to the basement. Turn right into the hallway at the bottom of the stairs and take the first door in the hallway to your left.***

*******Executive Session: The Public Defense Services Commission will meet in executive session at approximately 11:30 a.m. The session will be for the purposes of reviewing and evaluating the performance of its Executive Director, Peter Ozanne and administrative agency, the Office of Public Defense Services, in 2005. The executive session is being held pursuant to ORS 192.660(2)(f) and (h).***

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

MEETING MINUTES

January 12, 2006 Meeting
Office of Public Defense Services
1320 Capitol Street N.E.
Salem OR

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Jim Brown
Chip Lazenby

STAFF PRESENT: Peter Ozanne
Peter Gartlan
Kathryn Aylward
Rebecca Duncan
Ingrid Swenson
Laura Anson

Commission Chair Barnes Ellis called the meeting to order at 9:08 a.m.

Agenda Item No. 2 OPDS's Monthly Report

Kathryn Aylward announced the resignation of Angelique Bowers from the Contract and Business Services (CBS) and the resulting Accountant 3 vacancy. Kathryn also informed the Commission that CBS will be reviewing and approving attorneys for court-appointments and submitting lists of approved attorneys to the courts by April 1, 2006.

Peter Gartlan announced the resignation of Esme Hughes from the Legal Services Division (LSD) and the resulting secretarial vacancy. Pete indicated that he did not have current data on the backlog of appellate cases at LSD, but would collect that data for a report to the Commission at its next meeting.

Agenda Item No. 5 Updates of the Service Delivery Plan for Marion County

Peter Ozanne reported minor revisions to Marion County Service Delivery Plan to clarify the steps necessary to establish a community-based public defender office in the county. He also advised the Commission on the formation of a Steering Committee, with the help of Justice Carson, Mike Greenfield and Jim Brown, to assist in the process of establishing that office. At the Chair's request, Peter agreed to revise the Service Delivery Plan further to emphasize the importance of establishing a community-based board of directors for the new office, as well as the board's role in selecting the office's director and assisting the director in designing and developing the office

Agenda Item No. 5 Update of Service Delivery Plans for Klamath County

Peter Ozanne reviewed minor changes to the Service Delivery Plan for Klamath County as a result of additional information provided by representatives of the Klamath Defense Services consortium at the Commission's October 2005 meeting in Bend.

Agenda Item No. 1 Approval of the Minutes

Hearing no objections or corrections to the minutes of the Commission's November 2005 meeting, the Chair entertained a motion to approve those minutes. Shaun McCrea moved to approve minutes; Chip Lazenby seconded the motion; hearing no objection the motion carried: **VOTE 4-0.**

Agenda Item No. 2 Review and Approval of Proposed Contracts

Following Kathryn Aylward's review of the 77 preliminary agreements or proposed contracts for the delivery of public defense services in 2006 and 2007, questions by the Commission, comments by attorneys Jon Ghastin and Geoffrey Silver of the Multnomah County Indigent Defense Consortium regarding their concerns and objections to a proposed contract for defense services in Multnomah County's Early Disposition Program (EDP) and comments by Paul Petterson, the Director of Multnomah Defenders, Inc. (MDI) about the concerns of his board of directors over MDI's contract rates, the Commission voted to approve all of the preliminary agreements submitted by OPDS, with the exception of the proposed contract for defense services in Multnomah County's EDP. The Commission directed CBS to issue another Request for Proposals and propose another preliminary agreement for those services as soon as possible.

The Chair entertained a motion to approve all of the proposed contracts, Nos. 1 through 77, amending No. 70 to make 12/31/06 the end date for that contract, excepting proposed contract No. 63. Jim Brown moved to approve the motion; Shaun McCrea seconded the motion; hearing no objection the motion carried: **VOTE 4-0.**

Chip Lazenby moved to approve proposed contract No. 63; the Chair seconded the motion; the motion failed: **Vote 2-2.**

Agenda Item No. 8 Thanks to Justice Carson

Barnes Ellis, Shaun McCrea, Peter Ozanne, Ann Christian and Ross Shepard, on behalf of the Commission, the Oregon Criminal Defense Lawyers Association and the state's public defense community, expressed their appreciation for Justice Carson's years of leadership and service as Oregon's longest-serving Chief Justice, his advocacy and support for public defense and his personal kindnesses and friendship.

Agenda Item No. 6 Introductions of OPDS employees

Kathryn Aylward introduced Zachary Kreft-Lama, who has been working in CBS's accounts payable section for three months. Peter Gartlan introduced Bronson James, Brandon Williams, Kristin Carveth, Marc Brown and Ryan O'Connor, new attorneys at LSD, and Pam Bilderbeck, a new secretary for the division.

Motion to Adjourn

Shaun McCrea moved to adjourn the meeting, Jim Brown seconded the motion; hearing no objection, the motion carried. **VOTE 3-0.**

Attachment 2

OPDS's Final Report to the Public Defense Services Commission on Service Delivery in Yamhill County

(January 5, 2006)

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 service 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 and 2005, the Commission completed evaluations of the local delivery systems in Benton, Lane, Lincoln, Linn, Multnomah, Marion and Klamath Counties and 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 presents the results of OPDS's preliminary investigation of conditions in Yamhill County's public defense delivery system. It also represents the first and third steps in PDSC's service delivery planning process.

PDSC's Service Delivery Planning Process

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

Second, starting with preliminary investigations by OPDS and a report such as this, the Commission will review the condition and operation of local public defense delivery systems and services in each region by holding 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 of this report and public comments in response to that draft and during its meetings in a county or region, PDSC will develop a Service Delivery Plan, which is set forth at the conclusion of the final version of this 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 will (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, OPDS will implement the strategies or changes proposed in the Commission's Service Delivery Plan for that region. Any Service Delivery Plan that PDSC develops will not be the last word on the service delivery system in that region, or on the quality and cost-efficiency of the region'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 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 regions of the state on an expedited basis in order to address pressing problems in those regions.

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.

A range of strategies to promote quality and cost-efficiency. 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 Contractors 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 Quality Assurance Task Force is planning site visits of the largest contractors in counties across the state, including Columbia, Jackson, Klamath, Multnomah and Umatilla Counties.

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 accordance with its Strategic Plan for 2003-05, PDSC has developed a systematic process to address complaints over the behavior and performance of public defense contractors and individual attorneys. The Commission is also concerned about the “graying” of the public defense bar in Oregon and a 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. 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 Contractors Advisory Group and others, is usually in the best position to address performance issues.

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,

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).

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:

- 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 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

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

³ *Id.*

management and law practice expertise and appropriate internal resources, like training and office management systems, with other contractors in their counties.

- 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.

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 receiving court appointments.

- 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.

- 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.

- 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 Yamhill 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 delivery system begins with its 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, creates 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 November 10, 2005 from 11:00 a.m. to 4:00 p.m., PDSC will held a public meeting in the Yamhill County Courthouse in McMinnville, Oregon. The purpose of that meeting was to (a) consider the results of OPDS’s investigation in the county as reported in a preliminary draft of this 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 Yamhill County.

The preliminary draft of this report was intended to provide a framework to guide the Commission’s discussions about the condition of Yamhill 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. This preliminary draft also offered guidance to PDSC’s invited guests at its November 10th meeting, as well as the Commission’s contractors, public officials, justice professionals and other citizens who might have been interested in this planning process, about the kind of information and comments that would assist the Commission in improving Yamhill 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 Yamhill County’s justice system could turn out to be the single most important factor contributing to the quality of this final version of OPDS’s report to the Commission and its Service Delivery Plan for Yamhill County. Accordingly, OPDS invited written comments from any interested public official or private citizen no later than November 7, 2005, to:

Peter Ozanne
Executive Director
Public Defense Services Commission
1320 Capital Street N.E., Suite 200
Salem, Oregon 97303

or no later than November 9 to Peter.A.Ozanne@opds.state.or.us.

A Demographic Snapshot of Yamhill County⁴

⁴ The following information was taken from Yamhill County’s official website and from data compiled by Southern Oregon University’s Southern Oregon Regional Services Institute, which is

Founded in 1843 as one of four original Oregon Counties, Yamhill County lies in the northern end of the Willamette Valley. According to its official website, the county's "718 square miles contain lush farmland, fine wineries, the world famous "Spruce Goose" and a historical heritage unsurpassed in Oregon."

Yamhill was the second of the four original districts created by the Provisional Legislature in 1843. Its boundaries were drawn to include all of the area from the Willamette River west to the Pacific Ocean and from the Yamhill River south to the California border. The Yamhill district consisted of 12,000 square miles from which twelve counties were eventually created. The county shares borders with Washington County to the north, Tillamook County to the west, Polk County to the south, and Marion and Clackamas Counties to the east.

The county was named for the original inhabitants of the area, the Yamhill Indians, a tribe of the Kalapooian family, who lived around the Yamhill River. The tribe was moved to the Grand Ronde Reservation in 1855. The earliest non-native settlers entered the area in 1814. Most were employees of the various fur companies operating in Oregon. Many of the American immigrants who came over the Oregon Trail during 1843-1844 settled in the Yamhill region, which became the agricultural center of the Willamette Valley.

With a 2003 population of 88,150, including 29,000 in McMinnville and 20,000 in Newberg, Yamhill County counts agricultural crops, lumber, education, international aviation, dental equipment, manufactured homes, pulp and paper and steel among the principal products of its commerce and industry. From 1990 to 2000, the county's population grew by 30 percent.

One-third of Yamhill County is covered with commercial timber, the economic mainstay of the western part of the county. Agriculture is the primary commercial activity in Yamhill County, however, with an agricultural labor force twice the state average. The county ranks seventh out of the Oregon's 36 counties in the annual market value of agricultural production, including wheat, barley, horticulture, and dairy farming. Yamhill County is also the center of Oregon's wine industry, with 19 wineries making up the largest concentration of wine makers producing the greatest number of award-winning wines in the state. Manufacturing jobs comprise 18 percent of the labor force, and service jobs make up about 28 percent.

Although Yamhill County is the home of Linfield College and George Fox University, the higher education level of its residents is relatively low, with 13.4 percent of its adult population holding a Bachelor's Degree and 7.2 percent with a graduate degree (compared to respective statewide averages of 16.4 percent and 8.7 percent). The county also has a relatively small proportion of professionals, scientists and managers in its workforce (6.5 percent in 2000,

contained in the Institute's [Oregon: A Statistical Overview](#) (May 2002) and [Oregon: A Demographic Profile](#) (May 2003).

compared to a state average of 8.9 percent). But 76 percent of the county's population of adults (25 years old or older) completed high school or received a GED, nearly the same as the statewide average of 78.6 percent.

In 2000, Yamhill County had one of the lowest unemployment rates in the state at 3.9 percent, compared to the statewide rate of 4.9 percent. The county also ranked 12th in per capita income among Oregon's 36 counties and had the fifth lowest percentage of residents living in poverty 9.2, compared to 11.6 percent in Oregon and 12.4 percent in the United States. Yamhill County has an average teen pregnancy rate of 16.4 per 1,000 residents (the statewide average is 16.7), but the fifth highest high school dropout rate in Oregon over the past decade.

The diversity of Yamhill County's population is slightly below average. Its non-white and Hispanic residents make up 15.7 percent of the county's population, compared to 16.5 percent for Oregon as a whole. With juveniles (aged 18 years old or younger) making up 26.9 percent of its total population, the county's "at risk" population (which tends to commit more criminal and juvenile offenses) is larger than the state's at-risk population of 24.7 percent.

In 2000, Yamhill County ranked 16th in "index crimes" among Oregon's 36 counties with a rate of 36.1 index crimes per 1,000 residents,⁵ compared to a statewide rate of 49.2 (and compared to Marion and Lane Counties' rates of 58 per 1,000 and Multnomah County's at 74.8). The public defense caseload in Yamhill County is 1.4 percent of Oregon's total caseload.

OPDS's Preliminary Findings in Yamhill County

Most public defense services in Yamhill County, as in Klamath County, are delivered under contract with PDSC by a single consortium, Yamhill County Defenders, Inc. (YCD).⁶ Incorporated in 1996 as a 501(c)(3) tax exempt, nonprofit corporation, YCD was awarded its first contract in 2002, modeling its

⁵ "Index crimes" are those crimes reported by the Oregon State Police in the Oregon Uniform Crime Reports, including murder, rape and other sex offenses, robbery, aggravated assault, burglary, theft and arson. Oregon: A Statistical Overview at p. 122.

Index crime rates in Yamhill County have not been dropping as fast as in the state as a whole. From 1990 to 2000, the index crime rate in Yamhill County dropped by only 4 percent, while it dropped by 14 percent across the state. On the other hand, more serious crime rates of crimes against persons have been dropping faster in Yamhill County, with a decrease of 41.8 percent between 1990 and 2000 compared to the statewide decrease of 24.5 percent.

⁶ The following information is based upon YCD's answers to the "Questionnaire for Administrator of Consortium" developed by OPDS's Quality Assurance Task Force for use in its contractor site visit process (Questionnaire), YCD's Corporate Bylaws (Bylaws) and its Articles of Incorporation (Articles), all of which are attached in Appendix A.

According to YCD, attorneys outside the consortium, rather than YCD's attorneys, are appointed to represent allegedly mentally ill persons in civil commitment proceedings. Appendix A, Questionnaire, p. 4.

organizational structure and operations after Marion County's consortium, Marion County Association of Defenders, Ltd. (MCAD), apparently at the urging of the Indigent Defense Services Division (IDSD) of the State Court Administrator's Office. In particular, YCD adopted MCAD's hourly rate billing system and accounting methods.

YCD has a seven-member Board of Directors made up of consortium members and an Executive Director. Bob Suchy is currently YCD's Executive Director, having succeeded Carol Jones, who is now a Circuit Court Judge. The consortium has 24 members.

YCD's Board of Directors meets regularly throughout the year to conduct the consortium's business and "when needed, will also consider and follow-up on membership performance concerns, up to and including mentoring, monitoring, training, reprimanding or expelling a member."⁷ The Board is currently "taking into consideration the addition of a 'lay' member," pending discussions with the State Bar and other consortia about "how privacy interests are addressed."⁸

In addition to overseeing the management of the consortium,⁹ YCD expects its Executive Director to communicate effectively with its members, the courts and OPDS, mentor and train new members, identify and address problems with the conduct or performance of its attorneys, and inform members of relevant developments in the law. This half-time position is paid \$1,720 per month.¹⁰

According to YCD, the consortium originally included all of the attorneys in the county who practiced juvenile or criminal defense law in Yamhill County.¹¹ Apparently, YCD's membership still represents the vast majority of juvenile and criminal defense lawyers in the county. Among the consortium's 24 members, nine attorneys devote 75 percent or more of their time to the legal work of the consortium, 17 devote 50 percent or more of their time and only three spend as little as 20 percent of their time on consortium cases.¹² Most of YCD's need for new members appears to have been filled in the past by experienced public defense attorneys returning to the area or by additions to the law firms of existing

⁷ Id. at 1.

⁸ Id. This concern has been expressed by other consortia asked to consider outside or independent members on their boards of directors. Given the need for consortium members to preserve the privacy interests of their clients when talking among themselves, OPDS expects that YCD and other consortia should be able to address this privacy concern. After conferring with a number of consortium administrators at this year's annual Management Conference, OPDS is planning to form a Consortium Advisory Group in which administrators can share their experiences and insights for the purpose of addressing these kinds of concerns unique to consortia.

⁹ YCD's highly regarded office manager, Susan Hoyt, handles the day-to-day business operations of the consortium, including the administration of its contract with PDSC and dealings with CBS.

¹⁰ Appendix A, Questionnaire, pp.1-2.

¹¹ Id. at 2.

¹² Id. at 3. OPDS understands that eight of YCD's attorneys handle juvenile delinquency cases and four handle juvenile dependency cases.

consortium members. Additions to YCD's membership are subject to a majority vote of the Board of Directors and approval by the Presiding Judge.¹³

In response to the questionnaire provided by OPDS, YCD reports that the consortium, in close collaboration with the Circuit Court, has established or is developing a variety of practices and procedures to improve the quality of its lawyers' performance and delivery of its legal services:

. . . The presiding judge determines the level of proficiency [of YCD's new attorneys] and assigns cases appropriately. The [E]xecutive [D]irector monitors and observes the performance of [new] attorney[s] and discusses [their] performance with the court and sometimes the DA. The [E]xecutive [D]irector may recommend mentoring for individual attorneys when appropriate. Mentoring needs are determined from direct observation by the Executive Director; frequent discussions with judges about attorney performance and appropriateness. When an attorney is determined to be in "over his/her head," that attorney is counseled by the [E]xecutive [D]irector to accept cases at a lower level until sufficiently experienced. Formal Board action can result if an attorney does not respond to this informal prompt, but the judges maintain ultimate authority to assign cases commensurate with the attorney's ability.¹⁴

* * * * *

Currently there is a very strong and active collaborative environment among consortium attorneys. Newer attorneys are encouraged to seek help from the more experienced attorneys, and judges may appoint a more experienced attorney as a "second chair" when requested and appropriate. . . .

* * * * *

Adoption of a more formal mentoring system is in the development stage. The Board has authorized the Executive Director to study and propose a mentoring system and quality control measures for adoption by the [B]oard of [D]irectors. . . . A training manual is in the process of adoption and supplemental funding is necessary and has been requested for use in a mentoring program in the current contract proposal.¹⁵

¹³ Id.

¹⁴ Id. at 4.

¹⁵ Appendix A, Questionnaire, p. 5. In its responses to OPDS's questionnaire, YCD indicated that the consortium has also requested "supplemental funding" in its next contract with PDSC for CLE material, current publications from OCDLA and Westlaw. Assuming that any additional funds are available in PDSC's "maintenance-level" budget for 2005-07, OPDS would require YCD to show why (a) CLE and OCDLA materials currently acquired by its members cannot be shared among other consortium members and (b) cost-free online research services cannot be used by its members instead of Westlaw.

Cases are assigned by the court based on the court's determination of the skill level of the particular attorney. Attorneys are assigned cases at a higher level when the court feels they are competent to handle them. This is further monitored by the Executive Director through personally observing the attorney directly whenever possible; by the Presiding Judge; and by [the] Verification Specialist.¹⁶

The [E]xecutive [D]irector directly monitors attorney performance by reviewing dispositions and observing court performance. Routine informal meetings with the judges are conducted on a regular basis to obtain performance information and [ensure that] difficulties are addressed. Quality representation is perceived as one of the most important functions for the [E]xecutive [D]irector to oversee and YCD's current budget proposal includes [a] request for funding sufficient to provide adequate tools to set up, monitor, quantify, control and improve quality to the extent possible.¹⁷

YCD also described some of the things it does well and areas where improvement is needed, in part, as follows:

YCD member attorneys provide amazingly good defense services for indigent defendants given the constraints of our system and we interface very well with the court. Our structure seems to present the best features of "independent" defense and some economies of a public defender, and the result is better quality. We are enthusiastic and motivated to continue improving our effectiveness

¹⁶ Id. As in most counties, the Circuit Court in Yamhill County employs a Verification Specialist to determine whether defendants qualify for a court-appointed attorney. In addition, OPDS understands that the Verification Specialist in Yamhill County, with approximately 20 years of experience in this position, runs conflict of interest checks for YCD and assigns cases to YCD's members on a rotating basis in accordance with the attorneys' declared preferences and their qualifications to handle particular cases. As YCD observed in its responses to OPDS's questionnaire, this contribution of resources by the Circuit Court appears to reduce delays in assigning lawyers to clients and attorney withdrawals and substitutions arising from conflicts of interest:

Normally, conflicts are initially screened by Karla Fry, Court Verification Specialist. We are quite fortunate that her effort all but eliminates conflicts of the sort that would preclude an attorney from accepting the cases from the outset.

Id. at 5.

¹⁷ Id. at 7. YCD did not specify in this response to OPDS's questionnaire what the "adequate tools to . . . improve quality" would be or how much they would cost. Presumably, its current budget proposal does. In another response to OPDS's questionnaire, YCD does propose the addition of a "Staff Attorney to handle routine tasks . . . and stand-in [court] appearances . . . [, who] would also have an excellent vantage point to monitor quality control issues by handling all PV cases." Id. at 11. YCD also proposes that its Executive Director would fill this new position. Id. at 9.

as well as accommodate and endure the complex and dynamic nature of providing criminal justice in times of fiscal hardship. . . . We are becoming more and more comfortable with centralized control over some defense functions. We collaborate among ourselves very well

* * * * *

We are relatively new and are constantly evaluating ourselves and working to improve. Our interface with the juvenile system is poor and unfortunately little progress has been made in this area. Citizen Review [Board] Hearings are a crucial stage of dependency proceeding and attorneys are not attending them. We have added an experienced attorney who will handle only [j]uvenile cases as a step in rectifying this situation.

Improvement is needed in our ability to efficiently utilize investigators and to increase our effectiveness through mentoring, education, research, evaluation, and litigation support. . . .

YCD could further improve overall responsiveness to immediate or emergency needs of the court and, in some cases, clients by having a Staff Attorney available on call. . . .

YCD would like to see an Early Disposition Program implemented, improvement in the amount of time it takes to bring cases to trial and improvement in the case flow of those that are dismissed or end in a guilty plea. . . .¹⁸

On October 13 and 14, 2005, John Potter, a member of the Public Defense Services Commission, and Peter Ozanne, the Commission's Executive Director, visited Yamhill County on behalf of OPDS. They met with YCD's members and with public officials and justice professionals in the county, including all four Circuit Court judges, the District Attorney and a senior member of his staff, managers of the Community Corrections Department, Juvenile Department and Sheriff's Office and members and staff of the Citizens Review Board.

OPDS was left with a general impression from its visit to Yamhill County that the county is an exceptionally agreeable place to practice criminal and juvenile law, with a spirit of cooperation and collaboration among participants in the justice system that is comparable to what the Commission found in Klamath County.¹⁹ All of the county's Circuit Court judges are clearly committed to ensuring high quality public defense services by offering feedback and advice to the attorneys who appear before them and by actively seeking out and counseling those

¹⁸ Id. at 10-11.

¹⁹ Indeed, one justice professional who met with OPDS reported that Klamath County and Yamhill County are considered by his professional peers across the state as comparable models for collaborative approaches to the administration of justice.

attorneys whose skills or work habits need improvement. The Court's Presiding Judge has long been recognized as a leader in adopting innovative court management practices and in promoting the delivery of high-quality legal services in Yamhill County's criminal and juvenile cases. Another member of the Court was a highly regarded criminal defense attorney who served as the first Executive Director of YCD. The Circuit Court also provides an unusual level of high-quality administrative support services to YCD by screening cases for conflicts-of-interest, assigning cases to the consortium's attorneys and monitoring the performance of those attorneys.

YCD and the District Attorney's Office experience the usual disagreements over charging practices, approaches to discovery and motion practice, and the use of experts and investigators.²⁰ Nevertheless, Yamhill County's District Attorney has a unique understanding and appreciation for the role of the defense based upon his experience as a criminal defense lawyer before assuming his current position and as a member of the Study Commission that led to the establishment of PDSC. As a result, most observers in the county consider the relationship between YCD and the District Attorney's Office to generally be positive, cooperative and constructive.²¹

The other justice professionals and managers in Yamhill County with whom OPDS spoke expressed a commitment to advancing their interests and viewpoints within an admittedly adversarial process and arriving at what they

²⁰ During a meeting with OPDS on October 14, Yamhill County's District Attorney complained about the practice of some criminal defense attorneys to wait until the last minute to disclose discoverable material to his office. He expressed his frustration about the apparent lack of any meaningful consequences for this violation of the spirit, if not the letter, of Oregon's discovery statutes.

The District Attorney also expressed his opinion that YCD's attorneys use investigators in too many less serious criminal cases in which the costs of professional investigators are not justified. In Yamhill County, like Marion County, the consortium's Executive Director reviews and approves all non-routine expenses requested by consortium attorneys, including expenses for investigators. In order to address any problems regarding the use of non-routine expenses effectively and without delay, OPDS urges local prosecutors, or anyone else concerned with specific expenditures for investigative services or other non-routine expenses, to report their concerns promptly to the Executive Directors of YCD or MCAD or the Director of the Lane County Public Defender's Office in the three counties where non-routine expenses are administered locally, and directly to OPDS in all other counties in the state.

²¹ Several observers pointed to one particular area of tension between Yamhill County's criminal defense bar and the District Attorney's Office. Apparently, the District Attorney has been especially committed to a policy of aggressively prosecuting "quality-of-life" crimes in the county in order to promote the growth of healthy and safe neighborhoods. See e.g., George L. Kelling and Catherine M. Coles, Fixing Broken Windows : Restoring Order And Reducing Crime In Our Communities (The Free Press, New York 1996). This policy may lead to charging practices that focus more aggressively on relatively low-level offenses and, as a result, limit the scope and effectiveness of Early Disposition Programs. While some people with whom OPDS spoke supported this policy, others predicted its demise as justice resources continue to shrink and rates of serious person crimes continue to increase in Yamhill County.

viewed as just results, but without sacrificing their personal and working relationships with other justice professionals, including YCD's attorneys. Although they consistently reported that a few of YCD's attorneys are difficult to work with and that the skill levels of the consortium's lawyers vary considerably, these observers generally gave YCD high marks for the legal skills of its lawyers and the lawyers' commitment to the interests of their clients.

The Circuit Court's judges, as well as the members of YCD, concurred in this positive assessment of the consortium's lawyers and legal services, crediting good fortune, the high quality of law practice in the county and the judiciary's deep commitment and active engagement in day-to-day efforts to ensure quality lawyering in the county. The Circuit Court also complemented YCD and its Executive Director for their commitment and support for innovative programs in the county, like Drug Court and a new mental health court, which is referred to as Case Coordinated Services currently under development. The judges, however, recognized the need for more formal training and mentoring programs for YCD's new or underperforming lawyers, expressing confidence the members of the consortium and the private bar would step forward to serve as the volunteer trainers and mentors in such programs.

1. YCD's management structure should be reconsidered. In addition to being the only PDSS contractor, other than MCAD, which is compensated on an hourly basis,²² YCD is unique among consortia in the state in terms of its organizational structure and operations. Rather than a consortium that manages all of its operations and the work of its members internally, YCD has many features of a court appointment list, albeit a well-managed one. While it appears from YCD's responses to OPDS's questionnaire that some of these features have changed or are in the process of changing, the Circuit Court in Yamhill County has, over the years, apparently directly managed or substantially controlled the admission and promotion of attorneys in YCD, the selection of its Executive Director,²³ the assignment of cases to YCD's attorneys, the monitoring and evaluation of the conduct and performance of those attorneys and their removal from the consortium. YCD's former Executive Director confirmed that all of the lawyers who practiced criminal and juvenile law in Yamhill County were originally admitted as members of YCD when the consortium was first formed. She also noted that YCD's members were free to leave and return to the consortium without satisfying internal admission or qualification standards, as long as they satisfied the qualification standards of the State Court Administrator's Office and the Circuit Court. While the former Executive Director was available to mentor consortium attorneys informally, YCD has historically had no formal quality assurance programs of its own. In effect, it appears to OPDS that YCD has been managed externally by the court during most of its existence, rather than

²² See the discussion below regarding YCD's hourly rate system.

²³ YCD's responses to OPDS's questionnaire indicated that its first Executive Director "was selected by vote of the members of YCD with the advice and consent of [the Presiding Judge]." Appendix A. Questionnaire, p. 2.

internally by the consortium's administrators or Board of Directors. As evidence that aspects of this management structure still exist, several justice professionals in Yamhill County with whom OPDS spoke had no idea who at YCD was in a position to receive complaints and resolve problems on behalf of the consortium. They were unaware of the identity of YCD's Directors or its Executive Director.²⁴

In light of the responses of YCD to OPDS's questionnaire, it seems clear to OPDS that YCD's Executive Director is personally committed to assuming more responsibility for managing the conduct and performance of the consortium's members and the quality of its legal services by developing internal quality assurance programs and procedures. Many, if not most, of those programs and procedures, however, have not yet been implemented. Although OPDS concluded from its meeting with the county's Circuit Court judges that there is judicial support for these measures, OPDS was not able to determine whether or not all of YCD's members support them.

Because OPDS has concluded from its visit to Yamhill County that the quality of the legal services delivered by YCD is generally quite good (with the exception of the specific issues outlined below), and because OPDS has not received serious complaints about the general quality of YCD's legal services from key participants in Yamhill County's justice system, the prospect of changing the consortium's current organizational structure and operations raises a question for PDSC of determining the right balance among important policies or principles. On the one hand, the Circuit Court's active support and engagement in efforts to ensure quality public defense services in Yamhill County, the county's unique culture of collaboration and the generally good quality of YCD's legal services suggest that the Commission should honor its commitment to respecting the unique cultures and effective ways of doing business in each of Oregon's 36 counties and, in this case, follow the admonition, "If it ain't broke, don't fix it!"

On the other hand, the first principle of the American Bar Association's "Ten Principles of a Public Defense System," which is reflected in Oregon's establishment of a Public Defense Services Commission, suggests that the Commission should ask YCD to assume more direct responsibility for managing the conduct and performance of its members and the quality of its legal services. That principle states: "[t]he public defense function, including the selection, funding, and payment of defense counsel [should be] independent."²⁵ The ABA explains its rationale for this principle as follows:

²⁴ In fairness, the current Executive Director, Bob Suchy, has only held the position since September 1, 2004. Furthermore, other observers, including judges, complimented Mr. Suchy on his responsiveness and his ability to work with other justice agencies and professionals to resolve problems.

²⁵ See also, the ABA's tenth principle:

- 10. Defense counsel [should be] supervised and systematically reviewed for quality and efficiency according to national and locally adopted standards.** The defender office (both professional and support staff),

The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contractor systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.

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.....

assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.

²⁶ Gideon's Broken Promise: America's Continuing Quest for Equal Justice, A Report on the American Bar Association's Hearings on the Right to Counsel in Criminal Proceedings (ABA Standing Committee on Legal Aid and Indigent Defendants, December 2004), Appendix B, p. 48. Fortunately, thanks to a judicial tradition of respect for an independent defense function in Yamhill County and across the state, as well as support for the establishment of PDSC and OPDS, Oregon has not encountered the kinds of problems that the ABA's Standing Committee found and reported in Gideon's Broken Promise:

Judges and elected officials often exercise undue influence over indigent defense attorneys, threatening the professional independence of the defense function. In many localities, the selection and payment of counsel is still under the control of judges or other elected officials instead of an independent authority as recommended by national standards. Accordingly, lawyers must depend on judges to approve their compensation claims, as well as requests for expert and investigative services. Attorneys may be removed from court-appointed lists if they apply for fees considered by judges to be too high, creating a disincentive to spend adequate time on a case. In some places, elected judges award court appointments as favors to attorneys who support their campaigns for re-election. Sometimes, county officials respond to requests for modifications in contracts for indigent defense by threatening to terminate the current contract and award a new one to the lowest bidder.

Id. at 39 (emphasis in the original).

The National Legal Aid and Defender Association (NLADA), in collaboration with the U.S. Department of Justice's National Institute of Justice, has also developed a set of principles for the delivery of public defense services, including a goal "[t]o insure that the representation of clients is of high quality." To advance that goal, NLADA adopted as one of its objective that "[r]epresentaion on behalf of clients should remain free from improper judicial control," including, in relevant part, the following "criteria for compliance:"

- Staff recruitment and selection is (sic) made independent of judicial influence/interests.
- Staff retention and promotion are independent of judicial influence/interests
- Case assignment is not subject to judicial control.
- Defender office operational decisions are made independent of judicial control.

By citing the ABA's principle of independence of the public defense function, OPDS is not suggesting that the Yamhill County Circuit Court's administrative support of YCD's operations, the Court's critical views and input regarding the performance of YCD's lawyers, the judges' commendable efforts to improve the skills and performance of lawyers appearing in their courtrooms, or the close working relationship between the Court and YCD should in any way be discouraged. OPDS is suggesting, however, that PDSC, while encouraging these positive features of the collaboration between the Circuit Court and YCD, should consider the following advantages to the public defense system in Yamhill County and across the state of asking YCD to assume greater responsibility for managing the conduct and performance of its members and the quality of its legal services:

1. As the state agency responsible by statute for providing quality, cost-efficient public defense services in Oregon, the Commission has the authority and ability to hold consortia like YCD, rather than the courts, accountable for the delivery of those services;
2. By holding contractors like YCD primarily responsible for the admission, evaluation and discipline of its members, contractors are more likely to develop and implement effective and long-lasting programs and practices that promote the quality and cost-efficiency of public defense services in counties across the state;
3. If consortia like YCD develop and implement effective quality assurance programs and practices, problems in the conduct and performance of its attorneys can be addressed before the courts must resort to remedial or disciplinary action against individual lawyers and the general quality of Oregon's public defense services is more likely to improve as a result;
4. Because membership on Circuit Courts changes over time and the views of judges about their role in evaluating and managing the performance of lawyers vary, consortia like YCD should develop its own quality assurance "infrastructure" in order to promote the consistent, long-term quality of public defense services in the state.

2. YCD's operations provide PDSC with an opportunity to consider the merits of hourly contract rates. As the Commission is well aware, YCD is one of two consortia in the state that is compensated for its legal services on an hourly basis. The origins of this feature of YCD's operations are somewhat unclear.

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- Continuity and stability of defender services are reasonably insulated from judicial change in the community.

Evaluation Design for Public Defender Offices (Law Enforcement Assistance Administration, October 1977). pp. I-10, I- 5-16.

Whether YCD's adoption of an hourly rate and MCAD's accounting system were encouraged by outside sources or eagerly sought by the founders of YCD, it is now clear that the members of YCD embrace this feature with enthusiasm and conviction.

PDSC is also well aware of the principal arguments in favor of hourly rate: (1) payment by the hour compensates attorneys for the work actually required to competently represent clients in actual cases, as opposed to case rates that treat classes of cases the same and encourage attorneys to "triage" cases by settling cases that should be fully litigated; and (2) an hourly rate system results in clients viewing their court-appointed counsel as "real lawyers" who will put in as much work as necessary to competently represent them, as opposed to lawyers working under case rate contracts whom clients may view as part of "the system" and willing to settle their cases simply to keep that system running. In addition, YCD and MCAD frequently point out that their legal services are cheaper on a per case basis than the average flat rate per case, either for the purpose of urging PDSC to retain their systems because they are cheaper or for the purpose of urging PDSC to pay them more because they are too cheap.

The Commission has also heard the arguments against hourly rates. They are often made by paying clients who complain about private attorneys racking up "billable hours" or letting "the meter run" to generate more revenue, or by prosecutors who believe that hourly rates in criminal cases result in too many frivolous motions, unnecessary trials and harsher sentences for defendants who are advised to reject reasonable settlement offers.²⁷ In addition, CBS has pointed out to the Commission that its prevailing contract case rate system encourages the development of skills and efficiencies in handling cases in high-volume public defense practices, and that the uniform adoption of case rates across the state will promote PDSC's policy of increasing the consistency of contract rates among similarly situated contractors.

OPDS offers three observations in response to the principal arguments in favor of hourly rates. First, it is unrealistic, if not unfair, to expect lawyers in YCD and MCAD to perform the same or comparable legal services as other contractors in the state at persistently lower rates of compensation over time -- without a loss in quality. In addition to basic fairness, OPDS believes that a presumption underlying the Commission's policy directing CBS to seek consistency in rates across the state is "you get what you pay for." In other words, lower rates for the same legal services will, over time, reduce the quality of those services.

Second, proponents of hourly rates argue that they promote clients' trust and confidence in their lawyers. OPDS appreciates the importance of promoting good client relationships. Nevertheless, OPDS is troubled by the implications that an express or implied recognition of this argument by PDSC would have for

²⁷ During a meeting with OPDS on October 14th, Yamhill County's District Attorney voiced these concerns.

the rest of Oregon's public defense system. Implicit in the argument that hourly rates allow its lawyers to work harder for their clients is the assertion that other lawyers in the state who are paid on a case rate basis are less diligent or competent. OPDS and PDSC knows this assertion is not true, based on their own assessments of the operations of contractors paid by case rates, whose services and operations are among the highest quality and most cost-efficient in the state.²⁸

Finally, arguments about contract rates create a false dichotomy between hourly rates and case rates. Whether public defense clients appreciate it or not, under any system of attorney compensation, the person or entity paying the bill will ask two questions: "What will this case cost me?" and "What is the 'going rate' for this type of case?" Whether the bill is being paid by a private person or by PDSC, no one will allow "the meter to run" without limits. That is why budgets and "change orders" have entered the world of private law practice, and why OPDS and CBS will always have a method to manage costs by establishing a prevailing or going rate in ordinary cases.²⁹

3. YCD's delivery of public defense services in juvenile cases calls for further inquiry. Based on reports by OPDS and at least two task forces of the Oregon State Bar, PDSC has concluded that the quality of juvenile law practice across the state varies to an unacceptable extent and, therefore, is in need of special attention. As a result, the Commission plans to devote at least two meetings and a separate service delivery planning process in 2006 to identifying programs and strategies to improve the quality of public defense services in juvenile delinquency and dependency cases in Oregon. In the mean time, OPDS and PDSC have increased their focus on these services in the course of developing other service delivery plans.

Based upon its visit to Yamhill County in October and YCD's responses to its questionnaire, OPDS is uncertain about where it might rank Yamhill County in terms of the quality of its public defense services in juvenile cases. OPDS is heartened by the fact that the Circuit Court judges in the county have a deep commitment to their juvenile court and to ensuring the quality of representation by the lawyers who appear in the court's delinquency and dependency cases. The judges encourage, support and rely upon the work of CASAs and the Citizens Review Board. The county's Presiding Judge has also been an active participant in the joint efforts of the Commission and the Oregon Judicial Department's Juvenile Court Improvement Project (JCIP) to establish a "Juvenile Training Academy" curriculum that may become mandatory for all juvenile

²⁸ See also, Chapter 5, Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Commitment Cases, Report of the Oregon State Bar's Indigent Defense Task Force II (September 25, 1996); The Spangenberg Group, "Assessment of the Oregon Adult Criminal Indigent Defense System (March 1996), pp. 84-96.

²⁹ On the other hand, CBS regularly grants attorney requests for additional credit in extraordinary cases under PDSC's case rate contracts and will continue to do so in the future.

practitioners and to offering a recent, highly successful continuing legal education program in Eugene, “Essentials of Juvenile Court Practice.” Most importantly, the Circuit Court’s judges expressed their opinion to OPDS that the quality of YCD’s representation in juvenile cases is good to excellent. And to improve those services even more, the Presiding Judge has collaborated with YCD to identify a lawyer in the consortium who specializes in juvenile law to serve as a liaison with other parts of the juvenile justice system, particularly in dependency cases.

In contrast to these favorable reports from the Court, OPDS received some critical reports from others regarding the quality of YCD’s juvenile representation, including from YCD itself.³⁰ During OPDS’s meeting with representatives of the county’s Juvenile Department and the Deputy District Attorney assigned to handle delinquency cases for the state, they reported that overall quality of YCD’s representation in delinquency cases was good. But they also observed enough instances of lawyers from YCD appearing in delinquency case who were unfamiliar with the relevant law and procedure to suggest that the consortium needed stronger programs to train and mentor some of its juvenile lawyers. On a related matter, these observers also reported instances in which the juvenile court appointed lawyers for minor delinquency cases in which they believed an attorney was unnecessary.³¹

Like many counties across the state, Yamhill County has a Citizens Review Board (CRB) that feels ignored by public defense lawyers, compared to the support and attention it receives from the Circuit Court. The staff and two Board members with whom OPDS spoke recognized the demands on YCD’s lawyers and the conflicts between CRB hearings and the Court’s calendar, which frequently prevent these lawyers from attending their hearings. They also praised the skill of a few YCD lawyers who have attended CRB hearings in the past. In addition to believing that more of YCD’s lawyers should attend the meetings in the interests of their parent or child clients, these CRB representatives have observed instances when YCD’s lawyers attended the Board’s hearings, but knew so little about the CRB and its processes that they were incapable of protecting or promoting their clients’ interests.

A recent report by JCIP entitled “Child Abuse and Neglect Case Processing in Oregon’s Courts: 2003-2004” contains findings that also suggest the need for further inquiry into the quality of YCD’s legal services in juvenile dependency cases.³² As part of that report, a survey by JCIP of the average length of dependency proceedings in counties across the state reveals that the length of those proceedings in Yamhill County are substantially below average. That

³⁰ See page 16, above.

³¹ OPDS has heard the opposite criticism from some members of the defense bar, however: that the juvenile court fails to appoint counsel in cases where an attorney is necessary.

³² This report is available online at www.ojd.state.or.us/jcip/index.htm.

survey reports the length in minutes of the statewide average and Yamhill County hearings for each dependency proceeding as follows:³³

<u>Proceeding</u>	<u>Statewide Average</u>	<u>Yamhill County</u>
Shelter	19	12
Jurisdiction	18	6
Trial	112	32
Disposition	23	6
Permanency	24	7
Review	20	8

There may be a number of explanations for the relatively short length of the proceedings in Yamhill County’s dependency cases. This data on its face, however, raises questions about the nature and extent of YCD’s advocacy on behalf of children and parents in these cases.

Finally, in its responses to OPDS’s questionnaire, YCD stated that “[o]ur interface with the juvenile system is poor and unfortunately little progress has been made in that area.”³⁴ Citing its lawyers’ failure to attend CRB hearings, YCD reported that it has added an experienced juvenile attorney to the consortium “as a step in rectifying this situation.”³⁵ The Commission’s November 10th meeting was designed to provide an opportunity for YCD to explain how this situation has improved and whether the consortium believes other steps must be taken to improve the quality of its juvenile defense services. The meeting also provided an opportunity for others to offer their assessments of the quality of public defense services in Yamhill County’s juvenile justice system.

PDSC’s November 10, 2005 Meeting in Yamhill County

PDSC welcomed Presiding Circuit Court Judge John Collins as its first guest presenter at the Commission’s November 10th meeting in McMinnville. Judge Collins first observed that the public defense services delivered by YCD in Yamhill County were generally very good and that the Court’s method of assigning cases to defense counsel and tracking conflicts of interest has ensured the timely and efficient appointment of public defense counsel. He also described the current delivery system in which YCD decides who will become members of the consortium and the Presiding Judge decides who is qualified to appear on the Court’s appointment lists. Judge Collins believes that this appointment system should be preserved because the Court’s involvement

³³ Child Abuse and Neglect Case Processing in Oregon’s Courts: 2003-2004 Assessment, A Report of the Oregon Judicial Department’s Juvenile Court Improvement Project (October 2004), Appendix A, p. 168.

³⁴ Appendix A, Questionnaire, p. 10

³⁵ Id.

ensures the continuing quality of public defense services in Yamhill County. Karla Fry, who has served for 21 years as the county's Verification Specialist, described the Court's method of assigning cases and tracking conflicts of interest in more detail. Judge Collins reported that YCD has overcome its previous resistance to the county's Early Disposition Program and is now participating in the program more effectively. He also complimented YCD on its commitment to providing first-rate services in Drug Court and noted general improvement in the quality of the consortium's juvenile representation. The consortium needs to improve its communication and services to the CRB and has agreed to designate a team leader to serve as a liaison and mentor for lawyers in juvenile dependency cases. Judge Collins has encouraged the attendance of YCD's attorneys at CLE programs on juvenile law and has recently recruited a sufficient number of YCD's attorneys to address a shortage of competent attorneys in dependency cases. He observed that YCD needs to develop more effective training, mentoring and performance evaluation programs. Judge Collins also expressed his support of the consortium's current compensation system based on hourly contract rates on the grounds that it encourages the necessary level of dedication and performance by attorneys in individual cases and promotes the attorneys' credibility with their clients.

Circuit Court Judge Carol Jones, who served as the first Executive Director of YCD, was the Commission's next guest presenter. Judge Jones expressed her agreement with Judge Collin's assessment of the legal services provided by YCD and elaborated on the advantages of the consortium's compensation system based upon hourly contract rates. She also described how and why the consortium was formed and explained why major changes in YCD's organizational structure and operations were unnecessary. Judge Jones did agree, however, that the consortium needs to develop more effective training, mentoring and evaluation programs, and that YCD's attorneys must be more responsive to the needs of their juvenile clients and the juvenile court.

Ryan Vogt and Roberta Charlton appeared on behalf of the Department of Human Services to provide their perspectives on the quality of public defense services in juvenile dependency cases. Although YCD provides a substantial number of able lawyers to handle dependency cases, the turnover rate in the consortium's juvenile dependency practice is high, with the best attorneys leaving this practice because of low pay and large caseloads, resulting in inexperienced attorneys handling more cases than they should. Mr. Vogt also noted the strong support and commitment of the Circuit Court to improving the quality of juvenile law practice and Judge Collin's efforts, in collaboration with YCD, to develop new practices and procedures to improve juvenile law practice in the county. Ms. Charlton related her professional experience with the juvenile consortium in Marion County and expressed the view that juvenile practice in Yamhill County would be greatly improved by the kind of professional experience, specialization and commitment offered by Marion County's Juvenile Advocacy Consortium. Mr.

Vogt agreed with this conclusion based upon his experience with a specialized juvenile consortium in Lane County.

Melissa Wade, an employee of the Oregon Judicial Department and staff to the Yamhill County Citizens Review Board, appeared before the Commission to report perceptions of staff and the Board's members regarding the quality of public defense practice before the CRB, which was similar in substance to the information conveyed to the Commission by the Preliminary Draft of this report. In addition to the infrequent appearance of YCD members before the CRB on behalf of their clients, Ms. Wade reported that most of the attorneys who have appeared recently failed to understand the CRB's processes or how they can advance the interests of their clients. She emphasized the strong support that the CRB receives from the Circuit Court and expressed optimism that, with the Court's support, the CRB and YCD can improve their lines of communication and increase a mutual understanding of their respective roles and challenges. One option would be to develop a training program that informed CRB members of the roles and demands facing public defense attorneys and informed YCD's juvenile law practitioners about the CRB's purpose and process and how to advance the interests of their clients before the Board.

District Attorney Brad Berry was the next guest presenter. He noted that justice officials and professionals in Yamhill County work together collaboratively and effectively, and that his office and YCD have always had a productive working relationship, whether the issues between them involve individual criminal cases and court programs like Drug Court or the kind of broad policy questions addressed by the Local Public Safety Coordinating Council. Any complaints that his office has had regarding the conduct or performance of YCD's lawyers, however, have been taken to the Presiding Judge, rather than to the consortium's management. Mr. Berry had two specific concerns about YCD's operations and law practice. First, his deputies have observed the "churning" of some cases, which should have been resolved without litigation, but in which YCD's lawyers filed unnecessary motions or proceeded to trial – apparently to generate more revenue under the consortium's hourly contract rate system. Mr. Berry wondered if some kind of "hybrid" billing system could be developed that compensates lawyers for work actually performed in most cases justifying that work, but places a cap on compensation for most "run-of-the-mill" cases. Second, his deputies have observed defense investigators sitting through the entire length of trials in relatively straightforward cases, which did not appear to call for the full-time assistance of an investigator. Mr. Berry wondered whether reasonable limitations on this practice have been or could be developed by PDSC or its contractors, and whether clients or lower-paid assistants could perform whatever functions these investigators may be serving for defense counsel in some of these trials.

Tim Loewen, the Director of Yamhill County's Juvenile Department, and Debra Markham, the Deputy District Attorney in charge of prosecuting juvenile

delinquency cases in the county, addressed the quality of YCD's defense services in juvenile delinquency cases. Mr. Loewen believes that the consortium is generally working well and is providing competent legal services. His observations were based primarily on a recent survey he conducted of the probation officers in his Department. These probation officers report that YCD's attorneys frequently fail to contact their clients prior to their first appearances. They also reported that a significant number of those lawyers are inexperienced and lack sufficient substantive knowledge to protect the interests of their clients. On the other hand, most of YCD's attorneys work cooperatively with the Juvenile Department's staff in attempting to reach reasonable resolutions in most delinquency cases. When Mr. Loewen has had a problem with a YCD lawyer in the past, he has contacted that attorney directly to resolve the problem, rather than the consortium's management. He believes that YCD's establishment of formal mentoring and training programs or the establishment of a statewide "training academy" should be a high priority. Debra Markham concurred in the observations of Mr. Loewen and his staff about the general quality of YCD's legal services in delinquency cases, problems with the turnover rate of the consortium's attorneys and their lack of experience, the need for internal mentoring and training programs or a juvenile training academy, and that more of the consortium's attorneys should consider specializing in juvenile law practice. Ms. Markham emphasized that juvenile law practice is increasingly becoming a uniquely demanding specialty, and she sees too many defense attorneys approaching delinquency cases as if they were criminal cases. She believes that early contacts and regular communication with juvenile clients is even more important than in criminal cases. Ms. Markham sees too many cases where attorneys fail to take the time or make the effort to relate to their clients and understand their needs.

The day's presentations to the Commission concluded with remarks by representatives of YCD, including Paula Lawrence, a consortium member and Chair of its Board of Directors, Bob Suchy, the Executive Director of YCD and Susan Hoyt, the consortium's administrator. Ms. Lawrence related some of the history behind the formation of YCD and the state of private law practice in Yamhill County, explained the organization's original purposes and goals, and described some of the efforts YCD has undertaken over time to manage itself and improve its services. Although Ms. Lawrence emphasized that YCD's Board and the consortium's members are open to adopting improvements in its operations and working with the Commission, they are uncertain about the feasibility of some of the programs and changes that PDSC has recommended elsewhere. For example, YCD has trouble understanding how it would be possible to include outside directors, who are not consortium members, on its Board without disclosing confidences and secrets of consortium clients in the course of Board proceedings. Moreover, based on her experience as a prosecutor and defense attorney in other counties, she believes that PDSC's prevailing per case contract rates encourage shortcuts in handling cases, too many plea agreements and substandard performance by defense attorneys. Ms.

Lawrence and the other members of YCD enthusiastically support the consortium's current hourly rate structure because it encourages performing the amount of legal work necessary to protect the interests of clients and handle their cases competently, and because it promotes clients' trust in the dedication and commitment of YCD's attorneys to protecting their rights and advancing their interests. Bob Suchy noted that he has been YCD's Executive Director for a relatively short time, but believes he has the support of all of his members and has established effective working relationships with the District Court, the District Attorney's Office and other key stakeholders in Yamhill County's criminal justice system. Mr. Suchy recognizes that he lacks experience in juvenile law practice and that YCD needs to strengthen its practice in this area. He believes that the greater attention he intends to devote to this practice area and the recent establishment of a "team leader" for juvenile dependency cases should lead to necessary improvements. Mr. Suchy described the consortium's database and the methods he uses to track cases and monitor the performance of YCD's attorneys. He also expressed his commitment and the commitment of his members to working cooperatively with the Commission and OPDS in order to improve the consortium's management practices and develop stronger internal programs for training, mentoring and evaluating its attorneys. While acknowledging the difficulty of determining what proportion of the caseloads of YCD's attorneys are made up of consortium cases, Mr. Suchy indicated that a majority of YCD's attorneys are specialists in criminal and juvenile law and devote most of their time to handling consortium cases. Susan Hoyt described some details of YCD's administrative processes and billing practices, pointed to some reasons beyond the control of the consortium for consortium attorneys' delays in contacting juvenile clients, and explained that a principal reason for establishing YCD was preservation of the independence and autonomy of the attorneys in Yamhill County's criminal and juvenile defense bar.

A Service Delivery Plan for Yamhill County

For their hospitality and cooperation throughout this service delivery planning process, PDSC wishes to express its appreciation to the judges and staff of the Yamhill County Circuit Court, the District Attorney, the County's Juvenile, Community Corrections and Sheriff's Departments, the staff and members of the local Citizens Review Board, the local office of the State Department of Human Services, YCD and the other participants in OPDS's initial investigations and the Commission's November 10th meeting in McMinnville.

PDSC incorporates in this Service Delivery Plan as its factual bases for the recommendations that follow: (a) YCD's responses to OPDS's questionnaire, which are attached as Appendix A, (b) the information that OPDS received during its visit to Yamhill County on October 13 and 14, 2005 and reported to PDSC in the Preliminary Draft of this report, and (c) the presentations and comments to the Commission at its November 10th meeting, which are summarized above.

Based upon these factual bases and the Commission's discussions and deliberations during and after its November 10th meeting, PDSC adopts the following four components of a Service Delivery Plan for Yamhill County:

1. YCD must assume greater responsibility for managing the performance and conduct of its members and for ensuring the quality of its legal services. PDSC agrees with OPDS's observation in this report that YCD has many features of a well-managed court appointment list, rather than a consortium. The Commission also agrees that the most important issue facing Yamhill County's public defense system is YCD's lack of internal practices and procedures necessary to manage the performance and conduct of its members, including programs to train, mentor and update the skills of the consortium's lawyers and systematic methods to identify and remedy problems in the performance and conduct of its lawyers.

PDSC concludes that there are no obstacles in Yamhill County external to YCD that would prevent the consortium from developing these important aspects of an effective consortium. Although the Circuit Court has historically been active in overseeing many aspects of YCD's operations, the Commission detects no resistance on the part of the Court to the consortium's assumption of greater responsibility for managing the performance and conduct of its lawyers and for the quality of its legal services. The Commission also finds that YCD's Executive Director is personally committed to assuming more management responsibilities and to developing internal quality assurance programs and procedures, and that the consortium's Board of Directors is apparently open to such changes. Therefore, PDSC requests YCD's Board of Directors and its Executive Director to report back to the Commission no later than September 1, 2006 regarding the steps they have taken, or are proposing to take, to assume greater responsibility for managing the performance and conduct of its lawyers and for ensuring the quality of its legal services.³⁶

The Commission emphasizes that, while it endorses the best practices formulated by the ABA and NLADA concerning the allocation of responsibilities between courts and public defense administrators like PDSC for overseeing court-appointed attorneys, which are cited earlier in

³⁶ PDSC remains convinced that YCD, like any other consortium, will benefit from the policy guidance, business expertise and local community support that can result from the addition of one or more outside members to its Board of Directors. The Commission does not understand why this change would present a unique risk of disclosing confidences and secrets of a consortium's clients. The Commission assumes that, in many if not most cases, board members who are members of a consortium cannot ethically discuss the details of their cases at their meetings due to conflicts of interest among individual consortium members. In any event, a board's meeting agendas can be structured in a way that permits outside board members to be excused in appropriate circumstances.

this report,³⁷ it does not intend to discourage the close working relationship between the Circuit Court and YCD, including the Court's current administrative support of YCD's operations, its regular input regarding the performance of YCD's lawyers and the commendable efforts of individual judges to encourage improvement in the skills and performance of lawyers who appear in their courtrooms. Instead, PDSC simply believes that the assumption of responsibility by consortia like YCD for the management of their members and quality assurance programs (a) enhances the Commission's ability to hold its contractors responsible for the quality of their services and thereby manage the state's public defense system more effectively, (b) increases the likelihood of the development of more systematic and effective quality assurance programs for consortia (c) promotes the prevention and early resolution of problems involving the performance and conduct of consortium attorneys, and (d) ensures that quality assurance programs affecting consortium attorneys will be long-lasting and administered consistently.³⁸

2. At this time, PDSC will not request YCD to reconsider its compensation and billing systems based upon hourly contract rates, but the Commission may request YCD to do so in the future. PDSC notes that Yamhill County's Circuit Court judges, as well as all of YCD's members, are enthusiastic supporters of the consortium's current hourly contract rates and its resulting compensation and billing systems. While the Commission understands and respects these viewpoints, it has a different perspective as the administrator of Oregon's entire public defense system. First, PDSC has failed to detect any less exertion of efforts or commitment to the rights and interests of public defense clients among the majority of attorneys in the state who operate under per case contract rates, in comparison to the efforts and commitment of YCD's or MCAD's lawyers who operate under hourly contract rates. Second, the chance of abuse under either system – for per case rates, excessive plea-bargaining, for hourly rates, over billing – appear to the Commission to be roughly similar and call for the same level of management oversight to prevent abuse. Third, in PDSC's view, any advantage of hourly rates to individual attorneys in terms of gaining the trust and confidence of their clients is outweighed by (a) the ability of all attorneys to gain that trust and confidence by their commitment to their clients' cases and by being responsive to their clients' needs, whatever the method of their compensation may be, and (b) the administrative efficiencies of the per case contract rates that both OPDS's Contract and Business Services Division and its predecessor agency, the Indigent Defense Service Division of the State Court Administrator's Office, have reported to the Commission.

³⁷ See pages 19-21, above.

³⁸ See page 21, above, for further discussion of the likely benefits of stronger consortium management and internal quality assurance programs.

In any event, PDSC does not believe that this is the time to request or direct YCD to adopt a per case contract rate. The consortium has other more important and immediate challenges to address as a result of this Service Delivery Plan. However, YCD should be prepared for the possibility of such a request from the Commission prior to future contract negotiations.

3. YCD, like many of PDSC's other contractors who provide legal representation in juvenile cases, needs to concentrate on improving the quality of its juvenile law practice. The Circuit Court and other informed observers in Yamhill County have advised PDSC that the overall quality of public defense services in juvenile court is good, and that the Court has taken additional steps, with YCD's cooperation, to improve those services. The Commission is particularly encouraged by the Presiding Judge's personal commitment to ensuring the quality of legal services in juvenile court and to recruiting more able attorneys to enter the practice of juvenile law in Yamhill County.

Nevertheless, the Commission has received enough credible reports regarding the turnover rate, inexperience and lack of substantive knowledge of some of YCD's juvenile lawyers, including the consortium's own assessment of the need to improve its juvenile law practice, to conclude that YCD needs to take more aggressive steps to improve the quality of the legal services that it provides in juvenile cases.³⁹ Accordingly, PDSC directs YCD to evaluate the experience and expertise of its current corps of juvenile lawyers and report back to Commission by September 1, 2006 on the steps the consortium has taken, or proposes to take, in order to address problems in the quality of its juvenile law practice. That report should include, but not be limited to, answers to the following questions:

- What type of internal juvenile law training and mentoring programs has YCD developed or established?
- How has the establishment of a juvenile law "team leader," in cooperation with the Circuit Court, improved the quality and delivery of YCD's juvenile legal services?

³⁹ These problems are by no means unique to YCD. OPDS has reported wide variations in the quality of juvenile law representation across the state due, to a significant degree, to (1) contractors' failure to appreciate the unique and growing demands of juvenile law practice and, therefore, the increasing advantages of specialization in this area of law practice and (2) an all too common tendency to assign juvenile cases to new and inexperienced attorneys as a "training ground" for eventual criminal law practice. As a result, PDSC intends to develop a special Service Delivery Plan for the statewide delivery of juvenile law services later this year (probably in April and May). YCD can expect to receive an invitation from the Commission to participate in this process and contribute its experience and expertise to PDSC's planning efforts.

- How many juvenile law CLE programs has each YCD attorney who practices juvenile law attended in the last four years?
 - To what extent does each of those attorneys specialize in juvenile law?
 - What steps has YCD taken to improve lines of communication with the CRB and to develop a mutual understanding of their respective roles and the challenges?
 - Has YCD considered or developed a specialized unit of juvenile law practitioners within the consortium, or in a separate consortium,⁴⁰ and what are the pros and cons of such changes?
4. PDSC requests YCD to participate in OPDS's new Consortium Advisory Group. OPDS has advised the Commission that, during the first quarter of 2006, it intends to establish a Consortium Advisory Group to (a) advise OPDS and the Commission on best practices that facilitate and strengthen the management and operations of public defense consortia across the state, and (b) exchange information about such practices among consortium managers. PDSC enthusiastically supports OPDS's establishment of this advisory group

Over the past six months, PDSC has conducted investigations and developed Services Delivery Plans involving three major consortia in diverse regions of the state. Those experiences have confirmed the Commission's judgment that consortia face unique challenges in managing their attorneys and caseloads, including the challenge of evaluating and addressing problems with the performance and conduct of professional peers and the need for effective internal management and outside policy guidance and business expertise. As a result of these unique challenges, PDSC has urged consortia to adopt systematic evaluation, training and mentoring programs and to form boards of directors with outside members in order to gain greater access to policy and business expertise and support from their local communities.

A Consortium Advisory Group can offer OPDS and the Commission valuable insights and experience, which will help to ensure that the best practices they identify and propose for consortia are both feasible and effective. Of equal importance, this group can provide consortium managers with a forum to exchange ideas about best practices and management techniques suitable to consortia and to develop other practical and effective methods and programs for implementation by consortia across the state. For these reasons, PDSC requests that an

⁴⁰ In preparing its September 1, 2006 report to PDSC, the Commission recommends that YCD consult with other consortia that handle juvenile cases, including the Juvenile Advocacy Consortium in Marion County, which has successfully established a first-rate consortium made up exclusively of highly qualified and very experienced juvenile law specialists.

appropriate representative of YCD serve and actively participate on OPDS's Consortium Advisory Group.⁴¹

⁴¹ PDSC has extended this invitation to YCD at this time simply because OPDS developed the idea of a Consortium Advisory Group contemporaneously with its completion of this report. The Commission understands that OPDS will extend similar invitations to virtually every consortium in the state. Nevertheless, YCD's apparent willingness to undertake positive changes in the management of its consortium is likely to lead to particularly valuable insights and contributions to the advisory group.

Appendix A

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, see Attachments: A) Corporate By-Laws; B) Articles of Incorporation; C) Billing; D) Contract

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?

The Board consists of seven members whose terms are staggered. The duties of each elected position are outlined in Attachment A, Corporate By-Laws, Article III. Generally the Board retains broad general powers to conduct the business and affairs of YCD, including supervision of the Executive Director. The Board also discusses and may publicize recommendations to the membership concerning local issues of importance to the members. The Board, when needed, will also consider and follow-up on membership performance concerns, up to and including mentoring, monitoring, training, reprimanding or expelling a member.

The Board Members are: Paula Lawrence, Chairperson; Bernt A. Hansen; Mary Biel; Elana Flynn; Scott Hodgess; Mark Lawrence; and Carol Fredrick.

The Board holds its mandatory yearly meeting each October and also holds meetings monthly or semi-monthly throughout the year or more often to address consortium needs and concerns.

At present the Board is taking into consideration the addition of a "lay" member. A preliminary discussion concerning ethical and conflict concerns resulted in the matter being tabled until the matter can be researched more thoroughly. Research will include discussions with the Stat Bar and other attorney boards that have citizen members, and how privacy interests are addressed.

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?

Qualifications for administrator include being an active member of the Oregon Bar Association in good standing. Other qualifications, which are not set forth in the Articles or By-Laws but are accepted necessities for the position by the Board of Directors and members in general include the ability to effectively communicate with the member attorneys, courts and OPDS; manage the affairs of the corporation

in accordance with Corporate Law and under the direction of the Board of Directors; have necessary tools for mentoring and training of new member attorneys; ability to perceive in advance of escalation, any attorney issues with the court and effectively counsel attorneys when problems relating to attorney/court communications or relations arise. Invaluable to the functioning of the consortium is the Executive Director's monitoring of Legislative issues related to Indigent Defense as well as new case law and passing this information on the members.

The first Executive Director, now Judge Carol Jones, was selected by vote of the members of YCD with advice and consent of Judge Collins, PJ. The vacancy created by her ascension to the bench resulted in our Board of Directors having no disinterested majority, so a motion was made to ratify a majority vote of the members, producing the current Executive Director. The Executive Director is salaried. This salary is currently set at .5 FTE and compensated \$1720 per month. A liaison between the board and presiding judge is provided by a board member, Mary Biel in the event issues arise that the presiding judge is uncomfortable addressing with the Executive Director or unsatisfactorily addressed by the Executive Director.

The By-Laws at present do not include a set "term" for the Executive Director, whose term is limited at the will of the board.

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 to the overall workload related to consortium matters, and the Executive Director routinely provides assistance to attorneys on request and the daily workload may range from part-time to overtime given the "needs" of the day.

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?

When the executive director is not available or has a conflict, the Board Chairperson or another Board member will step in to fill the void. This is generally limited to signing paychecks; and reviewing the reasonableness and necessity of the executive director's fees.

6. What are the requirements for membership in the consortium?

Initially the consortium included all defense attorneys who were involved in indigent defense in Yamhill County at the time the consortium was formed. The goal was to maintain this status quo and form an entity to provide indigent defense services, primarily in response to the separation of indigent defense from OJD and the need to relieve some burden the court historically carried relating to matters of billing, fee review, expense authorization, and accounting. By contracting with OPDS on a per-hour basis it was believed that the accuracy and quality of defense service delivery would increase. Accountability for hours worked and the savings for cases resolved quickly would be passed on to OPDS in dollars saved while the quality of

defense service delivery would increase. Having one main office to process and engage in quality control of services and billing has result in economic savings for the court as well as for the attorneys.

Since the inception, members have been added to the consortium, including new attorneys who had been hired by existing consortium member firms or attorneys who were involved in providing indigent defense services in Yamhill County in the past and have returned to the county. Our current process of adding members is 1) determination of the need for and ability of the prospective member by the board; 2) approval of Judge Collins, PJ; 3) approval by OPDS; 4) majority vote by the Board of Directors. The Executive Director is responsible for checking into the history of prospective new members. Incorporation of the Qualification Standards for Court Appointed Counsel is, of course, mandatory.

7. What is the process for applying for membership?

In the past the prospective member has contacted YCD and set-up a personal meeting with the Executive Director and the presiding judge or his/her designee for consideration. This process now includes a majority of vote by the Board of Directors as outlined in the Corporate By-Laws Article IV, Section 4. Executive Director began recruiting on one occasion, but the needs were fulfilled by attorneys returning to the area who had previously engaged in indigent defense work in Yamhill County and the recovery of a sick attorney that eventually returned to work

8. How long has each of the attorneys been a part of the consortium?

Consortium Attorney	Date Contracted Into YCD	OSB #	%YCD
Mary Biel*	6/2/02	82191	50%
Pamela Bond	6/18/02	03081	65%
Theodore Coran	8/7/02	82226	20%
JanMarie Dielschneider	3/28/05	90053	95%
Majle Dodge	1/13/03	96225	71%
Michael Finch*	5/6/02	92303	62%
Elana Flynn*	5/6/02	98227	80%
Carol Fredrick*	5/6/02	88370	49%
Bernt A. Hansen*	5/6/02	72111	65%
Eric Hanson*	5/6/02	84146	30%
Keith Hayes	2/11/03	90295	40%
Griff Steinkc Healy	6/30/05	80379	80%
Scott Hodgess	8/8/03	01288	85%
Kevin Kinney*	5/6/02	95323	20%
J. Mark Lawrence*	5/6/02	89005	60%
Paula J Lawrence*	5/6/02	89285	90%
Charles Lisle*	5/6/02	86064	60%
John Mercer*	5/6/02	77278	46%
Rachel Negra	10/4/02	02403	20%
Nancy M. Nickel	10/1/05	81135	95%
Cynthia Kaufman Noble	3/5/03	92399	60%
Gregorio Perez-Selsky*	5/6/02	78335	95%
Robert Suchy*	5/6/02	85088	77%
James White*	5/6/02	91121	75%

*CHARTER MEMBER

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?

Most YCD member attorneys emphasize criminal defense, public defense, and several also have juvenile dependency and delinquency defense history. Prior to the formation of YCD, the attorneys who became members were already working in public defense.

With respect to mentally ill defendants, Yamhill County recently received a grant to establish a mental health court (named Court Coordinated Services or CCS) program and there are at present 3 attorneys who have been very effectively representing these special-needs clients. Indigent defendants in civil commitment proceedings are currently appointed attorneys outside the consortium who possess the necessary skills and are willing to accept these cases.

There is no limit on the percentage an attorney can devote to consortium related cases; some are able to devote a large percentage of their time, while others may only be able to take a limited number of court appointed cases due to the demands of their private practice or to the demands of the firm in which they are partners/associates.

10. How do you insure that new attorneys can become part of the consortium?

YCD's Bylaws allow for member firms to add associates to carry YCD caseloads. This has resulted in several new members over the years to cover attrition. A few attorneys who had previously carried indigent caseloads in Yamhill County have returned to the area and joined YCD. There has been some limited recruiting by Executive Director when necessary.

11. What materials and orientation are provided to new consortium members?

The YCD office makes consortium material and court rules available, and the Executive Director personally conducts an orientation for new members. The presiding judge determines the level of proficiency and assigns cases appropriately. The executive director monitors and observes the performance of the attorney and discusses performance with the court and at times the DA. The executive director may recommend mentoring for individual attorneys when appropriate. Mentoring needs are determined from direct observation by the Executive Director; frequent discussions with judges about attorney performance and appropriateness. When an attorney is determined to be in "over his/her head", that attorney is counseled by the executive director to accept cases at a lower level until sufficiently experienced. Formal Board action can result if an attorney does not respond to this informal prompt, but the judges maintain ultimate authority to assign cases commensurate with the attorney's ability.

The current Budget Proposal has asked for funding for library materials including CLE material and current publications from OCDLA. YCD maintains a brief bank and encourages member attorneys to submit material including Motions and Appeal documents. Also included in the proposal is a monthly subscription to WestLaw.

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.

Currently there is a very strong and active collaborative environment among consortium attorneys. Newer attorneys are encouraged to seek help from the more experienced attorneys, and judges may appoint a more experienced attorney as a "second chair" when requested and appropriate. In addition an attorney can always request assistance from the Executive Director. This practice results in greater efficiency where a member who has gained expertise in a particular area supports another member and information is transferred. Collaboration has been carefully nurtured by YCD and is growing rapidly.

Monthly membership meetings create a forum to discuss these issues and frequently there are presentations are made by member attorneys.

Adoption of a more formal mentoring system is in the development stage. The Board has authorized the Executive Director to study and propose a mentoring system and quality control measures for adoption by the board of directors. Currently information is being gathered and other mentoring programs are being investigated by the Executive Director. A training manual is in the process of adoption and supplemental funding is necessary and has been requested for use in a mentoring program in the current contract proposal.

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?

Cases are assigned by the court based on the court's determination of the skill level of the particular attorney. Attorneys are assigned cases at a higher level when the court feels they are competent to handle them. This is further monitored by the Executive Director through personally observing the attorney directly whenever possible; by the Presiding Judge; and by Verification Specialist.

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?

Through cooperation with court staff, numerous meetings revealed areas where efficiency could be gained. Cases are usually assigned within a matter of hours by the consortium office: specifically, court staff and Verification Specialists notify YCD directly by phone or e-mail; YCD then contacts the attorneys with all necessary information; YCD also notifies the DA's office of the daily appointments

to expedite Discovery information being delivered to the assigned attorneys quickly and without the need for costly paperwork. The Executive Director is provided two daily lists of all attorney appointments: one from the court and one from YCD for monitoring purposes. PDSC timeframe compliance is not monitored currently by YCD, but a proposal to devise a program to monitor this and other performance indicators has been authorized by the YCD board. Availability of Discovery within PDSC timelines would make compliance substantive and not mere rote.

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?

Every effort is made to assure continuity of representation. Attorneys having a pending case with a client are appointed to subsequent cases to the extent possible, including PVs. Some attorneys do not qualify for a more serious subsequent appointment, so these must be assigned to more qualified attorneys. Once an attorney is in OJIN as representing a particular client, subsequent cases are assigned to the extent possible.

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?

Normally, conflicts are initially screened by Karla Fry, Court Verification Specialist. We are quite fortunate that her effort all but eliminates conflicts of the sort that would preclude an attorney from accepting the case from the onset. In cases where this initial screening does not reveal the conflict, the attorney and their staff again verify; if there is a conflict YCD is notified and a case is reassigned the same day, many times at no cost to the state.

In cases of conflicts arising between the attorney and client, the Executive Director is available as a resource to intervene, and every effort made to avoid duplicate expenses to the state. Second opinions are also available and these two approaches have been highly successful. At present consideration is being given to making intervention mandatory prior to withdrawal.

17. Do consortium members meet regularly as a group? If so, how frequently?

Member meetings are held monthly, and special meetings are called when the circumstances require it.

18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing?

A collaborative environment is maintained by the Executive Director using E-mail. New cases and law updates are sent out to all members and other significant news is distributed as well. All YCD members maintain a folder in the DA's office for discovery that is also used for information dissemination. Efforts are also being

made to arrange for electronic delivery of Discovery. Most attorneys have e-mail but there are a few who do not, citing lack of training or funds as reasons.

19. Is there a mechanism for sharing research or forms?

Research and work product is freely shared among the members and made available through the Executive Director. YCD also maintains a Brief Bank and encourages member attorneys to submit documents. Some cases presenting novel or far reaching issues receive research support from the executive director.

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?

Daily lists of appointments are sent directly to YCD and the executive director which, combined with financial data, provide a constant overview of caseload. Verification Specialist Karla Fry also keeps a running tally of all cases appointed to each attorney. Overburdened attorneys are encouraged to contact the executive director for assistance and support. Attorneys can be relieved from appointment rotation if they are burdened by complex cases or numerous trials. The executive director can stand in for attorneys in routine matters.

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?

The executive director directly monitors attorney performance by reviewing dispositions and observing court performance. Routine informal meetings with the judges are conducted on a regular basis to obtain performance information and difficulties are addressed. Quality representation is perceived as one of the most important functions for the executive director to oversee and YCD's current budget proposal includes request for funding sufficient to provide adequate tools to set up, monitor, quantify, control and improve quality to the extent possible.

A formal evaluation program is currently being developed by the executive director under authority from the board of directors. This program is in the planning stages and executive director is discussing the program with member attorneys and gathering information. One facet of this program will very likely be a self reporting checklist for the attorney to complete as the case progresses. This would outline the expectations and provide opportunity for attorneys to express impediments to meeting these expectations. Review of these forms would enable executive director an opportunity to facilitate removal of obstacles and identify attorneys who exceed expectations as well as those who fail to meet them. Correction of underperformance trending is crucial, but recognition of those who exceed expectations constantly and identifying them as role models is important as well.

Another facet of this program would involve more formal feedback from the defendants, Judges, DA's, and other staff involved or affected as well as input from clients.

22. How do you address problems of underperformance by attorneys?

Currently executive director works directly with the attorney to address the problem, which often times can be rectified by reiterating the availability of help where necessary and some research assistance or perhaps some advice. Underperformance usually is related to failure to keep abreast of changes in the law to adequately prepare. New case law is frequently sent to member attorneys and member attorneys known to be working on particular cases are sometimes provided support. The executive director observes attorney performance and suggestions are made in areas needing improvement. The judges are willing to discuss attorney performance directly with the attorney and can remove any YCD attorney at will circumstances warrant. Our proposed budget makes provision for acquisition of adequate training materials, research tools and assistance to be made available to the attorneys needing improvement. In cases of chronic underperformance the executive director, after discussion with the Presiding Judge, would bring the matter before the board of directors for removal from YCD.

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?

Currently executive director sends out all significant cases from the U.S. Supreme Court, the 9th Circuit, and the Oregon appellate courts as well as significant motions filed. This augments monthly member meetings where there is a forum to discuss current cases and topics of interest to the defense bar. Defense attorneys outside the consortium are invited and encouraged to attend, often adding to the knowledge base of the consortium. Some CLE materials have been donated for member use, but our library and training materials are inadequate. There is no formal requirement for a certain number of CLE's in criminal law, but there is a program attendance requirement for Juvenile cases. Our current proposed budget also makes provision for training materials, as indicated above. With a sufficient library, training and quality control can be facilitated reasonably through required programming. A training manual for new attorneys is currently being considered for adoption.

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?

Disciplinary actions are expected to be reported to YCD without delay. The executive director expects disciplinary action to be reported when commenced in confidence. We are currently in the process of updating the member attorney's personnel records and the OSB disciplinary reporter will be searched and all instances of discipline will be maintained in these files in the strictest confidence.

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?

It is the executive director's policy to frequently solicit comments from the bench regarding attorneys and take action to rectify all concerns immediately. The judges have been notified to contact board member Mary Biel with any complaints regarding the executive director, either in the capacity of executive director or as counsel. Client complaints are communicated immediately with the attorney and remedies discussed. Complaints are usually directed to the court and the court can direct the complaint to YCD or the attorney for further action. YCD is investigating a complaint policy so client complaints can be remedied internally to the extent possible and appropriate. It is common knowledge that serious complaints go to Judge Collins, Presiding Judge. The executive director has frequent meetings with the judges regarding any issues with member attorneys and acts to remedy all concerns quickly, including any unresolved client complaints or complaints from others.

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?

The executive director has no knowledge of deficiency regarding cultural awareness or sensitivity, but should the occasion ever arise every effort would be made to remedy the deficiency. YCD and the courts make certain all defendants who are in need of an interpreter, regardless of language type, are provided this service. Cultural questions can be answered by discussion with the interpreters or appropriate consulate. Extraordinary expenses are authorized in cases attorneys need to consult immigration counsel.

27. Do you have a system in place that allows clients to evaluate the quality of services received from consortium attorneys?

One aspect of our performance evaluation process authorized by the board involves obtaining client feedback regarding performance of attorneys. The executive director has been in practice for quite some time in Yamhill County and has known and previously represented many indigent defendants who speak freely regarding the quality of representation and any complaints. Various ways to gain valid insight into client perception of service quality and improve it are being considered, including an outreach process of meeting with clients who are in-custody for input with a goal of enhancing customer satisfaction to the extent possible. Executive director has contacted Jim Arneson of OPDS's Quality Assurance Task Force to help in developing a program for YCD.

Part of our proposed budget includes a staff attorney position which would likely be filled initially by executive director. Part of the staff attorney duties would be probation violations. In this capacity executive director would have an excellent

vantage point to monitor quality of representation objectively discuss issues of representation on the underlying case.

28. Are consortium attorneys and the administrator active participants in policy-making bodies of your criminal and juvenile justice systems?

Executive director has a personal policy of discussing policy shifts among the members for feedback and input prior to recommending implementation to the board of directors. Executive director is active in the case management meetings held by the presiding judge, drug court policy meetings and local public safety meetings. Other members attend mental health court and juvenile meetings. Consortium participation is expected whenever asked. The information gathered in these various meeting are brought for discussion at the member's monthly meetings.

29. What are some of the things your consortium does especially well? Please describe.

YCD member attorneys provide amazingly good defense services for indigent defendants given the constraints of our system and we interface very well with the court. Our structure seems to present the best features of "independent" defense and some economies of a public defender, and the result is better quality. We are enthusiastic and motivated to continue improving our effectiveness as well as accommodate and endure the complex and dynamic nature of providing criminal justice in times of fiscal hardship. We have an established track record of doing just that. We all have dedication and are willing to sacrifice to help our indigent clients. We are becoming more and more comfortable with centralized control over some defense functions. We collaborate among ourselves very well, and this involves discussion and sharing of work product, much like a public defender's office. The consortium attorneys are willing to accept the degree of guidance and control necessary to achieve efficiency and yet know their independence and personal style is respected. Given the adversarial nature of our work, I believe we do a good job working with the courts to deliver efficient indigent defense justice.

30. Are there any areas in which you think improvement is needed? Please describe.

We are relatively new and are constantly evaluating ourselves and working to improve. Our interface with the juvenile system is poor and unfortunately little progress has been made in that area. Citizen Review Hearings are a crucial stage of dependency proceedings and attorneys are not attending them. We have added an experienced attorney who will handle only Juvenile cases as a step in rectifying this situation.

Improvement is needed in our ability to efficiently utilize investigators and to increase our effectiveness through mentoring, education, research, evaluation, and litigation support. We have been winning more trials in the last year than ever, and this trend is increasing, but there is stillroom for improvement. Adequate tools will be necessary to continue quantify and maintain performance. Our current budget contains provision for educational and support tools which are needed to increase our effectiveness, as well as monitor performance. Improvement in investigation

quality and investigator use is being explored along with litigation support issues. YCD has been working with the court to help rectify their process of setting hearings, especially first appearances and PV hearings, with only a couple days or less notice.

The proposed addition of a Staff Attorney to handle routine tasks such as first appearances, routine PV hearings, and stand-in appearances when the court appointed attorney has an unforeseen emergency is necessary and would benefit the client as well as the court. This position is also crucial for running an efficient indigent defense service delivery system and a huge benefit for the court. Defense counsel would no longer be forced to scramble with little time to prepare due to delay outside their control. Defense counsel would be relieved from these hectic and stressful tasks allowing them to focus on litigation and other important aspects of their practice. This would eliminate some of the case resets that add to our extremely clogged court docket and the attorney coverage will facilitate early disposition programs. The staff attorney would also have an excellent vantage point to monitor quality control issues by handling all PV cases.

YCD could further improve overall responsiveness to immediate or emergency needs of the court and, in some cases, clients by having a Staff Attorney available on call. Many members have limited or no support staff and cannot afford appropriate staff overhead at our current rate so rapid response cannot be achieved otherwise.

YCD would like to see an Early Disposition Program implemented, improvement in the amount of time it takes to bring cases to trial and improvement in the case flow of those that are dismissed or end in a guilty plea. Much of this is dependent on the charging discretion of the state. Given the sustained increase in acquittal rate, it would seem some adjustment is in order and may be forthcoming. This coupled with an appropriate Early Disposition Program should alleviate most of the problem we are experiencing with our docket if charging is targeted at a reasonable conviction rate. Presently, an incredible amount of unproductive time is spent in court waiting for cases to be called that require but a brief appearance and preparing for trials, which are only reset time and again. YCD would like to take further efforts in documenting and quantifying the magnitude of this loss and take active steps to reduce it, hopefully converting this saving into further rate increases or benefits for its woefully under-compensated members. Some progress in this area can be facilitated through more extensive and effective communications with the DA's office and the courts' docketing department and deployment of a Staff Attorney. There is a lot of work being done toward moving the docket more quickly through differential case management and adoption of an EDP program. Although well intentioned, our prospect for moving cases to trial on the first setting using differential case management techniques are overly optimistic given the current charging practices of the state and acquittal rates. Recent case law makes bringing cases to timely trial essential and will precipitate emphasis on docket reduction. Many YCD members are in private practice and are held hostage in court hours waiting for brief routine hearings. The District attorney routinely sends up a general duty DA to handle these matters, so the efforts of the court to intervene and make substantive progress to actually resolve the cases is diluted at best and in

many cases thwarted altogether. Reports of private clients waiting for appointments that walk out of offices when the attorney is hung up in court abound, making this situation even worse. Trials are reset numerous times and attorneys spend time repeatedly preparing for trial. Sometimes these cases are dismissed the night before or day of trial. By keeping accurate records to substantiate and quantify these effects and by working even more diligently with the courts and staff, YCD could make further progress in reducing or eliminating these costly delays.

YCD members could greatly benefit from a reduction in the stress level of their jobs through a modest hourly pay increase and appropriate tools. Financial difficulties due to extensive case load at a lower than average hourly rate add to the mounting stress of the criminal defense profession as a whole. The last rate increase was in the mid 80's and many consumer items, including health and retirement benefits not provided by OPDS contracts, have tripled in price. The effects of the low hourly rate adversely impacts effective management. It is difficult to manage effectively and maintain fee limits at the same time.

Before YCD was established, new attorneys were traditionally incorporated into indigent defense by the court and given misdemeanor cases to gain experience and prove themselves. Recently there has been a shift in emphasis to expanded felony prosecution and the state is allocating minimal resources to misdemeanor prosecutions and filing felonies wherever possible. This and Measure 11 have created a situation where there is a greater need now than ever for experienced attorneys that can handle these cases and retention of a local experience base is essential. Sufficient funding for tools to maintain and improve performance is necessary now and student debt forgiveness as incentive would help to attract and keep those capable and willing to participate for compensation at a small fraction of prevailing rates.

Thank you for your learned consideration.

Respectfully Submitted:

**Bob Suchy
Executive Director
Yamhill County Defenders**

Attachment 3

Presenter: Kathryn Aylward

Public Defense Services Commission
Meeting Action Item
February 9, 2006

Issue

PDSC approval of a change in the OPDS Compensation Plan and Personnel Policies and Procedures.

Discussion

ORS 151.216(1)(e) requires the Commission to establish a compensation plan for the Office of Public Defense Services.

151.216 Duties; rules. (1) The Public Defense Services Commission shall:

...

(e) Adopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies.

The job duties and responsibilities of the attorneys in the Legal Services Division are comparable to those of the attorneys in the Appellate Division of the Oregon Department of Justice (DOJ). PDSC's 2005-07 budget request (as well as the prior four biennial budget requests) included a policy package that would have funded an increase in attorney compensation to the level of DOJ attorneys. That policy package was not funded due to a lack of available funding.

Although there is not sufficient funding in LSD's operating budget to establish compensation comparable to DOJ, the attached tables show proposed Compensation Plan changes that can be self-funded this biennium.

In addition to the changes in the Compensation Plan, we recommend the following clarification of Salary Eligibility Date:

Current language:

2.39 SALARY ELIGIBILITY DATE

The salary eligibility date is the date an employee is eligible for consideration for a merit increase.

Proposed language:

2.39 SALARY ELIGIBILITY DATE

The salary eligibility date is the date an employee is eligible to receive a one-step increase in pay. This date is one year after initial hire or rehire, or one year after a subsequent promotion, upward reclassification or an adjustment to the compensation plan that results in a 5% or greater increase in an employee's salary, and annually thereafter until the employee reaches the maximum rate of pay for a class. This date shall be permanently adjusted for leave without pay in excess of 15 consecutive calendar days by adding to the date the number of calendar days absent without pay, thereby making the date later than it would have been if leave without pay had not occurred.

Recommendation

Approve the changes discussed above.

Required Commission Action

Vote to approve the new Compensation Plan and the change in the definition of Salary Eligibility Date.

Current OPDS	1	2	3	4	5	6	7	8	9
Deputy Defender 1	3386	3554	3725	3909	4100	4306	4526	4752	4985
Deputy Defender 2	3909	4100	4306	4526	4752	4985	5230	5494	
Sr Deputy Defender	4306	4526	4752	4985	5230	5494	5764	6055	
Chief Deputy Defender	5230	5494	5764	6055	6354	6663	6996	7350	
Chief Defender	5494	5764	6055	6354	6663	6996	7350	7715	

Proposed OPDS	1	2	3	4	5	6	7	8	9
Deputy Defender 1	3577	3756	3944	4141	4351				
Deputy Defender 2	4351	4577	4805	5044	5293	5562	5837		
Sr Deputy Defender	5080	5334	5596	5878	6169	6469	6792		
Chief Deputy Defender	5596	5878	6169	6469	6792	7136	7491		
Chief Defender	5596	5878	6169	6469	6792	7136	7491	7857	

DOJ	1	2	3	4	5	6	7	8	9
Assistant AGs	4141	4351	4577	4805	5044	5293			
Sr Assistant AGs	5562	5837	6134	6440	6756	7095	7456	7829	
Attorneys-in-Charge	5878	6169	6469	6792	7136	7491	7857	8250	
Asst Solicitor General	5878	6169	6469	6792	7136	7491	7857	8250	
Solicitor General	5878	6169	6469	6792	7136	7491	7857	8250	8657

Attachment 4

Current version of OPDS's Confidentiality Policy

5. CONFIDENTIALITY OF BILLING AND NONROUTINE EXPENSE INFORMATION

Statutes effectively prohibit the OPDS from disclosing information regarding the cost of representation of a client or requests for non-routine expenses to the district attorney before the case concludes. See, e.g., ORS 135.055.

It is the policy of the OPDS that its staff will keep confidential all information regarding the cost of representation of a client and non-routine expense requests for a particular case until the case concludes. For purposes of this section, a case concludes when:

- a) it is dismissed with prejudice and no appeal is filed;
- b) it is dismissed without prejudice and not refiled within one (1) year, except those cases where there is no statute of limitation;
- c) the defendant is acquitted;
- d) the time for filing a notice of appeal has run and no appeal has been filed;
- e) the appellate judgment is final and the case is not remanded for further proceedings from which the client may appeal; or
- f) the court unseals the records by written order.

The OPDS will release confidential information on a client's defense costs before the case concludes only:

- a) to appointed counsel or appointed counsel's client on written request; or
- b) pursuant to written court order.

This policy does not prohibit the OPDS from disclosing statistical information that cannot be identified to any particular case.

During an audit by the Secretary of State's Audit Division, the auditors may need to review confidential information to ensure that the funds have been disbursed lawfully. The OPDS will inform the auditors that the information is confidential.

Rev. 7/1/05

Proposed Amended Version of OPDS's Confidentiality Policy

5. CONFIDENTIALITY OF BILLING AND NON-ROUTINE EXPENSE REQUEST INFORMATION

In order for the OPDS to carry out its obligations under ORS 135.055, ORS 151.216 and other statutes regarding payment of counsel and authorization and payment of non-routine expenses in public defense cases, it is necessary for the OPDS to receive information that may be confidential or privileged or both.

ORS 135.055(9) prohibits disclosure of requests and administrative orders for preauthorization of non-routine fees and expenses, and billings for such fees and expenses, to the district attorney before the conclusion of the case. ORS 135.055(10) permits disclosure to the district attorney of the total amount of moneys determined to be necessary and reasonable for non-routine fees and expenses at the conclusion of the trial in the circuit court.

ORS 40.255 () (2005) provides that the lawyer-client privilege is maintained for communications made to the OPDS for the purpose of seeking preauthorization for, or payment of, non-routine fees or expenses.

ORS 192.502(4) exempts from disclosure under the Public Records Law information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

In light of its obligations under the foregoing statutory provisions, the OPDS has adopted the following policy.

It is the policy of the OPDS that its staff will keep confidential all information regarding the cost of representation of a client and non-routine expense requests for a particular case, except as follows:

- (1) It may release, upon request at the conclusion of the trial, the total amount of moneys paid for representation in the case.
- (2) It shall disclose information regarding non-routine expense requests in a particular case and the cost of representation of a client to: the attorney who represents or represented the client in the particular case; to the attorney who represents the client in a matter arising out of the particular case; or, upon written request, to the client, except that the OPDS shall not disclose information to the client that it is prohibited from disclosing under state or federal law.

- (3) This policy does not prohibit the OPDS from disclosing statistical information that cannot be identified with any particular case.
- (4) The OPDS may disclose to appropriate authorities information regarding non-routine expense requests and the cost of representation when such information is reasonably believed to be evidence of, or relevant to, alleged criminal activity on the part of the court-appointed attorney or other OPDS-paid provider.
- (5) The OPDS shall disclose information regarding the cost of representation as required by law.

Attachment 5

OCDLA Workgroup on the Qualification and Certification Standards
For Court-Appointed Counsel

Explanatory Statement for Recommended Amendments to
Section III (2) and Section V.

Submitted by Paul Levy
January 31, 2006

The Public Defense Services Commission, like its predecessors, has made a considerable investment in Oregon's public defense organizations. And rightly so, since a well structured and operated public defense organization can give great confidence that its clients are represented adequately and competently in Oregon's courts. That assurance arises because the attorneys practicing in these organizations can be subject to careful hiring, intensive and regular training, multi-disciplinary support, close supervision and regular evaluation, all of which can be subject to review by a board of directors. In part because of these structures, and by virtue of the substantial case loads these organizations handle, public defense organizations can quickly train new and developing lawyers to competently and effectively handle a significant volume of increasingly difficult cases.

The PDSC's Qualification Standards and certification requirements are an important part of its mission of providing cost-effective and competent legal representation in Oregon. These requirements, however, should work in concert with other efforts of the PDSC to assure competent representation, such as its support for public defense organizations, its regional assessments and recommendations, and its encouragement of peer review site evaluations. Because the qualification standards and certification requirements as presently written can, in fact, pose significant operational difficulties for some public defense organizations, possibly interfering with the very processes in place that do give assurance that attorneys practicing there will do so competently, the OCDLA workgroup has recommended some modification to the requirements.

The workgroup is mindful that the Commission has previously declined to amend the standards and certification requirements to exempt public defense organizations, and the workgroup is not recommending such a change. Moreover, as will be explained further below, by "public defense organization" we mean to include not just public defender offices but other entities that also provide for attorney training and oversight. In addition, while the example of the Metropolitan Public Defender is cited below, the concerns expressed here are shared by others organizations, including the Juvenile Rights Project, Multnomah Defenders, Inc., and the Public Defender Services of Lane County.

The principle difficulty for some public defense organizations, such as the Metropolitan Public Defender (MPD), is that some attorneys may not initially meet the specific qualification requirements for the class of cases they are assigned to represent. That would typically arise when lawyers are transferred to a new section within the office and asked to handle a new class of cases. Such transfers would occur both to further the

development and growth of the attorney and to meet the exigencies of the office but would only happen if, in the judgment of direct supervisors and other managers, the attorney were ready to meet the new challenge. In his or her new position, the attorney would be carefully monitored, along with whatever additional training and supervision might be required for the new assignment.

Another difficulty for an organizations like MPD, which has over 60 attorneys and regularly advances and transfers attorneys to new assignments, is the logistical challenge of providing new and updated certifications for advancing attorneys. Simply managing the paperwork requirements, and in a manner that would make the affected attorney immediately eligible to accept appointments in the new assignment, pose significant operational challenges.

An additional problem, that many providers in Multnomah County may face, is that the standards exclude many drug offenses from the classification of “lesser felony” cases. The district attorney’s office, and the courts in Multnomah County, maintain dockets, and devote special rules, to the handling of felony property and drug offenses. This docket, which includes many drug offenses that would be considered “major felony” cases, is handled primarily by the “Minor Felony” group at MPD, which is the section in that office where attorneys typically advance after beginning their service in the Misdemeanor Section. Other firms, as well, assigned newer, but well qualified attorneys, to handle cases from this docket. In reality, drug delivery and manufacturing cases are not significantly more difficult than less serious drug charges, and raise many of the same issues that attorneys, at least at MPD, face with their misdemeanor cases. But classifying many drug cases as major felonies could force a dramatic and unworkable restructuring of the office at MPD.

The amendments recommended by the OCDLA workgroup would avoid the above difficulties, without detracting from the goal of the Commission and the guidelines of ensuring competent and adequate representation. As a starting point, the workgroup recognizes, as we assume others do, that the task of ensuring quality representation by a sole practitioner and an attorney working within a public defense organization can be quite different. In the latter case, if the public defense organization can demonstrate that it has adequate training and supervision mechanisms in place, then there is reason to reliably believe that the attorneys practicing there will be doing so adequately and competently.

Thus, the principle amendments recommended by the workgroup would provide for an alternate certification option for attorneys practicing at public defense organizations that provide management and oversight of attorney performance, frequent attorney trainings and routine performance reviews. The term “public defense organization” is meant to include both public defender offices and other providers, such as consortia, that have in place the structures that can ensure competent attorney performance. To track with other sections of the qualification standards, the amendment provides that OPDS must be satisfied that the public defense organization has the appropriate structures in place to

ensure competence, and can request specific assurances of competence for any particular attorney.

The amendments also require a public defense organization seeking to qualify its attorneys under this alternate process to describe the oversight and training that they provide and also certify that attorneys will be working under the supervision of other attorneys who do meet the Commission's qualification standards for the class of cases they will handle. In addition, the public defense organization would be required to submit a list, updated as necessary, of the attorneys working under the supervision of qualified supervisory attorneys.

**QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL
TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

The Public Defense Services Commission adopts the following standards pursuant to ORS 151.216(1)(f)(F), effective October 21, 2005.

STANDARD I: OBJECTIVE

The objective in promulgating qualification standards for counsel appointed by the state courts to represent financially eligible persons at state expense is to ensure that competent and adequate legal representation is afforded to all financially eligible persons entitled to court-appointed counsel by state or federal constitution or statute.

STANDARD II: ATTORNEY CASELOADS

Attorneys appointed to represent financially eligible persons at state expense must provide each client the time and effort necessary to ensure competent and adequate representation. Neither defender organizations nor assigned counsel should accept workloads that, by reason of their excessive size or complexity, interfere with rendering competent and adequate representation or lead to the breach of professional obligations.

STANDARD III: GENERAL QUALIFICATIONS TO SERVE AS APPOINTED COUNSEL FOR FINANCIALLY ELIGIBLE PERSONS

Subject to the provisions of Standard V, the appointing authority shall appoint only those attorneys who:

1. Are active members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
2. Either:
 - A. Meet the qualifications specified in Standard IV for the applicable case type; or
 - B. Possess significant experience and skill equivalent to or exceeding the qualifications specified below, and who demonstrate to the Office of Public Defense Services' satisfaction that the attorney will provide competent and adequate representation; **or**
 - C. Work under the direct supervision of an attorney who does have the requisite qualifications or experience at a public defense organization that certifies to the satisfaction of the Office of Public Defense Services that it will provide management and oversight of attorney performance, frequent attorney trainings, and routine performance reviews in order to assure competent and adequate representation. On request, an attorney qualifying under this section may be required to provide a written statement explaining why the attorney believes he or she has the qualifications to handle the case types to be assigned to him or her, and be required to provide up to five letters of reference, at least two of which are from judges, attesting to his or her expertise and competence.**

3. Have adequate facilities such as sufficient support staff or answering service/machine and email capability to ensure reasonable and timely personal and telephonic contact between attorney and client, and between the court and attorney;
4. Have adequate legal research access through an online service or other electronic means or by being located near a law library of sufficient size to ensure the attorney has ready access to legal references and research material; and
5. Have reviewed and are familiar with the current edition of the Oregon State Bar's Indigent Defense Task Force Report, "Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases." (Exhibit C to this policy statement.)

STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE

1. Misdemeanor Cases and Misdemeanor Probation Violation Proceedings in Trial Courts

An attorney or certified law student is qualified for appointment to misdemeanor cases and misdemeanor probation violation proceedings if he or she:

- A. Has reviewed and is familiar with the current version of the ABA Standards for Criminal Justice relating to representation in criminal cases; the Oregon Rules of Professional Conduct; the Criminal and Evidence Codes of Oregon; the Uniform Trial Court Rules; and Oregon State Bar, Criminal Law (current version); and
- B. Satisfies one or more of the following:
 - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of a public defender office, a district attorney office, or a private attorney office in criminal cases; has undertaken such representation for at least six months; and can present a letter from the student's immediate supervisor certifying the student's knowledge of applicable criminal procedure and sentencing alternatives;
 - b. Has observed five complete trials of criminal cases that were tried and submitted to a jury;
 - c. Has served as counsel or co-counsel in at least two criminal cases that have been tried and submitted to a jury;
 - d. Has served as co-counsel in at least five criminal cases. Such service shall have included attendance at the majority of court appearances and client interviews in each case;
 - e. Has served as a judicial clerk for no less than six months' time for a court that regularly **conducts criminal trials** ~~hears criminal cases~~;
 - f. Has significant equivalent experience under Standard III, section 2.B, or will be working under the direct supervision of an attorney who does have the requisite qualifications or experience.

2. Lesser Felony Cases; Felony Probation Violation Proceedings; Contempt Proceedings in Trial Courts

Lesser felony cases include all **drug cases and all** Class C felonies other than sexual offenses ~~and the manufacture and delivery of controlled substance cases~~.

An attorney is qualified for appointment to lesser felony cases, felony probation violation proceedings, and contempt proceedings if he or she:

- A. Meets the qualifications specified in Standard IV, section 1;
- B. Has continued to meet the qualifications in Standard IV, section 1 for at least nine months;
- C. Has served as counsel or as co-counsel and has handled a significant portion of the trial in two criminal cases that have been submitted to a jury;
- D. In at least one felony trial submitted to a jury, has **served** ~~associated on a pro bono or paid basis~~ as co-counsel with an attorney who has previously tried felony cases and is otherwise qualified to try felony cases under these standards; and
- E. On request, can present an additional showing of expertise and competence in the area of criminal trial practice by submitting at least three letters of reference from other criminal trial lawyers or judges the attorney has appeared before on criminal cases. The letters must explain why the attorney has **the requisite** ~~special~~ experience and competence to handle felony cases involving potential incarceration of up to five years.
- F. In lieu of meeting the qualifications of A through E above, an attorney possesses significant equivalent experience under Standard III, section 2.B.

3. Major Felony Cases in Trial Courts

Major felony cases include all A and B felonies, all sex offense felonies, ~~all manufacture and delivery of controlled substance felonies~~, and all homicides other than murder and capital murder cases.

An attorney is qualified for appointment to major felony cases if he or she:

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has continued to meet the qualifications in Standard IV, section 2 for nine months and has had nine months of lesser felony trial experience in a public defender or a district attorney office or in private practice; and
- C. On request, can present evidence of additional expertise and competence in the area of criminal trial practice by submitting at least five letters of reference from other criminal trial lawyers or judges that the attorney has appeared before on criminal cases. The letters must explain why the attorney has **the requisite** ~~special~~ experience and competence to handle felony cases involving potential incarceration of 20 years.

- D. In lieu of meeting the qualifications of A through C above, an attorney possesses significant equivalent experience under Standard III, section 2.B.

4. **Murder Cases in Trial Courts**

- A. *Lead Counsel.* An attorney is qualified for appointment as lead counsel in murder cases, not including capital murder, if he or she:
 - a. Meets the qualifications specified in Standard IV, section 3;
 - b. Has continued to meet the qualifications in Standard IV, section 3 for three years;
 - c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent and vigorous representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, psychiatric issues and scientific evidence;
 - d. Has acted as lead counsel or co-counsel in a significant number of major felonies tried to a jury, which should include at least one homicide case that was tried to a jury and went to a final verdict; and
 - e. On request, can demonstrate the above by:
 - (1) A written statement explaining why the attorney believes that he or she has the qualifications required to handle a murder case; and
 - (2) Certification from those with direct knowledge of the attorney's practice, indicating that they believe that the attorney should be allowed to defend murder cases and explaining why the attorney has the qualities required. Certification must include at least five letters from **persons representing** at least two of the following three groups:
 - i. Judges before whom the attorney has appeared;
 - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; and
 - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
 - f. In lieu of meeting the qualifications of a through e above, an attorney possesses significant equivalent experience under Standard III, section 2.B.
- B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, c, and e or must possess significant equivalent experience under Standard III, section 2.B.

5. Capital Murder Cases in Trial Courts

- A. *Lead Counsel.* An attorney is qualified for appointment as lead counsel in capital murder cases if he or she:
- a. Meets the qualifications specified in Standard IV, section 4;
 - b. Has tried major felony cases for at least five years;
 - c. Has acted as lead counsel or co-counsel in a significant number of major felonies tried to a jury, which should include at least one homicide case that was tried to a jury and went to a final verdict. Lead counsel in capital cases must have acted as counsel or co-counsel in at least one murder case that was tried to a jury and went to a final verdict;
 - d. Has completed or, prior to trial will have completed, comprehensive training in the defense of capital cases. Such training should include, but not be limited to, training in the following areas:
 - (1) relevant state, federal, and international law;
 - (2) pleading and motion practice;
 - (3) pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
 - (4) jury selection;
 - (5) trial preparation and presentation, including the use of experts;
 - (6) ethical considerations particular to capital defense representation;
 - (7) preservation of the record and of issues for appellate and other postconviction review;
 - (8) counsel's relationship with the client and his or her family;
 - (9) postconviction litigation in state and federal courts;
 - (10) the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.
 - e. Has attended and successfully completed within the last two years at least 18 hours of specialized training on current issues in capital cases through an established training program awarding CLE credits;
 - f. Has demonstrated to persons with direct knowledge of his or her practice:
 - (1) a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;

- (2) substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
 - (3) skill in the management and conduct of complex negotiations and litigation;
 - (4) skill in legal research, analysis, and the drafting of litigation documents;
 - (5) skill in oral advocacy;
 - (6) skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
 - (7) skill in the investigation, preparation and presentation of evidence bearing upon mental status;
 - (8) skill in the investigation, preparation, and presentation of mitigating evidence;
 - (9) skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements; and
- g. On request, can demonstrate all of the above by:
- (1) A written statement by the attorney explaining why the attorney believes that he or she has the qualifications required to handle a capital murder case; and
 - (2) Certification from those with direct knowledge of the attorney's practice, indicating that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. Certification must include at least five letters from **persons representing** at least two of the following three groups:
 - i. Judges before whom the attorney has appeared;
 - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; or
 - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- B. *Co-counsel.* Co-counsel in capital murder cases must meet the qualifications in Standard IV, section 5.A, subparagraphs a, b, d, e, f, and g or must possess significant equivalent experience under Standard III, section 2.B.
- C. *Alternate Procedures for Meeting Minimum Qualifications.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial

experience or extensive civil litigation experience meets the minimum qualifications for appointment as lead or co-counsel, if the attorney clearly demonstrates that the attorney can and will provide competent representation to the capitolly charged financially eligible defendant. For qualification under this paragraph, attorneys:

- a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and
 - b. must have either:
 - (1) specialized postgraduate training in the defense of persons accused of capital crimes, or
 - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).
- D. *Limited Caseload.* An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

6. Civil Commitment Proceedings Under ORS Chapters 426 and 427 in Trial Courts

An attorney is qualified for appointment in civil commitment proceedings under ORS Chapters 426 and 427 if he or she:

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has experience handling psychiatric or psychological evidence and psychiatric or psychological experts;
- C. Has knowledge of available alternatives to institutional commitment;
- D. Has knowledge of the statutes, case law, standards, and procedures relating to the involuntary commitment of the mentally ill and mentally retarded.
- E. In lieu of meeting the qualifications of A through D above, an attorney possesses significant equivalent experience under Standard III, section 2.B.

7. Juvenile Cases in Trial Courts, Including Delinquency, Waiver Proceedings, Neglect, Abuse, Other Dependency Cases, Status Offenses and Termination of Parental Rights

An attorney is qualified for appointment to juvenile cases, under ORS Chapter 419, if he or she:

- A. For all cases, has knowledge of juvenile justice statutes, case law, standards, and procedures; has observed at least one contested juvenile court case; is generally familiar with services available to children and parents in the juvenile system; and has reviewed and is familiar with the following materials:
 - a. Oregon Revised Statutes, Chapters 419A, 419B, and 419C, Oregon Juvenile Code.

- b. Oregon Revised Statutes, Chapter 417, Interstate Compact on Juveniles and the Community Juvenile Services Act.
 - c. Oregon Revised Statutes, Chapter 418, Child Welfare Services.
 - d. Oregon Revised Statutes, Chapter 420, Youth Correction Facilities; Youth Care Centers; and Chapter 420A, Oregon Youth Authority; Youth Correction Facilities, and applicable administrative rules.
 - e. Oregon State Bar, Juvenile Law, (current version).
 - f. Pub. L. 105-89, Adoption and Safe Families Act of 1997.
 - g. Pub. L. 95-608, Indian Child Welfare Act of 1978, 25 USC §§1901-1963 (1982) and Refugee Child Act, ORS 418.925-418.945.
 - h. Pub. L. 105-17 Individuals with Disabilities Education Act.
 - i. Pub. L. 93-112, Title V §504, Rehabilitation Act of 1975, as amended, 20 USC §794 (1982).
- B. For juvenile delinquency cases, meets the qualifications for the equivalent adult crimes specified in Standards IV, sections 1-4;
 - C. For status offense cases, meets the qualifications specified in Standard IV, section 1;
 - D. For abuse and neglect cases and dependency cases, meets the qualifications specified in Standard IV, section 2;
 - E. For waiver proceedings, meets the qualifications specified in Standard IV, section 3. Where the underlying offense is equivalent to adult murder or capital murder, the attorney must meet the qualifications specified in Standard IV, sections 4 and 5, respectively;
 - F. For termination of parental rights cases, meets the qualifications specified in Standard IV, section 3, or has had equivalent experience, civil or criminal, involving complicated child-custody issues..
 - G. In lieu of meeting the qualifications of B through F above, an attorney possesses significant equivalent experience under Standard III, section 2.B.

For purposes of this section, a court trial in a delinquency case is equivalent to a jury trial under Standard IV, sections 1-3.

8. Appeals Other Than in Murder and Capital Murder Cases

An attorney is qualified for appointment in appeals other than in murder and capital murder cases if he or she:

- A. Has reviewed and is familiar with:

- a. ORS 138.005 - 138.504 in the case of appeals of criminal cases;
 - b. Oregon State Bar, Criminal Law (current edition) in the case of appeals of criminal cases;
 - c. ORS 419A.200 - 419A.211 and ORS Chapter 19 in the case of appeals of juvenile cases;
 - d. In the case of appeals of juvenile cases, Oregon State Bar, Juvenile Law, (current edition);
 - e. The Oregon Rules of Appellate Procedure;
 - f. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
- a. Has experience as appellate counsel, either in practice or under the Oregon State Bar's Law Student Appearance Rule commensurate with the seriousness of the underlying case;
 - b. Has served as co-counsel in at least **two one** appellate cases **which were briefed on the merits and argued to the court** under the supervision of an attorney eligible for appointment to appellate cases under this standard;
 - c. Has observed oral argument and reviewed the appellate record in at least five appellate cases, at least one of which was an appeal from conviction of a major felony or murder;
 - d. Has significant experience in motion practice and arguments in state circuit court or federal district court;
 - e. Has significant equivalent experience under Standard III, section 2.B, **or will be working under the direct supervision of an attorney who does have the requisite qualifications or experience.**

9. Appeals in Murder and Capital Murder Cases

An attorney is qualified for appointment in appeals in murder and capital murder cases if he or she:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. For appointment as lead counsel, is an experienced and active trial or appellate lawyer with at least three years' experience in criminal defense;
- C. Has demonstrated the necessary proficiency and commitment that exemplify the quality of representation appropriate to:
 - a. Capital murder cases if the appeal is in a capital case; or

- b. Other murder cases, if the appeal is in a noncapital murder case;
- D. Has demonstrated proficiency in appellate advocacy in felony defense;
- E. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and
- F. For co-counsel in capital murder appeals and for lead or co-counsel in other murder cases, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- G. *Alternate Procedures for Meeting Minimum Qualifications.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial or appellate experience, or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation to the capital charged financially eligible defendant. For qualification under this paragraph, attorneys:
 - a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and
 - b. must have either:
 - (1) specialized postgraduate training in the defense of persons accused of capital crimes, or
 - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

10. Postconviction Proceedings Other Than in Murder and Capital Murder Cases

An attorney is qualified for appointment in postconviction proceedings in cases other than murder and capital murder cases if he or she:

- A. Meets the qualifications for appointment to an original proceeding involving the highest charge in the postconviction proceeding; or
- B. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

11. Postconviction Proceedings in Murder and Capital Murder Cases

An attorney is qualified for appointment in postconviction proceedings in murder and capital murder cases if he or she:

- A. Meets the qualifications specified in Standard IV, section 4;
- B. For appointment as lead counsel, has prior experience as postconviction counsel in at least three major felony cases; and

- C. For capital murder cases, meets the qualifications specified in Standard IV, section 9 for co-counsel in capital appeals. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 9.
- D. *Alternate Procedures for Meeting Minimum Qualifications.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or postconviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for postconviction relief proceedings in murder and capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation to the financially eligible petitioner. For qualification under this paragraph, attorneys:
 - a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and
 - b. must have either:
 - (1) specialized postgraduate training in the defense of persons accused of capital crimes, or
 - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

12. Habeas Corpus Proceedings

An attorney is qualified for appointment in habeas corpus proceedings if he or she:

- A. Meets the qualifications specified in Standard IV, section 2; or
- B. Possesses significant equivalent experience under Standard III, section 2.B.

STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT LISTS

1. Certificate and Supplemental Questionnaire

Effective April 1, 2006, in order to receive an appointment to represent a financially eligible person at state expense, **unless covered under paragraph 2.3 of this Standard**, an attorney must have submitted a certificate of qualification together with a completed supplemental questionnaire and have been approved for inclusion on an appointment list. The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards.

2. Submission Requirements

- A. *Contract Attorneys.* Contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the execution of the contract and thereafter as necessary to ensure that OPDS has current information for each attorney who performs services under the contract.

- B. *Assigned Counsel (for all Noncontract Appointments)*. Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.

C. *Public Defense Organizations that certify that they will provide management and oversight of attorney performance, frequent attorney trainings, and routine performance reviews in order to assure competent and adequate representation will provide, and update as needed, certificates of qualification for supervising attorneys and a list of those attorneys working under their direct supervision, along with a description of the organization's management, supervision, evaluation and training procedures.*

3. Supporting Documentation

An attorney must submit supporting documentation in addition to the certificate and questionnaire:

- A. At the request of OPDS; or
- B. When the attorney seeks to qualify for appointments based on equivalent experience.

4. Appointment Lists

A. *Review of Submitted Certificates*. OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications will be approved for inclusion on appointment lists. OPDS's goal is to select attorneys who:

- a. if possible, are more than minimally qualified,
- b. have specialized skills needed in a particular community,
- c. are available to cover cases in the appropriate geographic area,
- d. are able to meet specific needs of the court such as availability at specific times,
- e. are both effective and efficient, and/or
- f. have other qualities which would benefit the court, the clients or OPDS.

At the completion of the review, OPDS shall notify the attorney of the case types for which the attorney has been approved for appointment and the reason for its decision not to approve the attorney for appointment in any case type for which certification was submitted..

- B. *Request for Reconsideration*. An attorney who is not approved for appointment in case types for which the attorney has certified qualification may request reconsideration by submitting to OPDS, within 21 days of the notice of approval/disapproval for appointment in particular case types, additional information,

including supporting documents, if any, which the attorney believes indicate that the attorney meets the criteria for selection set forth in Paragraph 4.A.

- C. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. OPDS shall notify the attorney of its final determination.
- D. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.
- E. *Provision of Lists to the Courts.* OPDS will prepare an applicable list of attorneys for each county. The list will be sorted by case type and, within each case type, alphabetically by attorney name.
- F. *Updating Lists.* OPDS will update lists monthly with a supplemental list of any changes.

5. Suspension From Appointment List

- A. *Suspension from Future Appointments.* If OPDS obtains information that calls into question an attorney's ability to provide adequate assistance of counsel, OPDS shall notify the attorney of the information and shall perform such investigation as is necessary to determine whether the attorney is able to provide adequate assistance of counsel. After completing its investigation and reviewing any information provided by the attorney OPDS shall have authority to suspend the attorney from future appointments for any or all case types until OPDS is satisfied that the attorney is able to provide adequate assistance of counsel. When OPDS suspends an attorney from future appointments OPDS shall notify the attorney and the court of the suspension and the reason(s) for the suspension.
- B. *Suspension from Current Appointments.* The court, after reviewing the reason(s) for the suspension, shall consider whether the attorney should be relieved as counsel in any pending court-appointed cases. The court shall consider with respect to each open case: the reason for the suspension, the needs of the client, and the ability of the attorney to provide adequate assistance of counsel under all of the circumstances. The court shall comply with the Paragraph 1.7 of OPDS's Public Defense Payment Policies and Procedures relating to substitution of counsel.
- C. *Request for Reconsideration.* An attorney who is suspended from future appointments may request reconsideration by submitting to OPDS, within 21 days of the notice of suspension, additional information, including supporting documents, if any, which the attorney believes establish the attorney's ability to provide adequate assistance of counsel.
- D. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration, the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. In reviewing the request the executive director or the executive director's designee may select and empanel a group of public defense attorneys to advise the executive director about the attorney's ability to provide adequate assistance of counsel and whether the attorney should be suspended from future

appointment for any or all case types. OPDS shall notify the attorney and the court of its final determination and the reasons for its final determination.

- E. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.

10. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with law related to the case types you have certified?

11. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling the case types you have certified.

12. List two cases by county and case number that have been tried and submitted to a jury in which you served as counsel or co-counsel within the last two years.

13. ~~Are there any Oregon State Bar complaints pending against you? If yes, please explain.~~ Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction.

14. ~~Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.~~ Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.

15. Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.

45 16 Has a former client ever successfully obtained postconviction relief based on your representation? If yes, please describe and cite to opinion, if there was one.

I certify that the above information is true and complete.

SIGNATURE

DATE

Attachment 6

Members

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

**Ex-Officio Member**

Chief Justice Paul J. De Muniz

Executive Director

Peter A. Ozanne

PUBLIC DEFENSE SERVICES COMMISSION

February 1, 2006

MEMORANDUM

TO: Public Defense Services Commission
FR: Peter Ozanne
RE: Revisions to the Commission's Service
Delivery Plan for Marion County

In accordance with directions from the Commission's Chair at your last meeting on January 12, 2006, I have revised the Service Delivery Plan for Marion County solely for the purpose of emphasizing the importance of a community-based board of directors for the new public defender office in the county and the board's role in establishing and overseeing the operations of the office.

Only the relevant portions of OPDS's report to the Commission on Marion County are attached, with the material revisions appearing in bold face.

Gorham told the Commission that he preferred not to comment on the matters set forth at pages 27 to 31 of this report pending MCAD's written responses.¹ He also declined the Commission's invitation to offer suggestions for change and improvement in Marion County's service delivery system because "what you are asking us to do here is not appropriate for us to do in this forum [but] . . . is appropriate in other planning forums that [OPDS] runs" ²

[PLEASE NOTE: The revisions that follow for PDSC's consideration at its February 9, 2006 meeting are set forth in bold print.]

A Service Delivery Plan for Marion County

The following Service Delivery Plan for Marion County was adopted by PDSC at its October 21, 2005 meeting,³ **with revisions in accordance with the directions of the Commission at its January 12, 2006 meeting.** This plan is based on the public comments and discussions at the Commission's two meetings in Salem in July and August 2005, written materials submitted to PDSC in preparation for those meetings and the Commission's deliberations and directions to OPDS.

PDSC bases this plan on four principles or considerations regarding the delivery of criminal defense services in Marion County:

- (1) In order to promote quality and cost-efficiency in the delivery of public defense services in a populous county with a relatively large criminal defense caseload like Marion County, PDSC should seek to contract with more than one service provider in order to enhance creative management and innovative practices among its providers and to reduce the Commission's dependence on any one service provider;
- (2) Given its size and its role as the seat of state government, Marion County is a particularly appropriate site for a public defender office (a) **overseen by a board of directors constituting a representative group of local citizens and officials** (b) managed by a professional manager with a commitment to promoting the quality and cost-efficiency of the state's entire public defense system, (c) staffed by a corps of full-time public defense attorneys and support staff who are accountable for their performance and conduct through an employer-employee relationship and (d) supported by effective and cost-efficient management practices and quality assurance and training programs that (i) promote the interests of the justice system and the entire community in Marion County and (ii) serve as models for other public defense providers across the state;

¹ See Appendix D for those written responses.

² Appendix E. Tr. 30.

³ A transcript of the relevant proceedings at PDSC's October 21, 2005 meeting is attached as Appendix F.

- (3) There will always be a significant role for qualified consortia or private attorneys in Marion County to handle a major portion of the county's public defense caseload;⁴ and
- (4) MCAD will be able to continue serving as a major public defense contractor in Marion County if the consortium's membership and management demonstrate to the satisfaction of PDSC that they (a) accept the Commission's role in overseeing the quality and cost-efficiency of its legal services, (b) are willing to address and resolve the problems identified throughout this report and (c) in particular, recognize that MCAD must strengthen and enforce its practices and procedures governing (i) the management, oversight and accountability of the consortium's lawyers with regard to their professional performance and conduct, (ii) the assignment of cases to those attorneys commensurate with their skills and experience and (iii) the recruitment, training, retention and removal of the consortium's members.

In accordance with these principles, PDSC adopts two components of a Service Delivery Plan for Marion County, including some specific details concerning implementation of the plan:

1. Establish a high-quality, cost-efficient public defender office in Marion County. PDSC intends to establish a public defender office in Marion County with (a) guidance, input and support from the Marion County community, (b) **oversight by an engaged board of directors made up of local citizens and officials**, (c) leadership by a highly qualified public defense manager, and (d) legal staff that includes approximately six to 10 full-time public defense lawyers. In order to ensure the success of this new office, the Commission is committed to involving Marion County's legal and justice communities, as well as the county's entire community, in the design, establishment and oversight of the office.

The size of the new public defender office's initial caseload should be proportionate to the number of lawyers and support staff who are employed by the office. The nature of the office's initial caseload, or its mix of cases, will depend on the skills and experience of the lawyers who are initially hired by the office.

Once a board of directors has been established and its members have been appointed,⁵ PDSC recommends that the new board take the following steps in the developing the public defender office in order to ensure that the office delivers quality, cost-efficient legal services in Marion County and gains the support of the local community:

⁴ National studies and experienced public defense managers confirm that approximately 20 percent or more of the caseload in a jurisdiction with a public defender office must be handled by private attorneys because of conflicts of interests and other considerations, such as the need for special legal experience and expertise.

⁵ **OPDS has recently formed a "Steering Committee" of prominent citizens, justice professionals and public officials in Marion County for the purposes of advising the Commission and OPDS on the establishment and membership of a community-based board of directors for the new public defender office. The Steering Committee will also provide the Commission with valuable guidance concerning a preliminary design for the office and effective approaches to establishing the office in the county.**

- with the assistance of OPDS and its Contractor Advisory Group and Quality Assurance Task Force made up of experienced public defense managers and attorneys, develop a preliminary design for the office;
- present that design to the Commission for its review and comment;
- recruit a new manager, attorneys and support staff for the office using two possible approaches:
 - OPDS's regular Request for Proposals (RFP) process to solicit proposals for establishing and operating the office from groups of interested attorneys in Marion County;
 - a special RFP process for the identification and selection of a highly qualified public defense manager, which could include a request for a proposed design for the new office, as well as proposed plans to implement that design and to recruit attorneys and staff for the office.⁶

PDSC will review and evaluate the operations of the new public defender office after its first 18 months of operation, taking into account the performance of the management and lawyers in the office and input from the office's Board of Directors, the Circuit Court and other key stakeholders in Marion County, in order to determine whether or not the office's current mission, operations and capacity should continue or be changed.

2. Provide MCAD with the opportunity to strengthen its management and operations over the coming year. Assuming MCAD and CBS can reach agreement on the terms and conditions of a new contract acceptable to PDSC during the current round of contract negotiations, the duration of that new contract shall be one year. This will provide MCAD with the opportunity to resolve the problems identified in this report and address the concerns of the Commission regarding the strength of the consortium's practices and procedures governing the management, oversight and accountability of its lawyers, the assignment of its cases, and the recruitment, training, retention and removal of its members. If MCAD addresses these problems and concerns to PDSC's satisfaction, then PDSC will consider a longer-term contract with MCAD consistent with this Service Delivery Plan.

⁶ These two approaches are not necessarily mutually exclusive. **The board of directors could decide to implement** them at the same time in order to (a) promote openness in its process for establishing the office, (b) ensure community involvement and support for the office and (c) increase the chances of identifying the strongest manager, office design and staff of employees for the office. **On the other hand, if the board identifies a qualified manager through the second approach, it could** direct that manager to recruit and hire attorneys and establish an office in accordance with **an office design and implementation and recruitment plans approved by the board.**

PDSC requests MCAD to submit a report no later than August 1, 2006 containing a detailed description and documentation of the specific actions that the consortium has undertaken to resolve the problems and concerns identified in this report. PDSC also requests MCAD to take the following steps and address the following points in the course of developing its report to the Commission:

- MCAD's management and Board of Directors should share this report and Service Delivery Plan, including the appendices hereto, with all of MCAD's members. They should also meet and confer with MCAD's members regarding the actions the Board proposes to take in response to this report and the Commission's Service Delivery Plan. Based on its informal contacts with members of MCAD during this planning process, OPDS informed the Commission that a significant number of MCAD's members might not be fully aware of (a) the Commission's deliberations and concerns regarding their consortium, (b) MCAD's presentations to the Commission on their behalf during this planning process, (c) the opportunity for MCAD to continue providing public defense services in Marion County and (d) the steps that must be taken to take advantage of that opportunity.
- In determining the actions it should take to address the Commission's concerns in this report and plan, MCAD should confer with OPDS's Contractor Advisory Group and Quality Assurance Task Force, as well as the administrators and boards of other consortia in the state, such as those in Clackamas, Klamath and Yamhill Counties. In order to ensure meaningful input from these groups and to take advantage of their experience and expertise, MCAD should present them with its specific proposals for change, rather than general requests for ideas and assistance.
- In preparing its 2006 report to PDSC, MCAD should update, reconsider and revise its responses to the written inquiries of OPDS and the Commission, which are contained in Appendices A and D of this report, in order to ensure that the Commission has current, accurate and complete information regarding its concerns about the management and operations of the consortium. MCAD corrected and clarified some of its initial responses to the Contractors' Site Visit Questionnaire in Appendix A. Some of its responses to PDSC's follow-up questions in Appendix D, however, are unclear or unresponsive.⁷

⁷ For example, rather than explaining how MCAD can deal effectively with an apparent requirement in its procedures for binding arbitration in the event the consortium decides to sanction an underperforming member, MCAD proposed that PDSC "can make this process easier" by providing additional funding. Appendix D, p. 4. In response to widespread criticism of MCAD's attorney-of-the-day case assignment system and PDSC's express concerns about the effectiveness of that system and about MCAD's willingness to consider change in any form, MCAD asserted that "[u]nless there is a consensus that these changes [in its case assignment system] would bring about at least better service to the indigent defendant, why make them?" MCAD then argued, apparently in the alternative, that it should receive over \$123,000 in funds, like "Portland" purportedly receives for its case assignment system, without explaining how MCAD's system or issues are similar to Portland's or why changes in MCAD's current system should cost more money. *Id.* at 6.

- During their presentations to PDSC at its July and August meetings in Salem and in their written submissions to the Commission, MCAD's representatives asserted that the Commission must provide the consortium with additional funds in order for the consortium to address PDSC's concerns, such as establishing more rigorous mentoring and oversight programs for its lawyers. These requests for additional funding were not accompanied by specific program designs or proposals that would assure the Commission that the additional funds would be spent wisely or produce the desired results. In any event, MCAD must address the Commission's current concerns about the consortium's management and operations and assure the Commission that MCAD can better manage the resources that it already receives before PDSC will consider proposals for additional funding.
- Despite three full-time employees and \$70,000 devoted to a .70 FTE Executive Director, MCAD appears to be devoting too little attention to the evaluation, mentoring and oversight of its lawyers. Accordingly, MCAD's Board of Directors should consider the redeployment of the consortium's current staff resources to address this problem, including the reallocation of some of the funds now devoted to its Executive Director position to a new position responsible for the evaluation, training and mentoring of its lawyers.

Attachment 7

PROPOSED PDSC AGENDA ITEMS FOR 2006
(Revised February 3, 2006)

Meeting Date	Agenda Items	Location
March 9	[<u>Cancel meeting</u> to prepare for Service Delivery Plans for Judicial District #7** and statewide juvenile law practice]	
April 13	<ul style="list-style-type: none"> ● Hold hearing re. Service Delivery Plan for Judicial District 7 ● Progress report on Lane & Marion Counties' Service Delivery Plan ● Review aspects of OPDS's 2005-06 contracting process ● Discussion of 2007 Legislative Concepts and budget strategies 	Hood River
May 11	<ul style="list-style-type: none"> ● Hold hearing re. Service Delivery Plan for statewide juvenile law practice ● Finalize Service Delivery Plan for Judicial District 7 ● Discussion of 2007 Legislative Concepts and budget strategies 	(Location TBA)
June 16	<ul style="list-style-type: none"> ● Hold hearing re. Service Delivery Plan for statewide juvenile practice ● Progress report on Marion County's Service Delivery Plan ● Discussion of 2007 Legislative Concepts and budget strategies ● Progress Report from Klamath Defender Services 	Bend (OCDLA meeting)
July 13	[<u>Cancel meeting</u> to prepare for a Service Delivery Plan for Clatsop County and to complete a Service Delivery Plan for statewide juvenile law practice]	

** *Judicial District 7 includes Hood River, Wasco, Sherman, Gilliam and Wheeler Counties.*

August 10	<ul style="list-style-type: none"> ● Hold hearing re. a Service Delivery Plan for Clatsop County ● Finalize the Service Delivery Plan for statewide juvenile law practice ● Discussion of 2007 Legislative Concepts and budget strategies ● Progress report from Marion County Association of Defenders 	Astoria
September 14	<p>[<u>Cancel meeting</u> to complete Service Delivery Plan for Clatsop County and to prepare for a Service Delivery Plan for statewide post-conviction relief]</p>	
October 20	<ul style="list-style-type: none"> ● Hold hearing re. Service Delivery Plan re. post-conviction relief ● Finalize 2007 Legislative Concepts and review PDSC's budget request ● Progress Report from Yamhill County Defenders 	Welches (OCDLA meeting)
November 9	<ul style="list-style-type: none"> ● Finalize the Service Delivery Plan for post-conviction relief ● Progress report on Marion County's Service Delivery Plan ● Approve PDSC's final budget request ● Review & approve proposed contracts commencing January 1, 2007 	Salem
December 14	<p>[<u>Cancel meeting</u> for the holidays and In preparation for the 2007 Legislative Session]</p>	

NOTE: *OPDS and the Quality Assurance Task Force plan to complete the following contractor site visits in 2006:*

Date	Site Visit Location
January 18 – 20, 2006	Multnomah County (eight juvenile contractors)
March 15-17, 2006	Linn County (one criminal and one juvenile contractor)
May 17-19, 2006	Multnomah County (six criminal contractors)

July 19-21, 2006

Washington County (five criminal and
juvenile contractors)

September 20-22, 2006

Lincoln County (one criminal and
juvenile contractor)

December 6-8, 2006

Columbia County (one criminal and
juvenile contractor)

Attachment 8

DRAFT
(January 25, 2006)

MEMORANDUM

February 1, 2006

TO: Public Defense Services Commission
FR: Peter Ozanne
RE: Status Report on My Priorities and Work Plan for 2005

At the Commission's request during my annual performance review in February 2005, I prepared a memorandum dated April 7, 2005, which set forth my priorities and work plan for 2005. Those priorities and work plan were based on goals and strategies in PDSC's Strategic Plan for 2005-07.

For the purposes of the Commission's 2006 annual evaluation of my job performance, I am submitting this status report on the accomplishment of my priorities and work plan for 2005. The report first sets forth my priorities and work plan for 2005, just as they appeared in my April 7, 2005 memorandum to the Commission, followed by my report on their current status *in bold italics*.

MY PRIORITIES & WORK PLAN FOR 2005

1. Secure an adequate public defense budget. This priority is likely to be the primary and perennial challenge for the Commission and its staff for the foreseeable future. Phase I of the 2005 Joint Ways and Means Committee's budget process is now complete. As a result, the Public Safety Subcommittee understands the integral role of public defense in the state's public safety system and the dire consequences to that system caused by cuts to PDSC's budget. The Subcommittee also accepted the Commission's assignment of its highest priority to each and all of its legally mandated services, thereby increasing the chances that all of those services will appear on the Ways and Means Committee's priority list for state funding.

PDSC is scheduled to appear for Phase II of this budget process on May 11 and 12. Phase II will involve the Subcommittee's more detailed examinations of PDSC's proposed budget for 2005-07 and provide an opportunity for public testimony regarding that budget. I will arrange for public testimony in support of our budget by law enforcement officials across the state, similar to the testimony during our successful budget presentation before the 2003 Ways and Means Committee.

Current Status: Our Phase II budget presentation in May 2005 included individual presentations by Chief Justice Carson and Barnes Ellis, and by

judges and law enforcement officials from across the state. As a result of that budget hearing and the efforts of many others throughout the 2005 legislative session, the Commission secured a "maintenance level" budget for 2005-07 of approximately \$175 million, including \$166 million for the Public Defense Services Account. Our final budget exceeded the Governor's recommended budget by \$15.4 million and eliminated the distraction and uncertainty associated with appearances before the Emergency Board throughout the 2006 interim to plead for additional operating funds.

OPDS's Contract and Business Services Division (CBS) just completed negotiating all of PDSC's contracts for the first time prior to their expiration. CBS distributed a 2.4 percent cost-of-living increase in PDSC's 2005-07 budget, which was awarded to all state agencies by the 2005 Legislature, to lower-paid contractors in accordance with the Commission's directions to reduce unreasonable disparities in contract rates as quickly as possible.

PDSC also proposed "Policy Packages" to the 2005 Legislature for additional funds in order to achieve "parity" in compensation between public defense contractors and prosecutors and to establish a new division in OPDS to handle post-conviction relief cases. Like the policy packages of nearly all state agencies in 2005, our budget proposals for new money did not receive a hearing. OPDS did receive legislative authorization to reallocate a last-minute budget cut in the amount of \$270,000 to PDSC's entire budget rather than to its "administrative" budget, thereby avoiding a crippling reduction in our staff at CBS.

2. Support and follow-up on the Commission's service delivery planning process.

In accordance with PDSC's Strategic Plan for 2005-07, I am about to begin OPDS's preliminary investigations in Marion and Yamhill Counties in preparation for the Commission's service delivery planning process in those counties, which will take place between June and September 2005. I also plan to conduct a preliminary investigation in a third county in 2005, leading to the Commission's third planning process between September and December.

Although the Commission's Strategic Plan currently proposes Jackson County for this second planning process, I am considering recommending Klamath County instead. PDSC's primary contractor in Klamath County has expressed interest in a pilot project to attract and retain new public defense attorneys in the county. That project could serve as a good comparator to a similar effort in Lincoln County, where we are following-up on the Commission's service delivery plan for that county by attempting to engage our current contractors in a "succession planning process" to attract new legal talent to the county.

Consistent follow-up on PDSC's service delivery planning process is essential to maintaining the credibility and influence of the Commission; it also is as time-consuming as OPDS's preliminary investigation process. In addition to our efforts in Lincoln County to attract and retain new contractors, I am staffing or overseeing (a) the establishment of the new court-appointment process in Lane County; (b) the creation of Early Disposition Program guidelines for consideration by the Commission and implementation in Linn County pursuant to PDSC's plan for that county; and (c) the development and implementation of more cost-effective methods for handling conflict-of-interest cases in Multnomah County.

Current Status: *With minor adjustments to the foregoing schedule, the Commission completed Service Delivery Plans in Marion and Klamath Counties and is about to complete such a plan for Yamhill County. With regard to essential follow-up on these Services Delivery Plans, PDSC's prime contractors in all three counties are required to report to the Commission in 2006 on their progress in addressing the problems and implementing the changes identified in the plans. In Marion County, OPDS has established a "Steering Committee" made up of prominent local citizens, public officials and justice professionals to guide the development of a new public defender office in the county, with particular emphasis on the establishment of a community-based board of directors to oversee the initial formation and ongoing operation of the office. The Steering Committee will meet in February and March 2006 with the goal of identifying the members of a new board of directors by April. OPDS anticipates that the new board will (a) conduct a search for the office's new executive director and develop a preliminary design for the office by June 2006, (b) hire the executive director in October (c) fully staff the office by December and (d) begin operating under a contract with PDSC in January 2007.*

With regard to follow-up on the Commission's earlier service delivery plans, Kathryn and I recently met with the administrator of Lane County's court appointment panel for a progress report. The panel appears to be operating as effectively as the Commission intended in its plan for Lane County. The panel's Oversight Committee and administrator will present a formal progress report to the Commission at its April 2006 meeting. Kathryn, Shelley Dillon and I also met recently with a representative of the Lincoln County consortium to discuss the options for restructuring the county's service delivery system in order to improve its cost-efficiency and effectiveness. OPDS will report to the Commission on recommended options for service delivery in Lincoln County prior to expiration of the consortium's current one-year contract in December.

After review and input from OCDLA, presiding judges and district attorneys, PDSC adopted a set of standards for Early Disposition Programs (EDPs) in 2005, which are designed to assist Linn County or any other

county in the state in developing or improving its EDP to ensure such a program's fairness and effectiveness, as well as the participation of public defense attorneys.

Following its Service Delivery Plan in Multnomah County, PDSC agreed to follow up on the problems reported in that county involving conflicts of interest by commissioning a study chaired by Ann Christian and Paul Levy. With the assistance of a team of experienced public defense attorneys from across the state, they produced a lengthy and detailed report with a set of specific proposals for managing conflicts of interests. That report revealed that perceptions of problems with conflicts of interest in Multnomah County were exaggerated; however, it also proposed best practices applicable to any county for minimizing claims of conflict of interest and for reducing the delays and inefficiencies in the justice and public defense systems associated with conflicts.

3. Support and follow-up on the contractors' site visit process. Because Ingrid is doing an outstanding job of staffing and overseeing this process, one of my roles in the process is simply to provide back-up and support. I will continue to help Ingrid recruit lawyers and allied professionals for site visit teams and assist the Quality Assurance Task Force select contractors for site visits.

Another, more critical role for me in the process is to provide the necessary follow-up to ensure that the process realizes its full potential as the Commission's most important quality assurance strategy and most visible performance measure for the state's public defense system. With advice from the Contractors Advisory Group and its Quality Assurance Task Force, I will develop a list of best practices that (a) contractors will be encouraged to adopt; (b) site visit teams will use as bases for evaluating and advising contractors; and (c) will form the bases for my periodic reports to the Commission and the legislature on the performance of the state's public defense system. I will also follow-up on site visit team recommendations for improving the operations of PDSC's contractors by developing relevant training programs, such as a special program to encourage the formation and engagement of boards of directors at the next PDSC/OCDLA Management Conference in October.

Current Status: The contractors' site visit process remains one of the Commission's and the public defense community's most successful joint efforts to ensure the quality and cost-efficiency of Oregon's public defense system. Experienced and busy attorneys continue to willingly accept our invitations to participate in site visit teams because they agree that systematic quality assurance is the right thing to do and because this effort serves the collective interests of the public defense community by strengthening its credibility with citizens, local public officials, justice professionals and state legislators. Thanks to Ingrid's efforts, site team

members and contractors subject to the site visits uniformly praise the experience and its professional and educational value.

In 2005, site visit teams reviewed and evaluated the operations of major contractors in Jackson, Douglas, Umatilla and Multnomah Counties. On January 18-20, 2006, a team of experience juvenile law practitioners completed a site visit of Multnomah County's seven juvenile contractors.

As a result of the individual reports developed by the site visit teams and drafted by Ingrid, a set of public defense "best practices" and common problems facing PDSC's contractors are emerging. These best practices and common problems will be the subject of my progress report to the Commission in June 2006 on the site visit process, as well as the bases for my report to the 2007 Legislature on the performance of the state's public defense system. They have also been incorporated into recommendations of the Commission's in its most recent service delivery plans.

The site visit reports also continue to confirm the need for stronger management oversight by boards of directors or comparable oversight groups and the importance of the sharing of information on best practices in public defense management among PDSC's contractors. As a result, OPDS and OCDLA organized presentations to encourage the development and more effective use of boards and advisory groups and to share best practices in public defense management (such as regular and systematic personnel evaluations) at OCDLA's annual Management Conference in 2005, and will continue to do so in the future. I am also in the process of forming a Consortium Advisory Group to develop best practices and exchange information among consortium managers and administrators across the state regarding management and operational issues unique to consortia.

4. Develop and implement standards and processes for court-appointments of private, hourly-paid lawyers. Ingrid, Kathryn and I are developing a new court-appointment process for capital defenders not under contract with PDSC. This experience, along with the development of Lane County's new court-appointment process, will support the development of a statewide court-appointment system for private, hourly-paid attorneys. These processes should be operational by the end of the year.

Current Status: With input from OPDS's advisory panel of capital defenders, Ingrid drafted a new set of qualification standards for capital defenders. Those standards, along with a revised set of qualification standards for all court-appointed attorneys and a process to administer them, were reviewed and approved by PDSC during the fourth quarter of 2005. At the time of their adoption, the Commission encouraged OCDLA to continue its review of the new qualification standards and process and to

submit any proposed improvements to PDSC as soon as possible in 2006. I anticipate that OCDLA will present its proposals to the Commission in February.

OPDS has decided to meet the state's demand for capital defenders by contracting with individual attorneys as much as possible, rather than forming court-appointment lists of hourly paid attorneys. PDSC's capital defense contractors must satisfy the relevant qualification standards and, must be, in OPDS's judgment in consultation with its advisory panel of capital defenders, the most competent and effective attorneys available from the relevant pool of qualified attorneys. On April 1, 2006, when all of the new qualification standards for court-appointed attorneys become effective, OPDS plans to (a) determine the need for hourly-paid, private bar attorneys in jurisdictions across the state, (b) with the advice and assistance of advisory panels of experienced and highly qualified public defense attorneys, screen and select the most competent and effective lawyers from among the available pool of qualified public defense attorneys and (c) distribute lists identifying those lawyers to circuit courts as the only court-appointed attorneys in their jurisdictions who are eligible for compensation by PDSC.

5. Oversee the development or refinement of the following OPDS administrative processes:

A. Fully implement and refine OPDS's personnel policies, employee evaluation processes and compensation system. Kathryn and Pete, as OPDS's division managers, are primarily responsible for implementing these kinds of policies and procedures. Nevertheless, our Management Team has concluded that some of OPDS's policies and procedures need further implementation or refinement calling for my involvement, including: (a) adoption of additional personnel rules; (b) further development and refinement of our employee evaluation processes; and (c) revision of our compensation system to (i) implement the Commission's statutory mandate to develop a compensation system commensurate with comparable state agencies and (ii) accommodate a performance-based compensation system with the resources available to the Commission.

Current Status: **OPDS's Legal Services Division (LSD) and CBS continue to refine their employee evaluation processes and to promote a culture where performance is valued and rewarded. The evaluation processes include the development of periodic work plans and self-evaluations by individual employees, followed by clear feedback and performance evaluations by their direct supervisors. OPDS's employee evaluation processes are not designed to serve as the principal means to resolve problems in the performance of individual employees; performance problems must**

be addressed immediately by an employee's direct supervisor who, in collaboration with that employee, develops a specific plan of action to remedy the problem, which is reinforced by a process of progressive discipline in the event that the problem is not resolved in the first instance.

An evaluation system should be designed to prevent performance problems before they occur, reward positive performance and promote the improved performance and career satisfaction of employees. While such a system is always a "work in progress," LSD and CBS have made great strides in gaining employee trust and support for a performance-based management system and in developing a corps of managers who are willing and increasingly able to administer such a system effectively.

Fair and adequate employee compensation is a necessary condition to successful performance-based management. As PDSC has already been advised, OPDS will present a new agency compensation plan for the Commission's review and approval at its February 9, 2006 meeting. In accordance with PDSC's enabling legislation, that plan represents the first step in eventually ensure levels of compensation equal to OPDS's most comparable state agencies.

OPDS personnel rules, while addressing the basic terms and conditions of employment, employee rights and benefits and disciplinary processes, remain incomplete. More immediate priorities and the absence of staff to assume human resource responsibilities are the primary reasons for the lack of progress in this area.

B. Develop a systematic process to evaluate the legal competency and ability of current and prospective contractors. OPDS needs to develop a formal and more systematic process to ensure that professional judgments are made with regard to the competency and ability of candidates for PDSC's contracts before those contracts are negotiated or renewed. With the assistance of Ingrid, Kathryn and CBS's contract analysts, I intend to develop such a process for the Commission's consideration before the end of the year.

Current Status: This goal may either be an overambitious objective that cannot be accomplished with OPDS's existing staff and resources, or a task that is slowly being accomplished with OPDS's existing contracting staff in CBS and with new strategies and programs that have recently been implemented by the Commission and OPDS. As originally envisioned during preparation of the 2003

“Ozanne-Guilfooy Report” on the Indigent Defense Services Division’s contracting process, a formal and systematic process to ensure the professional competency and capacity of candidates for PDSC’s contracts would involve an increase in the size of OPDS’s legal staff for the purposes of auditing the operations, surveying the relevant stakeholders in a contractor’s jurisdiction and evaluating a prospective contractor’s organization and personnel prior to the commencement of contract negotiations. Such a process might be the first stage of an RFP process in which prospective contractors are “prequalified” before proceeding to the second stage of contract negotiations. Obviously, OPDS does not have the resources to establish this kind of process, and is unlikely to obtain them in the near future.

On the other hand, OPDS may be making progress on this goal with its existing staff and resources. Certainly, CBS’s current staff makes assessments of the competency and capacity of contractors in the course of negotiating contracts and conducting business with them, and by surveying or receiving input from judges, prosecutors and defense attorneys in a contractor’s jurisdiction. The Commission and OPDS have also developed new quality assurance programs and strategies, such as OPDS’s formal complaint process to address unacceptable performance or misconduct by individual attorneys and PDSC’s service delivery planning and contractor site visit processes. These programs and strategies increase the likelihood that PDSC’s contractors will possess the professional competence and organizational capacity to deliver quality, cost-efficient legal services.

The Commission will have the opportunity to make its own assessment of OPDS’s progress in accomplishing this goal during its review of the 2005 contracting process at its February 9, 2006 meeting.

C. Establish a pilot project to centralize the preparation of appellate transcripts. OPDS should take steps to ensure greater accountability with regard to quality and cost-efficiency in the preparation of appellate transcripts. These transcripts are currently prepared by individual transcriptionists across the state who are paid by the page at a statutory rate. With the assistance of Kathryn and Lorrie Railey, I intend to develop a pilot project to contract with a single, centralized transcription service that is capable of preparing all appellate transcripts in one or more counties and addressing the complaints of LSD’s attorneys regarding the quality of its transcripts.

Current Status: This goal remains a worthy one, though it fell to the bottom of my list of priorities for 2005 and, therefore, was not accomplished. Of equal importance, I concluded that, by proposing to deploy and directly supervise CBS's employees to accomplish this goal and by implicitly setting division priorities without fully considering all of its responsibilities and organizational needs, I was intruding into management responsibilities and prerogatives that are properly Kathryn's. Thus, I have delegated to Kathryn and her management team the determination of what priority this goal should be given among the many cost-saving goals that CBS is now and will be pursuing in the future.

CONCLUSION & PROSPECTS FOR 2006

2005 was the year to (1) secure an adequate budget for maintenance of Oregon's public defense system without the distraction and uncertainty associated with appearances before the Emergency Board during this legislative interim, (2) continue to pursue and refine PDSC two principal planning and quality assurance strategies – the service delivery planning and contractor site visit processes, (3) develop new court-appointed attorney qualification standards and processes to ensure the competency and effectiveness of individual public defense attorneys and (4) strengthen OPDS's internal management and operations. In my view, all four of those principal goals were accomplished.

With two notable exceptions, 2006 should be another year to focus on refining and strengthening PDSC's existing programs and strategies, including its service delivery planning and site visit processes, implementation of its court-appointed attorney qualification standards and OPDS's selection process for public defense attorneys, and OPDS's internal management systems and operations. One critical exception to this focus on established programs and strategies should be the development of new and more effective strategies to obtain an adequate public defense budget from the 2007 Legislature. As a result, I am proposing that the Commission devote significant portions of its monthly meetings in 2006, beginning in April, to developing effective strategies to secure an adequate budget for 2007-09.¹ A second exception should be the development of new strategies to increase diversity and cultural competence within Oregon's public defense work force. Therefore, I have established an Advisory Group on Diversity made up of diverse public defense attorneys and support staff and chaired by Angel Lopez to advise the Commission and OPDS on strategies and practices for increasing diversity and cultural competence in the public defense system.

¹ See the attached copy of "Proposed PDSC Agenda Items for 2006."